#### **CITY OF CARSON**

### PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING: July 29, 2020

SUBJECT: Continued Public Hearing for:

Site Plan and Design Review (DOR) 1745-18

Conditional Use Permit (CUP) 1074-18

Specific Plan (SP) 18-18

General Plan Amendment (GPA) 108-18,

Entitlement Agreement (DA) 24-18.

APPLICANT: KL Fenix Corporation

19401 S. Main Street Gardena, CA 90248 Attn: Segovia Felipe

PROPERTY OWNER: Young Kim

KL Fenix Corporation 19401 S. Main Street Gardena, CA 90248

REQUEST: Consideration of applicant's proposal for construction

of 53,550-square-foot structure with 39,500 square feet of warehouse space, 14,050 square feet of office space, 6 loading docks, 115 passenger vehicle parking spaces, 475 cargo container/truck spaces

PROPERTY INVOLVED: 20601 S. Main Street

#### **COMMISSION ACTION**

AYE	NO		AYE	NO	
		<b>Chairperson Pimentel</b>			Palmer
		Vice-Chair Madrigal			Rahman
		Cainglet			Rashad
		Fe'esago			Valdez
		Mitoma			Alt. Diaz Alt. Hellerud Alt. Zuniga

Item No. 7A

#### I. Introduction

Applicant
KL Fenix Corporation
19401 S. Main Street
Gardena, CA 90248
Attn: Segovia Felipe

Property Owner
Young Kim
KL Fenix Corporation
19401 S. Main Street
Gardena, CA 90248

#### II. Background

The applicant requests the Planning Commission's consideration for a General Plan Amendment (GPA) to change the designation from MU-BP to Heavy Industrial, a Zone Change via the Specific Plan (SP), an Entitlement Agreement (EA) to regulate the temporary use, a Conditional Use Permit (CUP) for development of the proposed use and development on an Organic Refuse Landfill site and a Site Plan and Design Review per CMC 9172.23.

At the regularly scheduled meeting of May 27, 2020, the Planning Commission voted 7-2 to continue this item to the July 28, 2020 meeting. Of paramount concern to the Planning Commission were the deficiencies and discrepancies in the plans submitted by the applicant resulting in numerous conditions of approval including those requiring submittal of revised plans prior to scheduling the item for City Council. In addition, the applicant submitted a letter disagreeing with many of the conditions of approval and the Entitlement Agreement (EA) provisions making it difficult for the Planning Commission to analyze and make a decision on the project. The Commission discussed the project and directed the applicant to revise their plans and continued the item to this meeting Staff has held several meetings with the applicant's representatives to resolve many of the matters. On July 9, 2020, the applicant submitted the revised plans for staff's review. Therefore, staff has had just enough time to review the plans and revise the conditions of approval and the EA; however, we have not had time to discuss our comments and corrections with the applicant. This has resulted in retaining most of the conditions of approval from the previous Planning Commission meeting including the one requiring the applicant to revise the plans prior to scheduling for City Council's consideration. In addition, there are still disagreements with staff on many of the major deal points of the EA.

The Planning Commission also directed the applicant to host a Community Meeting or other type of feasible community outreach during the COVID-19 health crisis; to date staff is not aware that the applicant has complied with this request.

#### Site & Project History

The May 27, 2020 staff report provides a detailed Site and Project history, including the exception granted to the applicant by City Council to the logistics moratorium in place at that time for making this application. (Exhibit 5)

#### **II. Project Description**

The May 27, 2020 staff report discussed in detail the project use, structures, vehicle parking, access, setbacks, fencing and landscaping. This staff report highlights Planning Commission direction from the last meeting and applicant's response to said direction.

#### <u>Use</u>

The applicant is proposing a "cargo container parking" facility on the project site. On-site operational activities would include the mobilization of either imported goods that have just arrived from the Ports of Los Angeles and Long Beach or exported goods that are in transit to the Ports. The project also includes a warehouse component within the proposed building. Hours of operation have not changed from the May 27, 2020 Staff Report and are implemented through COA # 59.

#### Structures and Vehicle Parking and Storage Spaces

The proposal originally included a 53,550-square-foot structure on the eastern portion of the 14.33 acre property with 39,500 square feet of warehouse space, 14,050 square feet of office space and 6 loading docks within a two-story building. The site plan includes 115 passenger vehicle parking spaces, 400 cargo container parking spaces and 75 truck parking spaces for a total of 475 cargo container/truck spaces (Truck Spaces). However, the applicant has revised and removed a proposed open-air loading dock facility with 9 loading docks from the site plan which is acceptable to staff.

#### Access

The applicant has revised the access points to the site as suggested by staff. The project now proposes one driveway along Main Street for cars and one along Figueroa Street for trucks as requested by CalTrans. However, the new Figueroa Street driveway creates additional issues which are discussed later in this report.

#### **Setbacks**

The proposed facility has a 25-foot setback along Main Street, a 20-foot setback along Figueroa Street and 5 foot of landscaped setbacks along Northern and Southern property lines. The building is setback 50 feet from the Southern property line and the loading docks are setback 150 feet from the same.

The proposed Specific Plan proposes a 25-foot setback on Figueroa Street Figueroa street setback which is inconsistent with 20-foot setback on the site plan. Condition No. 61 (g) has been added to reduce the Specific Plan setback to 20 feet resolve this discrepancy.

#### III. Analysis

The May 27, 2020 staff report provided a detailed analysis for the proposed project. Below are a summary of unresolved issues between city staff conditions of approval/recommendations and the proposed application.

#### Submittal of Revised Documents

The materials presented to the Commission in the May hearing were not drawn or written by professional firms. Applicant was directed by the Planning Commission to follow Staff's recommendation on hiring professional architect to draw up the architectural drawing set and hire a professional planning firm to draft the Specific Plan. In addition, Staff also recommended that the elevations be revised to incorporate comments of City's Design consultant.

The applicant hired a professional planning firm to draft the Specific Plan. The revised specific plan addresses major concerns, however, the applicant and planning firm did not address all issues in detail. This is discussed later in the report.

Staff had numerous concerns with the applicant's previously submitted Site Plan and Elevations which were not created by a professional design firm. It appears that most of the same issues remain with the resubmitted Site Plan as it includes minimalistic edits and the Elevations have not been modified at all. Therefore, Conditions of Approval Nos. 15,16,17,18,19, 20, 21 and 61 include provisions to address staff's concerns and requires the applicant to submit the revisions to the site plan, elevations, and the specific plan prior to scheduling the item for City Council.

#### Land Use Compatibility

#### **Design Aspects**

The May 27, 2020 staff report presented Land-use compatibility issues (Exhibit 5). This report provided a creative approach to addressing site compatibility with the surrounding areas.

This approach involved a significant reduction of Truck Spaces to make the proposed use more compatible with the areas to the south and reduce the traffic, noise, and air quality impacts associated with the proposed use. Eliminating two rows of Truck Spaces together with the most southerly drive aisle would provide an approximately 155' foot buffer between the truck operations and the uses to the south. This would reduce the number of Truck and Container Spaces by 177 from 475 to 298, refer to COA #15. Additional safe guards were also presented to ensure these conditions are met and to allow even more separation between incompatible uses. Depending on how surrounding parcels develop, the proposed truck operations may cease permanently or could expand to 475 spaces as currently proposed by the applicant and be vested permanently. The applicant has not agreed to this reduction to protect the surrounding land uses and create compatibility with them and is asking the Planning Commission to consider their original proposal with 475 spaces with no buffer from the properties to the south. One such property is currently being proposed with a Specific Plan to cause the development of the site as high density residential.

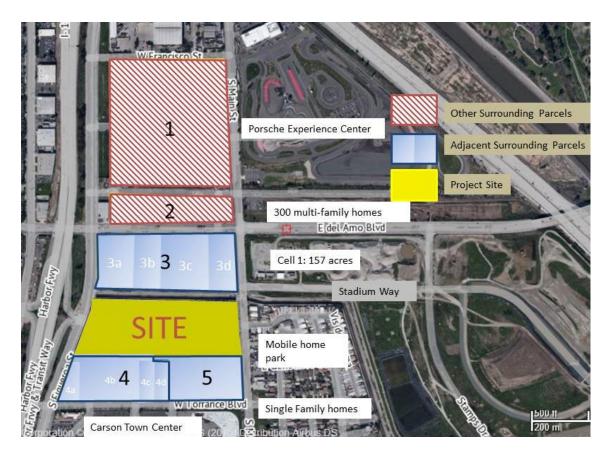


Figure (a) Surrounding parcels and area

#### **Entitlement Agreement (EA)**

The May 27, 2020 staff report required additional safeguards to ensure long term compatibility of the proposed use with the surrounding areas. The following provides a summary of the provisions included in the EA for the Cargo Container Parking facility:

- Initial Term is 7 years meaning the proposed use will continue as approved for a 7 year period regardless of the developments of the surrounding areas.
- 5 Surrounding Parcels have been identified to define compatibility of the project with surrounding areas (Figure (a)):
  - 3 Adjacent Surrounding Parcels; and
  - 2 Other Surrounding Parcels.
- o 3-year automatic extension will be granted at the end of 7 years:
  - If within the 7 year period no new development occurs on the Adjacent Surrounding Parcels; or
  - No new development or only one new development occurs in Other Surrounding Parcels.
- Automatic 3-year extensions will be granted until one of the following occurs:
  - One new development occurs in Adjacent Surrounding Parcels:
    - If the new development is heavy industrial, the proposed use will be vested and continues for perpetuity; or

- If the new development is non-heavy industrial, the proposed use will cease operation for perpetuity.
- There are two new developments (cumulative) on Other Surrounding Parcels
  - If both new developments (cumulative) are heavy industrial, the use will be vested and continues for perpetuity; or
  - If both new developments (cumulative) are non-heavy industrial, the use will cease operation for perpetuity.
  - If both the parcels develop, one as heavy industrial and the other as non-heavy industrial, the permanency or the cessation of the use will be determined by the development of the adjacent surrounding parcels
- In the event that during a review period, two of the adjacent surrounding parcels develop, the development of the first parcel shall govern the permanency or cessation of the use, except if the second parcel developed has a residential use, in which case the residential use would take precedence and the Cargo Container parking use will have to cease permanently.

In addition, in the event at least 50% of the area of the Surrounding Parcels gets developed as Light Industrial, then at least (60) calendar days prior to expiration of the Initial Term or any Extended Term, Developer may petition City to have the Planning Commission review the Project in the context of such development, and the Planning Commission will determine whether Developer will be granted permanent use of the Cargo Container Parking facility or will cease operations permanently.

As long as Cargo Container use is operational, the warehouse use shall be allowed to continue. If the Cargo Container Parking Facility use has to cease operations, the warehouse use can be allowed to continue. The following provides a summary of the provisions included in the EA for the Warehouse Use:

- 3-year automatic extension will be granted from the date of cessation of Cargo Container Parking use if both the other surrounding parcels have been developed, one as a light industrial and other one is developed as something other than Light Industrial.
- If only one of the adjacent surrounding parcels develop as Light Industrial, the warehouse use shall be permanently vested.
- o In the event that during a review period, two of the adjacent surrounding parcels develop, the development of the first parcel shall govern the permanency or cessation of the use, except if the second parcel developed has a residential use, in which case the residential use would take precedence and the warehouse use shall cease operations.

The above provisions will ensure the proposed project will be predominantly compatible with the surrounding uses both now and in the future. The applicant has not agreed to the above and is proposing the following for the Planning Commission to consider:

- At the end of the initial term the cargo container parking use will terminate if two of the Surrounding Parcels are developed with non-heavy industrial uses, otherwise the use becomes permanent.
- However, if two of the Surrounding Parcels are developed with non-heavy industrial uses, the warehousing use will still remain permanent as it is an automatically permitted use under the existing land use and zoning designations.

The applicant also contends that regardless of how the surrounding areas develop, the warehousing use should continue permanently as it is an automatically permitted use under the existing land use and zoning designations. Staff disagrees with the applicant's determination as the existing Mixed-Use Business Park (MU-BP) Designation of the General Plan does not allow large warehousing uses. Such uses are only permitted in Heavy Industrial (HI) and Light Industrial (LI) designations.

General Plan's MU-BP states that this land-use would allow for commercial and business park/limited industrial uses but not residential. The definition of limited industrial uses is further clarified in the Business Park section of the General Plan, which clearly states that "warehousing of a small scale (for example, no more than one ground level loading door per x square feet of building) in conjunction with a permitted primary use will be allowed". The General Plan does not contemplate large, independent warehouses in this area.

#### Stormwater Management

The subject property adjoins the Torrance lateral of the LA County Flood Control District along its northerly property line.

#### Area of Concern:

The applicant has indicated their intent to drain run-off water into the flood control channel and claim to have District approval but has yet to provide written confirmation from the District. Without formal confirmation of District approval, the applicant must redesign the proposed stormwater management system to the satisfaction of the Department of Public Works Engineering Division and the LA County Flood Control District prior to issuance of any permits; refer to COA# 31, 77.

#### Access

The applicant proposes one point of vehicular access from Main Street. In addition, the proposal has been modified to a single driveway on Figueroa Street as per the written comments received from Caltrans. Staff still has concerns regarding the Figueroa Street access point which are discussed later in this report.

#### Area of Concern:

Staff still has concerns about the viability of the proposed driveway which is not aligned with the on and off-ramp of the I-110. COA # 18 (b) addresses this concern and advises the applicant to redesign the entrance with a median to separate the incoming and outgoing traffic flow and also consult with Caltrans to align the ingress-egress with the on and off ramps of I-110. The applicant will also have to work with Caltrans to get an approval for the precise location of the driveway (COA# 19). In addition, the proposed new driveway location would require a left-turn pocket to be created on Figueroa Street for access to the Site from southbound trucks (refer COA# 88(I)).

#### Parking & Traffic

The proposed development exceeds the minimum parking requirement for the Site, as presented in May 27, 2020 Staff Report. The applicant has attempted to address Staff's concerns about maneuverability of trucks on site by removing the outdoor docking area.

#### **Area of Concern:**

The revised Site Plan rectifies the maneuverability issue for dock numbers 1 through 4. However, the distance between the docking area of docks 5 & 6 and the first container parking bay directly across from these bays is still insufficient for a 65-foot truck to back up and dock.

In addition, Staff had proposed a Condition of Approval requiring the Figueroa Street gates to be open at all times during the operational hours. This was intended to prevent any backing up of traffic on Figueroa Street as trucks await opening of the gate. Applicant team does not agree to this condition and for security reasons would like to be able to close the gate at dusk. Thus, COA # 18 (e) has been drafted to modify the Site Plan to allow at least one full truck length of stacking outside the gates of the property. Alternately, the applicants still retain the possibility of accepting Staff's condition.

The revised Site Plan does not show any truck turning radii and flow of movement within the site.

#### **Building and Architecture**

The proposed building lacks the design quality and thoughtfulness expected from a project of this nature. The City's Design Consultant team (RRM) reviewed and provided detailed comments and suggestions for improvements that the applicant has not incorporated into the proposed development.

#### Area of Concern:

The proposed elevations are conflicting in different directions. Moreover, the renderings that have been recently submitted also fail to create interest or provide clarity to the project.

- The applicant was directed to work with a licensed architect specializing in tilt-up construction in order to address all comments provided by RRM. To Staff's knowledge, this process has not been initiated. COA # 5, 20 & 21 address these issues by requiring the applicant to submit revised elevations, revised materials board, and revised color renderings prior to scheduling for City Council.
- In addition, COA # 43 requires additional on-site landscaping to adequately screen the Cargo Container parking areas from I-110 off-ramp and North and Southbound Figueroa Street. Applicant objects to this condition and staff is concerned that without the additional landscaping, the visual impact of one of the primary entrances into the City will be blighted by the view of trucks and containers on this project site.

#### Signage

Due to the unique nature of the project, the project shall be required to submit for a Sign Program for all signs to be permitted on the property. The standards incorporated in the Specific Plan are not comprehensive and thus COA # 53 and 62 require the applicant to

edit the Specific Plan to remove all sign standards from the Specific Plan and file for a Sign Program instead. COA # 54 clarifies that no proposed signages shall be approved as part of this approval including the "City of Carson" monument sign proposed along Figueroa Street.

#### Fencing

The entire perimeter of the subject property includes 8-foot high walls and fencing. The developer is proposing a combination of wrought-iron fencing and pre-cast concrete panel walls as fencing material. The building entrance on Main Street will include wrought-iron fencing. Pre-cast concrete panels will be installed along the Northern and Southern property lines and a combination of both materials is proposed along Figueroa Boulevard.

#### Area of Concern:

The proposed wall on the North side is offset 10 feet to the south of the property line. Staff presented their concerns about the maintenance of the area between the wall and the North property line in the May Planning Commission hearing. The applicant has not provided an explanation to address this concern other than placement of the water filtration system on the north side of the wall and draining run-off water into the flood control channel, which staff believes is not permissible. The applicant has not revised the Site Plan to place the wall on the property line as directed earlier. Thus, COA # 31 is still relevant and valid.

The applicant has been requested to match the colors of the concrete panels to the colors of the building and provide a paint and material board for the fencing and walls for Staff's review. Since this information has not been provided, COA# 28 & 29 still remains valid.

In addition, the applicant will be required to build an 8-foot high fence along the last truck/container parking spaces securing the buffer area created by eliminating two rows of container parking spaces and the associated drive aisle. This fence is at least 150 feet from the Southern property line to fence off the unused portion of the Site due to reduced truck/container parking spaces. Refer to COA# 18(d) & 34.

#### Specific Plan

Specific plans are planning tools included in state law that allow cities to adopt different development standards than those in specific zones included in the City's zoning code. The implementation of the proposed project requires different development standards and uses than those included in the Carson Municipal Code Chapter 1, Part 4, Heavy Industrial Zone; therefore, the applicant proposes the KL Fenix Cargo Container Parking Specific Plan (Exhibit 3).

After the May 27, 2020 Planning Commission meeting, the applicant hired a professional firm to redraft the said Specific Plan.

#### Areas of Concern:

The revised Specific Plan is a marked improvement over the first draft. However, it is clearly evident that the applicant and the Specific Plan team did not have sufficient time to address all of the conditions presented by Staff. For example, on Page 16 of the

revised Specific Plan, Cargo Container facilities are prohibited within 1,000 feet of residentially zoned properties. However, since residential uses do currently exist within 1,000 feet of the site, the applicant's proposed use would not be permitted by the Specific Plan. The same applies for institutional uses as well.

There are several other minor issues such as discrepancy of setbacks and missed details that have been addressed by COA # 62.

Furthermore, the Permitted Uses Section of the proposed Specific Plan would need to be modified to exclude "Cold Storage" warehousing. Cold Storage use generates a different trip generation rate that other warehousing uses and the inclusion of this use could result in the substantial modification of the Mitigated Negative Declaration. Therefore, staff has included COA# 62 (e) to address this issue prior to scheduling the Specific Plan for City Council.

It should be noted that the CMC includes a definition for a cargo container parking facility; however, it is not included as a permitted use or a use requiring a Conditional Use Permit. Since the zoning code is a permissive code meaning that if a use is not specifically mentioned as permitted or conditionally permitted then it is not permitted by the zoning code, a Specific Plan is the proper tool to allow the proposed cargo container facility.

#### **Entitlement Agreement Terms and Conditions**

In addition to the provisions stated above to ensure compatibility of the proposed use with the surrounding areas, the following provides a summary of the major Terms and Conditions included in the Entitlement Agreement:

#### Compliance with EA, Fines

Prior to issuance of building permits, the developer is required to deposit with the City \$100,000. This deposit will be used by the City, if necessary, to ensure compliance with the provisions of the EA. A fine of either \$1,000 per incidence or \$500 per day until compliance has been reached will be levied for violation of the following terms and conditions of the EA:

- Only a total of 298 spaces (220 container parking spaces and 75 truck parking spaces) spaces shall be allowed on the site. (\$1,000).
- Use of the Property must be in strict compliance with the Permissible Usage. (\$1,000).
- All truck ingress and egress to and from the Property shall be via Figueroa Street. (\$1,000)
- No trucks shall be permitted to traverse on Torrance Boulevard or Main Street. (\$1,000).
- Developer is required to install Video Surveillance Cameras ("VSCs") that record 24-7. (\$1,000)
- Developer's trucks do not travel into or from the Property using Torrance Boulevard and Main Street. (\$1,000).

- Developer must cease operations when such cessation is required, and retrofit warehouse when required. (\$500 per day as a penalty until compliance has been reached)
- Trucks without the KL Fenix logos shall not be authorized to use the site. (\$1,000)
- Developer must comply with the prescribed hours of operation.(\$1,000)
- All VSCs shall be installed and operational at all times. (\$1,000)
- The Property, including the Buffer Area, must at all times be maintained and generally kept in a clean condition. (\$1,000)

#### **Area of Concern:**

Since May 27, 2020 Planning Commission meeting, Staff has revised the fines from \$5,000 per incident down to \$1,000 in an attempt to be accommodating to the applicant, reach a consensus and allow this project to move forward.

However, due to the fairly nominal value of fines per violation, Staff has a concern that there could be an issue of repeated and persistent violations. The Commission may consider the following options to remedy the situation and provide direction to Staff:

- 1. Increase the per violation amount and direct staff to incorporate the fine amount in the Entitlement Agreement.
- 2. Institute an incremental increase in fines per violation via the Entitlement Agreement. As an example, fine for the first violation is at \$1,000, second violation at \$1,500, third at \$3,000 and so on.
- 3. Condition the project for reconsideration by Planning Commission after a certain number of violations within a given time. As an example, Commission may decide to reconsider the project's entitlements if 10 violations occur within any given 6-month period.

Staff requests the Commission to consider these options and provide further direction.

#### IV. CFD/DIF Discussion

Interim Development Impact Fee: On July 1, 2020, the citywide DIF fees were adjusted in accordance with Article XI of the Carson Municipal Code (Interim Development Impact Fee Program) which requires the applicant to pay an estimated one-time development impact fee of 217,396.96 (currently \$729.52 per truck/container space based on 298 Truck Spaces) to fund the development's proportional share of city-wide capital infrastructure improvements. The fee paid will be proportional to the number of truck Spaces ultimately approved for the project and the fee in effect when building permits are issued, refer to COA #1.

Funding Mechanism for Ongoing Services / Community Facilities District: The applicant, property owner, and/or successor to whom these project entitlements are assigned ("Developer") is responsible to establish a funding mechanism to provide an ongoing source of funds for city services including the maintenance of parks, roadways, and sidewalks. A uniformed-standardized rate for ongoing city services was adopted by the City pursuant to Resolution No. 19-009 and accompanying Fiscal Impact Analysis ("FIA") report. Under the adopted Resolution and FIA report, the subject property falls under "Other Industrial Zones" with a current rate of \$480.75 per acre per year. Based on a 14.33-acre site, the current estimated annual

amount is \$6,889.15 which reflect the adjusted rates as of July 1, 2020. The actual amount of the CFD will be based on the fee in effect at the time the building permits are issued. Developer is required to mitigate its impacts on city services either through: 1) Annexing into a City established Community Facilities District (CFD) or 2) Establishing a funding mechanism to provide an ongoing source of funds for ongoing services, acceptable to the City, refer to COA#2.

Additionally, at the time of application for a business license, if there are two different users between the Cargo Container Parking Facility and warehouse, then an additional DIF payment will be made for the warehouse in the amount of One Hundred Thirty Thousand Six Hundred Sixty Two Dollars (\$130,662.00), calculated at \$2.56 per square foot of building area (calculated at \$2.56 x 53,550 = \$137,008). Such DIF payment will be made at the time applications for the business licenses are submitted to City.

#### V. Zoning and General Plan Consistency

The proposed Cargo Container Parking use is not allowed within the Mixed-Use Business Park General Plan Land Use designation. Therefore, to implement the proposed project, a General Plan Amendment is required to change the General Plan Land Use Designation to Heavy Industrial. This change would make this parcel the only parcel in the vicinity of the site with a HI designation.

Since the current zoning of the site is not compatible with the HI land use designation, a zone change is required. Typically, the implementing zone for the HI designation is Manufacturing Heavy (MH) zone. However, since the MH zone allows a variety of uses not desired in this area, Staff requested the applicant to file for a specific plan which provides more control over the possible uses of the site.

#### **VI. Environmental Review**

Pursuant to the California Environmental Quality Act (CEQA), a Draft Mitigated Negative Declaration was prepared and made available for public review from April 14, 2020 through May 13, 2020. A Notice of Intent to Adopt a Draft Mitigated Negative Declaration was posted with the City Clerk, LA County Clerk, Carson Library, on-site, and sent to responsible agencies. An electronic copy of the the document was also posted on Planning Division (http://ci.carson.ca.us/CommunityDevelopment/KLFenix.aspx). No comments were received recommending that an Environmental Impact Report (EIR) should be prepared.

Detailed discussion of the impacts and mitigation measures has been presented in the May 27, 2020 Staff Report.

The applicant recently submitted a design approval letter from DTSC (Exhibit 7) that approves the Construction Quality Assurance Plan (CQAP). CQAP summarizes the activities associated with the installation of the pavement system and cover system at the project site. Additionally comments were received from Armbruster Goldsmith & Delvac LLP, legal counsel of Carson El Camino LLC on the inadequacies of the CEQA document, which have been addressed in a letter by City's Environmental

Consultant (Exhibit 10). Based on the comments and their responses, Staff believes that revising or recirculating the MND is not warranted.

#### VII. Public Notice & Community Meeting

Notice of public hearing was published in the newspaper on April 30, 2020. Notices were mailed to property owners and occupants within a 750' radius and posted to the project site by April 30, 2020. No re-noticing was required as the Planning Commission continued the item to the July 28, 2020 regularly scheduled public hearing. The agenda was posted at City Hall no less than 72 hours prior to the Planning

At the regularly scheduled meeting of May 27, 2020, the Planning Commission directed the applicant to host a Community Meeting or other type of feasible community outreach during the COVID-19 health crisis; to date the applicant has not complied with this request.

#### VIII. Recommendation

That the Planning Commission:

 ADOPT Resolution No. 20-2696, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON APPROVING SITE PLAN AND DESIGN OVERLAY REVIEW NO. 1745-18, CONDITIONAL USE PERMIT NO. 1074-18 AND RECOMMENDING APPROVAL TO CITY COUNCIL FOR GENERAL PLAN AMENDMENT NO. 108-18, SPECIFIC PLAN NO. 18-18, ENTITLEMENT **AGREEMENT** NO. 24-18, MITIGATED **NEGATIVE** MONITORING DECLARATION AND MITIGATION AND REPORTING PROGRAM (MMRP) FOR A PROPOSED CARGO CONTAINER PARKING FACILITY AT 20601 S. MAIN STREET"

#### IX. Exhibits

- 1. Draft Resolution
  - A. Legal Description
  - B. Conditions of Approval
- 2. Development Plans
- 3. Revised Container Parking Specific Plan
- 4. Entitlement Agreement
- 5. Planning Commission Staff Report dated May 27, 2020
- 6. Planning Commission Disposition Excerpt dated May 27, 2020
- 7. DTSC Design approval letter
- 8. Applicants comment letter to May 27, 2020 Staff Report
- 9. Public Comments letters received post-publication of May 27 agenda packet.
- 10. Response to AGD LLP Comment Letter

Prepared by: Manraj G. Bhatia, Assistant Planner

#### **CITY OF CARSON**

#### PLANNING COMMISSION

#### **RESOLUTION NO. 20-2696**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON APPROVING SITE PLAN AND DESIGN **OVERLAY** REVIEW NO. 1745-18 CONDITIONAL **PERMIT** 1074-18. USE NO. RECOMMENDING TO THE CITY COUNCIL APPROVAL SPECIFIC PLAN NO. 18-18, **GENERAL** AMENDMENT NO. 108-18, ENTITLEMENT AGREEMENT NO. 24-18, MITIGATED NEGATIVE DECLARATION AND **MONITORING** MITIGATION AND REPORTING PROGRAM FOR A PROPOSED CARGO CONTAINER PARKING FACILITY AT 20601 S MAIN STREET.

WHEREAS, on October 10, 2018, the Department of Community Development received an application from KL Fenix Corporation (sometimes, "Developer") for real property located at 20601 S. Main Street and legally described in Exhibit "A" attached hereto, requesting approval of Design Overlay Review No. 1745-18, Conditional Use Permit No. 1074-18 and Specific Plan No. 18-18, with the expectation that Developer would follow up with applications for a General Plan Amendment and Development Agreement, to construct a 53,550 square foot tilt-up warehouse building and several hundred truck and container parking spaces, in connection with development of a Cargo Container Parking facility. On May 26, 2020, Developer submitted applications for General Plan Amendment No. 108-18 and Entitlement Agreement No. 24-18 in connection with such proposed project; and

WHEREAS, studies and investigations were made and a staff report with recommendations was submitted, and the Planning Commission, upon giving the required notice on May 12, 2020 for a May 26, 2020 public hearing which was continued to May 27, 2020 and again continued to July 28, 2020 and adjourned to the Planning Commission's July 29, 2020 meeting, while hearing testimony and considering all factors both oral and written, did on the 27th day of May, 2020 and the 29th day of July, 2020, conduct a duly noticed public hearing as required by law to consider said applications. Notice of the hearing was originally published in the newspaper and posted and mailed to property owners and properties within a 750-foot radius of the project site by April 30, 2020.

## NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF CARSON, CALIFORNIA, HEREBY RESOLVES AS FOLLOWS:

**SECTION 1**. The Planning Commission finds that the foregoing recitals are true and correct, and are incorporated herein by reference.

**SECTION 2**. The Planning Commission finds as follows:

1. With respect to **Site Plan and Design Review No. 1745-18** to construct a 53,550 square foot warehouse building, 75 truck parking spaces and 223 container parking spaces:

- a) The proposed project, the use of which is allowed in the Heavy Industrial General Plan Land Use Designation, will be consistent with the General Plan of the City of Carson with the approval of General Plan Amendment No. 108-18. The project site has a General Plan Land Use designation of Mixed-Use Business Park and the applicant proposes to amend this designation to Heavy Industrial.
- b) The proposed project is currently not compatible in architecture and design with existing and anticipated development in the vicinity, including the aspects of site planning, land coverage, landscaping, appearance and scale of structures, open spaces, and other features relative to a harmonious and attractive development of the area. The revised elevations of the proposed warehouse building, if submitted by Developer to City, will include vast expanses of glass and provide architectural interest to be compatible with the surrounding light industrial, office and retail uses. Therefore, approval of Site Plan and Design Review No. 1745-18 is conditioned upon Developer submitting the revised elevations of the warehouse building consistent with the description above and consistent with the Conditions of Approval imposed on Site Plan and Design Review No. 1745-18.
- c) The proposed development's revised Site Plan incorporating all the conditions set forth for the project shall provide for convenience and safety of circulation for pedestrians and vehicles. The proposed development will have adequate street access for pedestrian and vehicles, and also adequate capacity for parking and traffic. The project site will be accessed through one driveway off of Main Street which will be restricted to vehicular traffic only, and one driveway off of Figueroa Street for ingress/egress of truck traffic. Carson Municipal Code Section 9162.21 (Parking Spaces Required) requires 1 parking space for every 1,500 square-feet of gross floor area for warehouse purposes and 1 space for every 300 square feet of office space. The proposed warehouse and office building requires 74 parking spaces: 27 for warehouse (39,500 sf/1,500 =26.33) and 47 for office (14,050 sf/300 =46.83). The applicant proposes 115 parking spaces; 101 standard stalls, 4 ADA compliant parking stalls and 10 EV vehicle stalls.
- d) The proposed Cargo Container Parking facility has approximately 456 feet of lot frontage along Main Street. All signage associated with this project will be reviewed and approved as a separate Sign Program and will exhibit attractiveness, effectiveness and restraint in signing graphics and color.
- e) The proposed Cargo Container Parking facility will be constructed in one single phase.
- f) The proposed landscape plan will comply with applicable water conservation requirements. Permanent irrigation utilizing best water conversation practices will be installed for both on-site and off-site landscaped areas. New landscape will be installed throughout the site providing shade to vehicles and enhancing the visual attractiveness from adjoining streets and walkways.
- g) The proposed Cargo Container Parking facility will be compatible with Specific Plan No. 18-18 and the design standards and guidelines contained therein which, if Specific Plan No. 18-18 is approved by the City Council, will have been adopted pursuant to CMC Section 9172.15.

- h) The proposed Cargo Container Parking facility will not be compatible with the character of the surrounding uses. However, the proposed use is intended as a temporary use for 7 years, with possible additional 3 year extensions depending on how the surrounding areas get developed, as more particularly detailed in Entitlement Agreement No. 21-19. Depending on how the surrounding areas get developed after which time certain compatibility determinations will be made, if the proposed cargo parking facility is found compatible, the use may be allowed to remain permanently. Otherwise the Developer will be required to cease its Cargo Container Parking operations and bring the property into conformance with the surrounding uses. Therefore, approval of Site Plan and Design Review No. 1745-18 is conditioned upon how the surrounding areas get developed, in accordance with Entitlement Agreement No. 21-19.
- **2.** With respect to **Conditional Use Permit (CUP) No. 1074-18** to construct a 53,550 square foot warehouse building, 75 truck parking spaces and 223 container parking spaces on a Site Designated as Organic Refuse Landfill (ORL) overlay:
  - a) The proposed project, the use of which is allowed in the Heavy Industrial General Plan Land Use Designation, will be consistent with the General Plan of the City of Carson with the approval of General Plan Amendment No. 108-18. The project site has a General Plan Land Use designation of Mixed-Use Business Park and Developer is proposing an amendment to Heavy Industrial.
  - b) The project site is adequate in size, shape, topography, location, utilities, and other factors to accommodate the proposed cargo container parking facility.
  - c) The proposed development will have adequate street access for pedestrian and vehicles, and also adequate capacity for parking and traffic. Two driveways, one along Main Street and one along Figueroa Street will provide access to the site. Truck ingress and egress to and from the site will be through one driveway along Figueroa Street while Main Street access will be restricted to vehicular traffic only. Regional access to the site from freeways will require no driving on residential streets by utilizing the Figueroa Street exit of the 110 Freeway on/off ramps, Del Amo Boulevard and Figueroa Street which are all truck routes. A total of 223 cargo container parking spaces and 75 truck parking spaces are proposed for the site. The proposed Cargo Container Parking facility requires 74 parking spaces: 27 for warehouse (39,500 sf/1,500 =26.33) and 47 for office (14,050 sf/300 =46.83). Developer proposes 115 parking spaces; 101 standard stalls, 4 ADA compliant parking stalls and 10 EV vehicle stalls.
  - d) The County Fire Department has reviewed the originally proposed project and concluded that adequate water supply exists to meet current and anticipated fire suppression needs. However, Developer will have to obtain approvals from County Fire Department for the revised project design before the issuance of building permits. Any approval of Conditional Use Permit (CUP) No. 1074-18 will be conditioned upon County Fire Department's approval of the revised project design.
  - e) The proposed Cargo Container Parking facility will not be compatible with the intended character of the area. However, the proposed use is intended as a temporary use for 7 years, with possible additional 3 year extensions depending on how the surrounding areas get developed, as more particularly detailed in Entitlement Agreement No. 21-19. Depending on how the surrounding areas get developed after

which time certain compatibility determinations will be made, if the proposed cargo parking facility is found compatible, the use may be allowed to remain permanently. Otherwise the Developer will be required to cease its Cargo Container Parking operations and bring the property into conformance with the surrounding uses. Therefore, approval of Conditional Use Permit (CUP) No. 1074-18 is conditioned upon how the surrounding areas get developed, in accordance with Entitlement Agreement No. 21-19.

- **3.** With respect to **Specific Plan (SP) No. 18-18**, KL Fenix Cargo Container Parking Specific Plan, dated July 2020, the Planning Commission finds that:
- a) The Specific Plan does fully comply with the requirements of California Government Code Section 65451 in that it contains text and diagram(s) specifying in detail:
  - i. The proposed distribution, location, extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy and other essential facilities proposed to be located within the area covered by the Plan and needed to support the land uses as described in the Specific Plan. The Specific Plan includes Section VI (Building Form and Design Guidelines), Section IX (Traffic, Circulation and Parking Demand Management) and Section X (Sustainability Features), which are among the sections that address these concepts.
  - ii. A program of implementation measures including regulations, programs, public works projects and financing measures necessary to carry out the project. The proposed Specific Plan includes Section XI (Implementation) which is among the sections that address these concepts.
  - iii. Standards and criteria by which development will proceed, and standards for the conservation, development and utilization of natural resources, where applicable. The proposed Specific Plan includes Section V (Specific Plan Development Standards), Section VI (Building Form and Design Guidelines), Section VIII (Landscape Guidelines) and Section X (Sustainability Features), which are among the sections that address these concepts.
  - iv. The relationship of the Specific Plan to the General Plan. Section IV (Relationship to the City's General Plan and Zoning Ordinance) of the Specific Plan contains an analysis of the consistency between the proposed Project, including the Specific Plan and the proposed General Plan Amendment. The Planning Commission has reviewed the analysis and determined that consistency between the Specific Plan and the General Plan Amendment is established.
  - v. The distribution, location, and extent of the uses of land, including open space, within the area covered by the Specific Plan. Section I (Introduction & Project Description) and Section II (Existing & Surround Area) of the proposed Specific Plan provide descriptions, text and exhibits that outline the areas covered by the plan, and the goals and objectives of the plan.
  - b) The Specific Plan is consistent with the General Plan, as amended pursuant to General

Plan Amendment No. 108-18. Section IV (Relationship to the City's General Plan and Zoning Ordinance) of the Specific Plan contains an analysis of the consistency between the proposed Project, including the Specific Plan, and the proposed General Plan Amendment. The Planning Commission has reviewed the analysis and determined that consistency between the Specific Plan and the General Plan Amendment is established.

#### 4. With respect to General Plan Amendment No. 108-18, the Planning Commission finds that:

- a) The proposed General Plan Amendment is consistent with the City's General Plan goals and policies. The proposed project advances the General Plan's goals and policies related to land use, transportation and economic development.
  - i. The proposed project supports General Plan goal LU-14 by making productive reuse of a brownfield site as Developer seeks to construct upon the site a 53,550 square foot tilt-up warehouse building, 75 truck parking spaces and 223 container parking spaces, in connection with development of a Cargo Container Parking facility. The facility would be used to mobilize both imported and exported goods that pass through the Ports of Los Angeles and Long Beach.
  - ii. The proposed project supports General Plan goal ED-11 by adapting reuse and redevelopment of "brownfields" as Developer seeks to construct upon the site a 53,550 square foot tilt-up warehouse building, 75 truck parking spaces and 223 container parking spaces, in connection with development of a Cargo Container Parking facility. The facility would be used to mobilize both imported and exported goods that pass through the Ports of Los Angeles and Long Beach.
  - iii. The proposed project supports General Plan policy TI-1.3 by ensuring that the City's designated truck routes provide efficient access to and from the I-110 Freeway as the project will require all truck access to and from the site to be via Figueroa Street. The property is located off of Figueroa Street directly across the street from the I-110 Freeway.
  - iv. The proposed project supports General Plan policy TI-3.2 by creating disincentives for traffic traveling through neighborhoods, without impacting adjacent residential streets, as the project will require all truck access to and from the site to be via Figueroa Street, away from and not impacting residential neighborhoods. The property is located off of Figueroa Street directly across the street from the I-110 Freeway.
- b) The General Plan Amendment will ensure consistency between the KL Fenix Cargo Container Parking Specific Plan and the General Plan. The General Plan amendment will establish a "Heavy Industrial" Land Use Designation for the KL Fenix Cargo Container Parking Specific Plan area to replace the site's existing Mixed-Use Business Park General Plan designations. The Specific Plan is consistent with the General Plan Land Use Element goals, policies and objectives.
- **5.** With respect to **Entitlement Agreement No. 21-19** to permit the KL Fenix Cargo Container Parking facility,
  - a) The Entitlement Agreement is authorized by and satisfies the requirements of Government Section Code 65864 through 65869.5.

- b) The Entitlement Agreement is consistent with the goals and objectives of the City's General Plan.
- c) The Entitlement Agreement supports General Plan goal LU-1: productive reuse of "brownfield" sites.
  - Evidence: the Entitlement Agreement proposes development and productive reuse of a brownfield site as Developer seeks to construct upon the site a 53,550 square foot tilt-up warehouse building, 75 truck parking spaces and 223 container parking spaces, in connection with development of a Cargo Container Parking facility. The facility would be used to mobilize both imported and exported goods that pass through the Ports of Los Angeles and Long Beach.
- d) The Entitlement Agreement supports General Plan goal ED-11: adaptive reuse and redevelopment of "brownfields."
  - Evidence: the Entitlement Agreement proposes an adaptive reuse and redevelopment of "brownfields" as Developer seeks to construct upon the site a 53,550 square foot tilt-up warehouse building, 75 truck parking spaces and 223 container parking spaces, in connection with development of a Cargo Container Parking facility. The facility would be used to mobilize both imported and exported goods that pass through the Ports of Los Angeles and Long Beach.
- e) The Entitlement Agreement supports General Plan policy TI-1.3: ensure that the City's designated truck routes provide efficient access to and from the I-405, I-110 and Route-91 Freeways, as well as the Alameda Corridor.
  - Evidence: the Entitlement Agreement requires all truck access to and from the site to be via Figueroa Street. The property is located off of Figueroa Street directly across the street from the I-110 Freeway.
- f) The Entitlement Agreement supports General Plan policy TI-3.2: where feasible, create disincentives for traffic traveling through neighborhoods, without impacting adjacent residential streets.
  - Evidence: the Entitlement Agreement requires all truck access to and from the site to be via Figueroa Street, away from and not impacting residential neighborhoods. The property is located off of Figueroa Street directly across the street from the I-110 Freeway.

<u>SECTION 3</u>. The Planning Commission finds that the proposed project, as mitigated pursuant to the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project, which are available for public review at <a href="http://ci.carson.ca.us/CommunityDevelopment/Billboards.aspx">http://ci.carson.ca.us/CommunityDevelopment/Billboards.aspx</a> and are incorporated into this Resolution by reference ("MND"), will not have a significant effect on the environment.

SECTION 4. The Planning Commission of the City of Carson, based on the findings set forth above, does hereby approve Site Plan Design Review No. 1745-18 and Conditional Use Permit No. 1074-18, subject to Section 5 of this Resolution, and recommends that the City Council (1) approve General Plan Amendment No. 108-18, (2) approve Specific Plan No. 18-18, (3) approve Entitlement Agreement 24-18 and (4) approve the MND, subject to the Conditions of Approval set forth in Exhibit "B" attached hereto and incorporated herein by reference.

SECTION 5. Pursuant to CMC Sections 9141.12(A) and (B), the Secretary of the Planning Commission is hereby directed to refer the Planning Commission's approval of Conditional Use Permit No. 1074-18 as set forth in this Resolution to the City Council for review as if an appeal had been filed pursuant to CMC Section 9173.4. As a condition precedent to use of the subject property under Conditional Use Permit No. 1074-18, Conditional Use Permit No. 1074-18 requires approval by the Building and Safety Division and the City Council of a report submitted by Developer pursuant to the applicable provisions of the Building Code, prepared by a licensed civil engineer designated by Developer and approved by the City, which shall provide and include plans for a protective system or systems designated to eliminate or mitigate the potential hazards and environmental risks associated with the proposed use. The Building Official's approval shall be submitted to the City Council for final approval which will be in the discretion of the Council.

**SECTION 6.** The Secretary of the Planning Commission shall certify to the adoption of this Resolution.

SECTION 7. The Planning Commission's approval of Site Plan and Design Review No. 1745-18 and Conditional Use Permit No. 1074-18 shall become final and effective fifteen (15) days after the adoption of this Resolution and subject to approval of Entitlement Agreement No. 24-18, General Plan Amendment No. 108-18, Specific Plan No. 18-18, and the MND by City Council, unless an appeal is filed in accordance with Section 9173.4 of the CMC.

	CHAIRPERSON
EST:	
251.	
SECRETARY	

**APPROVED** and **ADOPTED** this 29th day of July, 2020.

#### **EXHIBIT "A"**

#### LEGAL DESCRIPTION

PARCEL 4, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 62 PAGE 68 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING FROM THAT PORTION INCLUDED WITHIN LOTS 38, 39, AND 44 OF TRACT NO. 6378, ALL OIL, GAS, HYDROCARBON SUBSTANCES AND OTHER MINERALS IN AND UNDER SAID LAND WITH THE RIGHT TO DRILL FOR, MINE, EXTRACT, TAKE, AND REMOVE THE SAME FROM ANY WELLS OR SHAFTS LOCATED ON ANY LAND ADJACENT TO THE ABOVE DESCRIBED LAND WITHOUT ACCOUNTING TO THE GRANTEE FOR ANY RENTALS, ROYALTIES OR PROCEEDS FROM THE SALE OF SUCH MINERALS, AS RESERVED IN DEED FROM SUNSET OIL COMPANY, RECORDED AUGUST 2, 1944 IN BOOK 20925, PAGE 72 OF OFFICIAL RECORDS.

ALSO EXCEPT ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES AND ALL OTHER MINERALS IN AND UNDER SAID LAND (EXCEPT THE SOUTH 350 FEET OF LOTS 36 AND 37), AS RESERVED BY SUNSET OIL COMPANY, A CORPORATION IN DEED RECORDED JULY 1, 1955 IN BOOK 48230, PAGE 289 OF OFFICIAL RECORDS AND BY SUNSET INTERNATIONAL PETROLEUM CORPORATION, A CORPORATION IN DEED RECORDED JULY 20, 1960 IN BOOK D-916 PAGE 193 OF OFFICIAL RECORDS.

ALSO EXCEPT FROM SAID LAND THAT PORTION LYING WITHIN THE LINES OF LOT 91 TRACT NO. 4671, ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES WHICH LIE BELOW A PLANE OF 500 FEET FROM THE SURFACE OF SAID LAND AS EXCEPTED IN THE DEED FROM DEL AMO ESTATE COMPANY, A CORPORATION, RECORDED NOVEMBER 8, 1963 IN BOOK D-2250 PAGE 748 OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NUMBER: 7336-003043

#### CITY OF CARSON COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION

# EXHIBIT "B" CONDITIONS OF APPROVAL DESIGN OVERLAY REVIEW NO. 1745-18, CONDITIONAL USE PERMIT NO. 107418, SPECIFIC PLAN 18-18, GENERAL PLAN AMENDMENT NO. 108-18 AND DEVELOPMENT AGREEMENT 24-18

#### I. GENERAL CONDITIONS

1. *Interim Development Impact Fee:* In accordance to Article XI (Interim Development Impact Fee Program) of the Carson Municipal Code and the current Fiscal Year 2020-2021 fees (effective through June 30, 2021) the applicant, property owner, and/or successor to whom these project entitlements are assigned ("Developer") shall be responsible for payment of a one-time development impact fee at the rate of \$729.52 per truck/container space. 2.56 per square foot of building constructed as stipulated in the Entitlement Agreement. The Developer will be responsible for development impact fees of \$217,396.96 (\$729.52 X 298 truck/container spaces). If the Project increases or decreases in size, the development impact fee amount will be adjusted accordingly at the same rate.

Final development impact fee amounts are calculated and due prior to issuance of a building permit in one lump sum installment and are based on the DIF in effect at the time the building permits are issued. Fees are subject to adjustments every July 1 based on State of California Construction Cost Index (Prior March to Current March Adjustment). No building permits shall be issued prior to the full payment of the amount.

See the following City webpage for additional information: https://ci.carson.ca.us/communitydevelopment/IDIFProgram.aspx

2. Funding Mechanism for Ongoing Services/Community Facilities District: Funding Mechanism for Ongoing Services / Community Facilities District. The proposed development is required to mitigate its impacts on city services. City adopted Community Facilities District (CFD No. 2018-01) and may adopt a similar community facilities district in the future to use instead of CFD No. 2018-01 (collectively referred to herein as the "CFD") to fund the ongoing costs of law enforcement, street and sidewalk maintenance, landscape maintenance, street sweeping and sidewalk cleaning, and other eligible impacts of the Project within the CFD (the CFD Services). A uniformed-standardized rate was adopted pursuant to Resolution No. 19-009 ("Resolution") and accompanying Fiscal Impact Analysis ("FIA") report.

The Developer shall be responsible to establish a funding mechanism to provide an ongoing source of funds for the ongoing services comparable to the uniformed-standardized rate established in the Resolution and FIA report. Based on the adopted Resolution, the subject property falls under "Other Industrial Zones" with a rate of \$480.75 per acre per year through June 30, 2021. Based on a 14.33 acres total site area, the current estimated annual amount for ongoing services is \$6,889.15, subject to annual adjustments. The final CFD rates are based on the rates in effect at the time the building permits are issued.

Prior to building permit issuance, Developer shall demonstrate compliance under this section either through: 1) Annexing into a City CFD or 2) Establishing a funding mechanism to provide an ongoing source of funds for ongoing services, acceptable to the City. See the

- following City webpage for additional information: <a href="https://ci.carson.ca.us/communitydevelopment/CFD.aspx">https://ci.carson.ca.us/communitydevelopment/CFD.aspx</a>
- 3. If a building permit for Site Plan and Design Review No. 1745-18, Conditional Use Permit No. 1074-18, Specific Plan 18-18, General Plan Amendment No. 108-18 and Development Agreement No. 24-18 is not issued within **two years** of the effective date of the approved Planning Commission Resolution, said permit shall be declared null and void unless an extension of time is previously approved by the Planning Commission.
- 4. The approved Resolution, including the Conditions of Approval contained herein, and signed Affidavit of Acceptance, shall be copied in their entirety and placed directly onto a separate plan sheet behind the cover sheet of the development plans prior to Building and Safety plan check submittal. Said copies shall be included in all development plan submittals, including any revisions and the final working drawings.
- 5. Developer shall submit two revised sets of architectural plans (including Site Plan & Elevations) and revised Specific Plan incorporating all the Conditions of Approval to be reviewed and approved by the Planning Division prior to scheduling the project for City Council hearing unless explicitly specified herein.
- 6. Developer shall comply with all city, county, state and federal regulations applicable to this project.
- 7. Any substantial project revisions will require review and approval by the Planning Commission. Any revisions shall be approved by the Planning Division prior to Building and Safety plan check submittal.
- 8. The applicant and property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 30 days of City Council approval.
- 9. A modification of these conditions, including additions or deletions, may be considered upon filing of an application by the owner of the subject property or his/her authorized representative in accordance with Section 9173.1 of the Zoning Ordinance.
- 10. It is further made a condition of this approval that if any condition is violated or if any law, statute, or ordinance is violated, this permit may be revoked by the Planning Commission or City Council, as may be applicable; provided the Developer has been given written notice to cease such violation and has failed to do so for a period of thirty days.
- 11. Precedence of Conditions. If any of these Conditions of Approval alter a commitment made by the Developer in another document, the conditions enumerated herein shall take precedence unless superseded by the Entitlement Agreement, which shall govern over any conflicting provisions of any other approval.
- 12. City Approvals. All approvals by City, unless otherwise specified, shall be by the department head of the department requiring the condition. All agreements, covenants, easements, deposits and other documents required herein where City is a party shall be in a form approved by the City Attorney. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.
- 13. Deposit Account. A trust deposit account shall be established prior to issuance of building permits for all deposits and fees required in all applicable conditions of approval of the project. The trust deposit shall be maintained with no deficits. The trust deposit shall be governed by a deposit agreement. The trust deposit account shall be maintained separate from other City funds and shall be non-interest bearing. City may make demands for additional deposits to cover all expenses over a period of 60 days and funds shall be deposited within 10 days of the request therefor, or work may cease on the Project.

14. Indemnification. The applicant, property owner, and tenant(s), for themselves and their successors in interest ("Indemnitors"), agree to defend, indemnify and hold harmless the City of Carson, its agents, officers and employees, and each of them ("Indemnitees") from and against any and all claims, liabilities, damages, losses, costs, fees, expenses, penalties, errors, omissions, forfeitures, actions, and proceedings (collectively, "Claims") against Indemnitees to attack, set aside, void, or annul any of the project entitlements or approvals that are the subject of these conditions, and any Claims against Indemnitees which are in any way related to Indemnitees' review of or decision upon the project that is the subject of these conditions (including without limitation any Claims related to any finding, determination, or claim of exemption made by Indemnitees pursuant to the requirements of the California Environmental Quality Act), and any Claims against Indemnitees which are in any way related to any damage or harm to people or property, real or personal, arising from Indemnitors' operations or any of the project entitlements or approvals that are the subject of these conditions. The City will promptly notify Indemnitors of any such claim, action or proceeding against Indemnitees, and, at the option of the City, Indemnitors shall either undertake the defense of the matter or pay Indemnitees' associated legal costs or shall advance funds assessed by the City to pay for the defense of the matter by the City Attorney. In the event the City opts for Indemnitors to undertake defense of the matter, the City will cooperate reasonably in the defense, but retains the right to settle or abandon the matter without Indemnitors' consent. Indemnitors shall provide a deposit to the City 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 attorneys' fees, and shall make additional deposits as requested by the City to keep the deposit at such level. If Indemnitors fail to provide or maintain the deposit, Indemnitees may abandon the action and Indemnitors shall pay all costs resulting therefrom and Indemnitees shall have no liability to Indemnitors.

#### II. SITE PLAN

- 15. The project is restricted to a maximum of 223 container parking spaces and 75 truck spaces for a total of 298 truck and container parking spaces. Such spaces shall be striped and clearly marked by the Developer for the purposes of this project. A revised site plan shall be submitted prior to issuance of any permits to implement these requirements and ensure proper on-site circulation and fencing for the 150' buffer area to ensure the area is not used to park trucks and containers.
- 16. Any portion of the Site not striped shall be considered undeveloped and shall not be used by the Developer for any purpose.
- 17. The Developer shall submit a report, prepared by a licensed civil engineer, to the Building Official for review and approval prior to issuance of building permits. After review, the Building Official shall then submit the report to the City Council for their consideration. Certificate of Occupancy for the project shall not be issued until City Council approves the said report.
- 18. Developer shall submit a revised Site Plan to Planning Division for review and approval before scheduling the project for City Council hearing and shall include the following:
  - a. Maneuverability of trucks docking at dock door numbers 5 & 6 by superimposing the truck turning template on the Site Plan;
  - b. Redesigning the Figueroa Street entrance to align it with the on and off-ramp for northbound I-110 and include a median to provide separation for incoming and out-going truck traffic per comments received from CalTrans and ensure proper on-site circulation;

- c. The project's gated driveway on Figueroa Street shall
  - Either remain open at all times during the truck operating hours
  - Or be open from dawn though dusk and allowed to close during the night hours provided at least one truck length of stacking area is designed before the gates to allow for waiting of incoming trucks.
- 19. Developer shall provide a written statement from Caltrans confirming the location and design of Figueroa Street driveway is to the satisfaction of Caltrans before issuance of a grading permit.

#### III. AESTHETICS

- 20. Developer shall hire a licensed architect familiar with this type of project to address all the comments of City's Design Consultants. Such revised Plans and Elevations shall be submitted to the Planning Division for approval prior scheduling the project for City Council hearing.
- 21. A revised material board and a rendering of the project elevations shall be submitted to Planning Division for approval prior to scheduling the project for City Council hearing.
- 22. Down spouts shall be interior to the structure or architecturally integrated into the structure to the satisfaction of the Planning Division.
- 23. Any roof-mounted equipment shall be screened to the satisfaction of the Planning Division prior to issuance of building permits.
- 24. Graffiti shall be removed from all areas within twenty-four (24) hours of written notification by the City of Carson, including graffiti found on perimeter walls and fences. Should the graffiti problem persist more than twice in any calendar year, the matter may be brought before the Planning Commission for review and further consideration of site modification (i.e. fencing, landscaping, chemical treatment, etc.).
- 25. The proposed project site shall be maintained free of debris, litter and inoperable vehicles at all times. The subject property shall be maintained to present an attractive appearance to the satisfaction of the Planning Division.
- 26. No outdoor storage of materials shall be permitted on the property at any time.

Developer shall install one artistic piece along Main Street prior to issuance of occupancy permits and shall provide details for the same to Planning Division for review and approval prior to issuance of any permits. In case of disagreement on this matter, an in-lieu fee to cover the cost of the artistic piece shall be paid by applicant before the issuance of any permits. The fee shall be determined by the Community Development Director and based on a review of similar artistic pieces installed in and around the City. FENCE/WALLS

- 27. Perimeter walls and fences shall be architecturally coordinated with the project building and subject to the approval of the Planning Division prior to issuance of any permits.
- 28. A color and material board for the proposed fencing and walls shall be submitted to Planning Division for approval prior to scheduling for City Council.
- 29. An 8-foot high concrete panel wall shall be installed at the northern and southern perimeter of the property, in conformance to the approved revised Site Plan, Specific Plan, color and materials prior to issuance of certificate of occupancy.

- 30. Developer shall provide a letter of clearance from the LA County Flood Control District for the project including but not limited to the construction of Northern property line wall prior to issuance of any permits associated with the property.
- 31. An 8-foot high wrought-iron fence shall be installed prior to issuance of Certificate of occupancy along east property line adjacent to Main Street, in conformance to the approved revised Site Plan, Specific Plan, color and materials.
- 32. An 8-foot high concrete panel wall and an 8-foot wrought-iron gate shall be installed prior to issuance of Certificate of occupancy along west property line adjacent to Figueroa Street, in conformance to the approved revised Site Plan, Specific Plan, color and materials.
- 33. An 8-foot high fence spanning East-West, from Figueroa Street to the Warehouse building, shall be installed prior to issuance of Certificate of occupancy along the last truck/container parking spaces, at least 150 feet from the Southern property line in conformance to the approved revised Site Plan, Specific Plan, color and materials and verified by the Community Development Director.

#### IV. <u>LANDSCAPE/IRRIGATION</u>

- 34. Landscaping shall be provided with a permanently installed, automatic irrigation system and operated by an electrically-timed controller station set for early morning or late evening irrigation.
- 35. Installation of 6" x 6" concrete curbs is required around all landscaped planter areas, except for areas determined by National Pollutant Discharge Elimination System (NPDES) permit or other applicable condition of approval that requires certain landscaped areas to remain clear of concrete curbs for more efficient storm water runoff flow and percolation. Revised landscaping and irrigation plans shall be reviewed and approved by the Planning Division should subsequent modifications be required by other concerned agencies regarding the removal of concrete curbs.
- 36. The proposed irrigation system shall include best water conservation practices.
- 37. Installation, maintenance, and repair of all landscaping shall be the responsibility of the property owner.
- 38. All new and retrofitted landscape area of 500 square feet or greater (in the aggregate) is subject to the Model Water Efficient Landscape Ordinance (MWELO) per Department of Water Resources (Chapter 2.7 of Division 2 of Title 23 of the California Code of Regulations).
- 39. Maintenance and repair of all landscaping shall be the responsibility of Developer.
- 40. Prior to Issuance of Building Permit, the Developer shall submit two sets of landscape and irrigation plans drawn, stamped, and signed by a licensed landscape architect. Such plans are to be in conformance to the approved revised Site Plan, Specific Plan, color and materials.
- 41. All on-site trees shall be planted at 25-foot to center.
- 42. Additional on-site landscaping shall be provided to adequately screen the Cargo Container parking areas from I-110 off-ramp and North and Southbound Figueroa Street and to the satisfaction of Planning Division

#### V. <u>LIGHTING</u>

- 43. Developer shall provide adequate lighting for the parking areas and provide a lighting plan prior to issuance of any permits. The applicant shall demonstrate how the light poles will be installed on the former landfill site.
- 44. All exterior lighting shall be provided in compliance with the standards pursuant to Section 9147.1 of the Zoning Ordinance.
- 45. Such lights are to be directed on-site in such a manner as to not create a nuisance or hazard to adjacent street and properties, subject to the approval of the Planning Division.

#### VI. PARKING/TRAFFIC

- 46. All driveways shall remain clear. No encroachment into driveways shall be permitted.
- 47. All areas used for movement, parking, loading, or storage of vehicles shall be paved and clearly marked and in accordance with Section 9162.0 of the Zoning Ordinance.
- 48. Any portion of the Site not stripped shall be considered undeveloped and shall not be used by the Developer for any purpose.
- 49. No stacking of containers shall be permitted on site.
- 50. No containers shall be permitted to be placed on the ground. All containers shall remain on the trailer unit at all times.
- 51. No on-street parking shall be permitted along the frontage of the property on both Main Street and Figueroa Street.

#### VII. SIGNAGE

- 52. The project shall apply for a Sign Program to allow for any proposed signage on the property. Such a Sign Program shall be filed and approved prior to any permit issuance.
- 53. No signage shall be approved as part of this approval including the "City of Carson" monument sign along Figueroa Street.

#### VIII. AIR QUALITY

54. All of Developer's trucks shall be in compliance with the Port of Los Angeles and Port of Long Beach air quality standards.

#### IX. TRASH

55. Trash collection from the project site shall comply with the requirements of the City's trash collection company.

#### X. <u>UTILITIES</u>

- 56. All utilities and aboveground equipment shall be constructed and located pursuant to Section 9146.8 of the Zoning Ordinance, unless otherwise provided for in these conditions.
- 57. Any aboveground utility cabinet or equipment cabinet shall be screened from the public right-of-way by a decorative block wall or landscaping, to the satisfaction of the Planning Division prior to issuance of Certificate of Occupancy.

#### XI. PROJECT OPERATIONS

58. Truck Operation hours will be limited to M-F 6 am -2 am, Sat 6 am -6 pm and shall remain closed on Sunday.

59. From the effective date of issuance of building permits for a residential development on any one of the adjacent surrounding parcels, all vehicle motion alarms (back-up beeper) shall be disabled when maneuvering in reverse and prohibited on site from 8 pm -7 am.

#### XII. ENTITLEMENT AGREEMENT

60. The project is also conditioned to meet all the terms and conditions as set forth by the Entitlement Agreement (DA 24-18) and incorporated herein by reference.

#### XIII. SPECIFIC PLAN

- 61. The Developer shall submit a revised Specific Plan prepared by a professional planning firm incorporating all the Entitlement Agreement 24-18 terms and conditions, the conditions presented in this document and the following additional corrections before the scheduling of this project to City Council:
  - a. Correct the spelling error on Page 11, Chapter IV (B)
  - b. Remove any reference to General Plan Land-Use goal LU-5 since it is not applicable to this project.
  - c. Remove any reference to Carson Municipal Code sections.
  - d. Use CMC 9141.12 (D) to draft language requiring only one CUP for development on ORL area and for a use requiring a CUP.
  - e. Edit Chapter V (A) to remove any reference to a Cold Storage use.
  - f. Edit Chapter V (B) to reflect the maximum allowable height as the project's building height.
  - g. Revise setbacks to match proposed development and add setback requirements from Southern property line for Building and dock doors and for parking areas abutting public right-of-way in Chapter V(C).
  - h. Edit Chapter V (F) to include the standards for total amount of landscaping to be provided by the project.
  - i. Edit Chapter V (F)(c.2) to include "tree chips"
  - j. Edit Chapter V (F)(c.3) to add "swales"
  - k. Edit Chapter V (G) to correctly reflect the approval granting authority for a Site Plan and Design review to Planning Commission.
  - Edit Chapter VII to remove all reference to Sign standards on the property and include language for approval of all signs on the property via the mechanism of a Sign Program.
  - m. Edit Chapter VIII to correct the picture of "Webers Agave" in the Plant palette.
  - n. Edit Chapter IX (A) to remove any reference of subterranean parking structures.
  - o. Edit Chapter V to include the parking standards applicable to the Specific Plan area including but not limited to the parking standards used for the project, namely, 1:1500 ratio for warehouse use and 1:300 for office use.

- p. Edit Chapter XI to include a discussion on the temporary nature of this use and describing the process for modification or termination of the Specific Plan if the proposed use ceases to exist.
- q. Edit Chapter XI (B) to refer the site plan and design review shall be approved by the Planning Commission in the event that the proposal is not in substantial conformance to the approved plans.
- r. Edit Chapter XI (D) to clarify the intent of the "Exception" section and add language to give City Council the final authority to approve any substantial modification to the approved Specific Plan.

#### XIV. BUILDING AND SAFETY DIVISION

- 62. Applicant shall submit development plans for plan check review and approval.
- 63. Developer shall obtain all appropriate building permits and an approved final inspection for the proposed project.
- 64. Prior to issuance of building permit, proof of worker's compensation and liability insurance for Developer must be on file with the Los Angeles County Building and Safety Division.
- 65. A graywater system shall be required per section 304.1 of the 2020 County of LA plumbing code.
- 66. Site location will require a submitted to Environmental Programs Division for Methane Mitigation due to location from/within a Landfill.

#### XV. <u>FIRE DEPARTMENT</u>

67. The final revised plans for the proposed development shall obtain approval and comply with all Los Angeles County Fire Department requirements prior to issuance of Building Permits.

#### XVI. ENGINEERING SERVICES DEPARTMENT – CITY OF CARSON

- 68. Any existing off-site improvements damaged during the construction shall be removed and reconstructed per City of Carson PW Standard Drawings and to the satisfaction of the City Engineer.
- 69. A construction permit is required for any work to be done in the public right-of-way.
- 70. Payment and Performance bonds for all work to be done within the public right of way shall be submitted and approved by Engineering Division prior to issuance of permit by Engineering Division.
- 71. Proof of Worker's Compensation and Liability Insurance shall be submitted to the City prior to issuance of any permit by Engineering Division.
- 72. The Developer shall submit a copy of approved Grading plans on bond paper to the City of Carson Engineering Division, prior to issuance of grading permits.
- 73. The Developer shall submit an electronic copy of **approved** plans (*such as, Sewer, Street and/or Storm Drain Improvements, whichever applies*), to the City of Carson Engineering Division, prior to the issuance of construction permits.

Prior to issuance of **Building Permit**, the proposed development is subject to the following:

74. Per City of Carson Municipal Code Section 5809, Developer shall comply with all applicable Low Impact Development (LID) requirements and shall include Best Management Practices

- necessary to control storm water pollution from construction activities and facility operations to the satisfaction of the City Engineer.
- 75. Per City of Carson Municipal Code Section 5809(d)(2), Developer shall comply with the requirement that all street and road construction of 10,000 sq. ft. or more of impervious surface shall follow USEPA Guidance regarding Managing Wet Weather with Green Infrastructure: Green Streets.
- 76. Due to the adjacency of the project to Torrance Lateral, Developer shall design the Low Impact Development (LID) plan to mitigate stormwater in a way so as to capture and treat the water on-site, ensuring compliance with the National Pollutant Elimination System (NPDES) permit, City's Total Maximum Daily Loads (TMDL's) and zero effluent limits and to the satisfaction of the City Engineer.
- 77. Developer shall apply for a Construction Activities Stormwater General Permit from the State Water Resources Control Board.
- 78. Developer shall provide a copy of an approved SWPPP stamped by Los Angeles County Building and Safety Division along with WDID number.
- 79. Developer shall provide contact information of the Qualified Storm Water Developer (QSD) and/or Qualified SWPPP (Storm Water Pollution Prevention Plan) Developer (QSP) of the site to Julio Gonzalez via E-mail JGonzalez@Carson.ca.us.
- 80. Developer shall submit digital copies of the LID/NPDES/Grading Plans, hydrology and Hydraulic analysis concurrently to City of Carson, Engineering Services Department and Los Angeles County Building & Safety Division, and shall deliver a copy to Julio Gonzalez via E-mail JGonzalez@Carson.ca.us.
- 81. Developer shall complete, sign and return the Stormwater Planning Program LID Plan Checklist form and return to City of Carson Engineering Services Division.
- 82. Drainage/Grading plan shall be submitted for approval of the Building and Safety Division. The Developer shall submit a **copy of approved** Drainage/Grading plans on bond paper to the City of Carson Engineering Division.
- 83. If or when required, as determined by the City Engineer, provide CC&R's (covenants, conditions, and restrictions) to address drainage responsibilities.
- 84. A soils report, sewer area study, drainage concept, hydrology study and stormwater quality plan shall be reviewed and approved. Building Permit issuance will not be granted until the required soils, sewer, drainage concept, hydrology study and stormwater information have been received and found satisfactory. Developer shall comply with mitigation measures recommended in the approved soils, sewer area study, drainage concept, hydrology study and stormwater quality plan.
- 85. The Developer shall submit a sewer area study to the Los Angeles County Department of Public Works (LACDPW) to determine if capacity is adequate in the sewerage system to be used as the outlet for the sewer of the development that is the subject of these conditions. If the system is found to have insufficient capacity, the problem must be addressed and resolved to the satisfaction of the L.A. County Sewer Department.
- 86. Quitclaim or relocate any easements interfering with building locations to the satisfaction of the City or other appropriate agency or entity.
- 87. The Developer shall submit improvement plans to the Engineering Division showing all the required improvements in the public right of way for review and approval of the City

Engineer. A copy of approved conditions of approval shall be attached to the plans when submitted. The following are required as a part of the project's improvement plans:

- a. Repair any broken or raised/sagged sidewalk, curb and gutter within the public right of way along Main Street and Figueroa Street abutting this proposed development per City of Carson PW Standard Drawings and to the satisfaction of the City Engineer.
- b. Install sidewalk along Main Street and Figueroa Street abutting this proposed development per City of Carson PW Standard Drawing No. 117
- c. Remove existing street trees within public right of way on Main Street and Figueroa Street abutting this proposed development.
- d. Plant approved parkway trees on locations where trees in the public right of way along Main Street and Figueroa Street abutting this proposed development are missing, 25ft on center, per City of Carson PW Standard Drawings Nos. 117, 132, 133 and 134.
  - i. Along Figueroa Street replace existing trees with Strawberry Tree Arbutus unedo/'Marina'
  - ii. Along Main Street replace existing trees with a combination of Lophostemon conferta and Lagerstroemia indica hybrid 'Muskogee'
- e. Install irrigation system for the purpose of maintaining the parkway trees to be planted within the public right of way along Main Street and Figueroa Street abutting this proposed development.
- f. Install new curb and gutter per City of Carson PW Standard Drawing No 108A along Main Street and Figueroa Street abutting the proposed development.
- g. Fill in any missing sidewalk within the public right of way along Main Street and Figueroa Street abutting this proposed development
- h. Remove and replace any broken/damaged driveway approach within the public right of way along Main Street and Figueroa Street abutting this proposed development per City of Carson PW Standard Drawings and to the satisfaction of the City Engineer.
- i. Remove unused driveway approach if any, within the public right of way along Main Street and Figueroa Street abutting this proposed development and replace it with full height curb and gutter and sidewalk per City of Carson PW Standard Drawings and to the satisfaction of the City Engineer.
- j. The developer shall modify existing driveways within the public right of way along Main Street and Figueroa Street abutting this proposed development per City of Carson PW Standard Drawings to comply with the ADA requirements and to the satisfaction of the City Engineer.
- k. The developer shall construct new driveway approaches per City of Carson PW Standard Drawings and in compliance with the ADA requirements. The Developer shall protect or relocate any facilities to accommodate the proposed driveway approach. The maximum driveway approach width allowed for the site is 40 feet.
- 1. Developer shall construct a left-turn pocket on South-bound Figueroa to allow for truck access on the project site per City of Carson PW Standard Drawings and to the satisfaction of the City Traffic Engineer.
- m. Install/Modify existing raised landscaped median along the Main Street and Figueroa Street to the satisfaction of the City Engineer.

- n. Install striping and pavement legend per City of Carson PW Standard Drawings.
- o. Paint Curbs Red along Main Street and Figueroa Street within or abutting this proposed development. Plans showing the proposed red curbs shall be submitted to the Traffic Engineer for review and approval.
- p. The developer shall grind and overlay the top 2" of asphalt on Main Street and Figueroa Street directly abutting the development from curb-to-curb or from median-to-curb when medians are existing or as approved by the City Engineer.
- q. Sewer Main Improvements (if any) along Main Street and Figueroa Street as determined by the aforementioned sewer area study.
- r. Storm Drain Improvements (if any) along Main Street and Figueroa Street as determined by the aforementioned requirement.
- 88. Off-site improvements (e.g. driveways, sidewalk, parkway drains, trees, curb/gutter etc.) shown on the grading plans must provide a concurrent submittal to City of Carson Engineering Division. Off-site improvements may be shown on a separate set of street improvement plans. Prior to issuance of grading permit, Developer shall obtain clearance from City of Carson Engineering Division.
- 89. Developer shall comply with any mitigation measures or improvements as required by the California Department of Transportation (Caltrans) as a part of this proposed development. Developer shall work with Caltrans directly and coordinate offsite improvements with City of Carson conditions of approval. Developer shall provide a written statement from Caltrans confirming required mitigation measures have been met to the satisfaction of Caltrans before issuance of a certificate of occupancy.
- 90. All existing overhead utility lines, including Telecommunication lines, 12 kilovolts and less along Main Street and Figueroa Street shall be underground to the satisfaction of the City Engineer.

Prior to issuance of **Certificate of Occupancy**, the proposed development is subject to the following:

- 91. For any structural and/or treatment control device installed. Developer shall record a maintenance covenant pursuant to Section 106.4.3 of the County of Los Angeles Building Code and title 12, Chapter 12.80 of the Los Angeles County Code relating to the control of pollutants carried by storm water runoff. In addition, an exhibit shall be attached to identify the location and maintenance information for any structural and/or treatment control device installed.
- 92. Developer shall complete and submit digital BMP Reporting Template Spreadsheet to Sustainability Administrator, Julio Gonzalez at jgonzale@carson.ca.us
- 93. Covenant shall be reviewed and approved by the City Engineer prior to recordation with the Los Angeles County Registers Recorder/County Clerk.
- 94. RECORDATION is the responsibility of the Developer. Provide a copy of the recorded covenant agreement to City Engineer
- 95. Inspection will be conducted once a year after all Post Construction Best Management Practices (BMP) are constructed.
- 96. Developer shall provide an approved Notice of Termination (NOT) by the State Water Resources Control Board.

- 97. The Developer shall comply with all requirements from L.A. County Sewer Maintenance Division for maintenance of new and/or existing sewer main, relating to this development, prior to release of all improvement bonds.
- 98. The Developer shall execute and provide to the City Engineer, a written statement from the water purveyor indicating that the water system will be operated by the purveyor and that under normal conditions, the system will meet the requirements for the development and that water service will be provided to each building.
  - a. Developer shall comply with all mitigation measures recommended by the water purveyor.
- 99. The Developer shall construct and guarantee the construction of all required and previously approved Street Improvements to the satisfaction of the City of Carson Public Works Inspector and the City Engineer.
- 100. The Developer shall construct and guarantee the construction of all required drainage infrastructure in accordance with the requirements and recommendations of the hydrology study, subject to the approval of the City Engineer.
- 101. All new utility lines servicing the proposed development shall be underground to the satisfaction of the City Engineer.
- 102. Developer shall comply with any additional requirements, if any, as a means of mitigating any traffic impacts as identified in the traffic study approved by the City Traffic Engineer.
- 103. If needed, the Developer shall grant an easement to the City, and any other appropriate regulatory agency, or entity to the extent reasonably necessary, for the purposes of ingress, egress, construction and maintenance of all infrastructures constructed and handicap access to ensure the safety of the public, for this development, to the satisfaction of the City Engineer.
- 104. All infrastructures necessary to serve the proposed development (water, sewer, storm drain, and street improvements) shall be in operation prior to the issuance of Certificate of Occupancy.

#### XVII. <u>BUSINESS LICENSE</u>

105. All parties involved in the subject project including but not limited to contractors and subcontractors are required to obtain a city business license per Section 6310 of the Carson Municipal Code.

#### XVIII. <u>MITIGATION MEASURES</u>

- 106. *Air Quality*. MM-AQ-1: To reduce the potential for health risks as a result of construction of the project, the applicant shall:
  - a. Prior to the start of construction activities, the project applicant, or its designee, shall ensure that all 75 horsepower or greater diesel-powered equipment are powered with California Air Resources Board–certified Tier 4 Interim engines, except where the project applicant establishes to the satisfaction of the City of Carson that Tier 4 Interim equipment is not available.
  - b. All other diesel-powered construction equipment will be classified as Tier 3 or higher, at a minimum, except where the project applicant establishes to the satisfaction of the City of Carson that Tier 3 equipment is not available.

In the case where the applicant is unable to secure a piece of equipment that meets the Tier 4 Interim requirement, the applicant may upgrade another piece of equipment to compensate (from Tier 4 Interim to Tier 4 Final). Engine Tier requirements in accordance with this measure shall be incorporated on all construction plans.

- 107. *Cultural Resources*. MM-CUL-1: If archaeological resources (sites, features, or artifacts) are exposed during construction activities for the project, all construction work occurring within 100 feet of the find shall immediately stop until a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, can evaluate the significance of the find and determine whether or not additional study is warranted. Depending on the significance of the find under the California Environmental Quality Act (CEQA) (14 CCR 15064.5[f]; California Public Resources Code, Section 21082), the archaeologist may simply record the find and allow work to continue. If the discovery proves significant under CEQA, additional work, such as preparation of an archaeological treatment plan and data recovery, may be warranted.
- 108. *Geology and Soils.* MM-GEO-1: If excavations reach depths below human-transported fill materials, a qualified paleontologist meeting the 2010 Society of Vertebrate Paleontologists (SVP) standards should be retained to determine when and where paleontological monitoring is warranted. The qualified paleontologist or a qualified paleontological monitor meeting the 2010 SVP standards under the direction of the qualified paleontologist shall conduct the paleontological monitoring. If the sediments are determined by the qualified paleontologist to be too young or too coarse-grained to likely preserve paleontological resources, the qualified paleontologist can reduce or terminate monitoring per the 2010 SVP guidelines and based on the excavations remaining for the project.

#### 109. Hazards and Hazardous Materials.

- a. MM-HAZ-1: Prior to, during, and following construction of the project, specified programs and actions recommended in the remedial action plan (RAP) and approved by the Department of Toxic Substances Control (DTSC) shall be implemented in accordance with the RAP. Any potential variation to the RAP's recommendations shall be discussed with and approved by the DTSC prior to implementation. Evidence of compliance with the RAP shall be provided in a timely manner to the City of Carson and available to review in the project file.
- b. MM-HAZ-2: Before issuance of a grading permit, a licensed contractor shall prepare a hazardous materials contingency plan (HMCP) and submit the plan to the City of Carson. The purpose of the HMCP is to protect on-site construction workers and offsite receptors in the vicinity of the construction site. The HMCP shall describe the practices and procedures to be implemented to protect worker health in the event of an accidental release of hazardous materials, or if previously undiscovered hazardous materials are encountered during construction. The HMCP shall include items such as spill prevention, cleanup, and evacuation procedures. The HMCP shall help protect the public and workers by providing procedures and contingencies to help reduce exposure to hazardous materials.
- c. MM-HAZ-3: The proposed warehouse/office building and any other on-site habitable structure shall include a vapor mitigation system such as a vapor barrier, passive venting, and/or similar method. The design of the vapor mitigation system shall be approved by the Department of Toxic Substances Control (DTSC) as part of DTSC's review of the remedial action plan (RAP) and any approved variations to the RAP.

Evidence of installation of the vapor mitigation system shall be provided to the City of Carson within 2 weeks of the completion of installation.

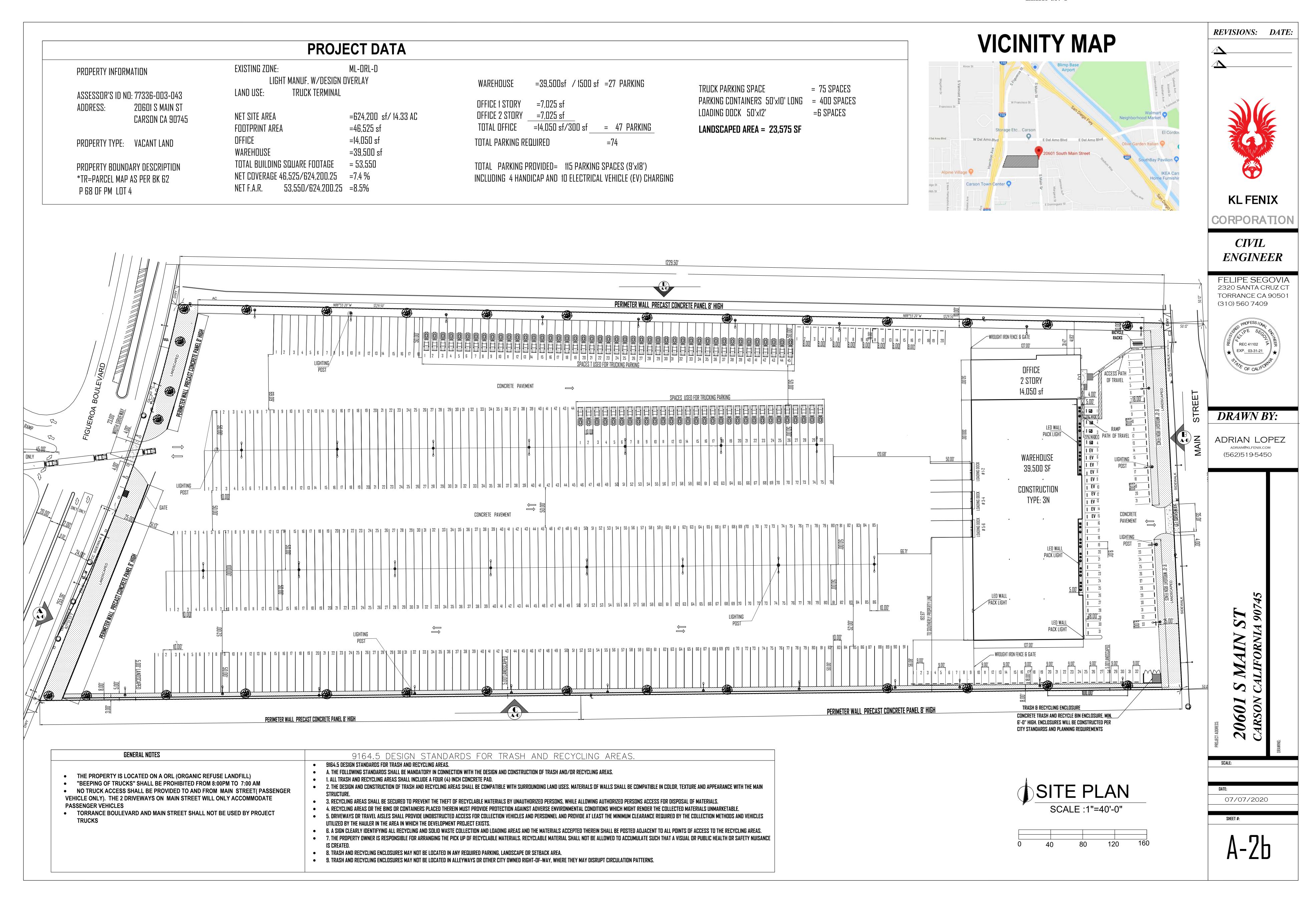
DTSC-approved performance measures shall be established to ensure that the vapor mitigation system is operating correctly and preventing unacceptable volatile chemical concentrations from migrating up and into the overlying structure. An operations and maintenance plan shall be prepared that identifies the performance measures and shall state the methods by which the performance goals will be tested and verified.

#### 110. *Noise*.

- a. MM-NOI-1: At least 30 days prior to commencement of construction, the contractor shall provide written notice to all residential property owners and tenants within 300 feet of the project site that proposed construction activities could affect outdoor or indoor living areas. The notice shall contain a description of the project, a construction schedule including days and hours of construction, and a description of noise-reduction measures.
- b. MM-NOI-2: Noise-generating construction activities (which may include preparation for construction work) shall be permitted weekdays between 7:00 a.m. and 6:00 p.m., excluding federal holidays. When a holiday falls on a Saturday or Sunday, the preceding Friday or following Monday, respectively, shall be observed as a legal holiday.
- c. MM-NOI-3: Stationary construction equipment that generates noise that exceeds 85 A-weighted decibels at the property boundaries shall be shielded with a barrier that meets a Sound Transmission Class rating of 25.
- d. MM-NOI-4: All construction equipment powered by internal combustion engines shall be properly muffled and maintained. No internal combustion engine shall be operated on the site without a muffler. All diesel equipment shall be operated with closed engine doors and shall be equipped with factory recommended mufflers. Unnecessary idling of internal combustion engines shall be prohibited.
- e. MM-NOI-5: Air compressors and generators used for construction shall be surrounded by temporary acoustical shelters. Whenever feasible, electrical power shall be used to run air compressors and similar power tools.
- f. MM-NOI-6: A temporary construction sound barrier wall shall be installed along the easterly and southerly project site boundaries. Entry gates for construction vehicles shall be closed when vehicles are not entering or exiting the site. The barrier shall be made of sound-attenuating material (not landscaping). To effectively reduce sound transmission through the barrier, the material chosen must be rigid and sufficiently dense (at least 20 kilograms per square meter). All noise barrier material types are equally effective, acoustically, if they have this density. For example, 5/8-inch plywood, mounted with no gaps between adjacent sheets, would be of sufficient density to achieve the target attenuation. The barrier shall be 8 feet in height from the ground surface on the construction side of the wall to achieve the goal of blocking direct line of sight to the adjacent residence windows. It is estimated that a noise barrier of the prescribed density would reduce average noise levels to sensitive receptors by approximately 8 A-weighted decibels or more by blocking direct line of sight to ground-level receptors.

111. *Transportation.* MM-TRA-1: Prior to the issuance of the first building permit, the project applicant shall coordinate with the California Department of Transportation (Caltrans) and the City on the redesign of the Figueroa Street/Interstate (I-) 110 northbound ramps intersection to ensure adequate and safe operation at the intersection and project access. The intersection modification shall involve the consolidation of the two project driveways currently proposed along Figueroa Street into a single driveway that is aligned with the present location of the I-110 on- and off ramps (i.e., creation of new east leg of the intersection) or other designs acceptable to Caltrans. The required improvement shall be installed and operational to the satisfaction of Caltrans and the City prior to issuance of the first Certificate of Occupancy.

*Tribal Cultural Resources.* MM-CUL-1: If archaeological resources (sites, features, or artifacts) are exposed during construction activities for the project, all construction work occurring within 100 feet of the find shall immediately stop until a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards, can evaluate the significance of the find and determine whether or not additional study is warranted. Depending on the significance of the find under the California Environmental Quality Act (CEQA) (14 CCR 15064.5[f]; California Public Resources Code, Section 21082), the archaeologist may simply record the find and allow work to continue. If the discovery proves significant under CEQA, additional work, such as preparation of an archaeological treatment plan and data recovery, may be warranted.



# PLANTING NOTES

QUANTITIES DESIGNATED.

REQUIREMENTS.

- TRIM ALL TREES, INCLUDING STREET TREES, AS PART OF THIS CONTRACT.
- 2. THE CONTRACTOR SHALL MAINTAIN A QUALIFIED SUPERVISOR ON THE SITE AT ALL TIMES DURING CONSTRUCTION THROUGH COMPLETION OF PICK-UP WORK.
- 3. THE CONTRACTOR SHALL VERIFY ALL PLANT MATERIAL QUANTITIES PRIOR TO INSTALLATION. PLANT MATERIAL QUANTITIES LISTED FOR CONVENIENCE OF CONTRACTOR. ACTUAL NUMBER OF SYMBOLS SHALL HAVE PRIORITY OVER
- 4. REMOVE ALL DEBRIS, WEEDS, EXCESS MATERIAL AND ROCKS LARGER THAN 1" IN DIAMETER FROM PLANTING AREAS PRIOR TO PREPARATION & AGAIN PRIOR TO PLANTING.
- 5. SEE DETAILS AND SPECIFICATIONS FOR STAKING METHOD, PLANT PIT DIMENSIONS, SOIL PREPARATION, AND BACKFILL
- 6. ALL PLANT MATERIALS SHALL BE APPROVED BY THE
- LANDSCAPE ARCHITECT PRIOR TO INSTALLATION. 7. FINAL LOCATION OF ALL PLANT MATERIAL SHALL BE SUBJECT
- 8. CONTRACTOR SHALL NOTIFY LANDSCAPE ARCHITECT 48 HOURS PRIOR TO COMMENCEMENT OF WORK TO
- 9. GROUNDCOVER PLANTING SHALL BE CONTINUOUS UNDER ALL TREES AND SHRUBS. GROUNDCOVER SHALL BE PLANTED ACCORDING TO SPACING ON PLANT LEGEND.

TO THE APPROVAL OF THE LANDSCAPE ARCHITECT.

COORDINATE PROJECT OBSERVATION SCHEDULES.

- 10. TREES SHALL BE LOCATED A MINIMUM OF 5' FROM WALLS, OVERHEADS, WALKS, HEADERS, AND OTHER TREES WITHIN THE PROJECT. IF CONFLICTS ARISE BETWEEN SIZE OF AREAS AND PLANS, CONTRACTOR TO CONTACT LANDSCAPE ARCHITECT FOR RESOLUTION. FAILURE TO MAKE SUCH CONFLICTS KNOWN TO THE LANDSCAPE ARCHITECT WILL RESULT IN CONTRACTOR'S LIABILITY TO RELOCATE THE
- 11. THE CONTRACTOR SHALL, AT HIS OWN EXPENSE, SUBMIT AT LEAST TWO (2) SAMPLES OF SITE SOIL FOR AGRICULTURAL SUITABILITY AND FERTILITY ANALYSIS AND AMENDMENT RECOMMENDATION TO: WALLACE LABORATORIES (310) 615-0116, OR OTHER TESTING LABORATORY APPROVED BY THE CITY. ALL SAMPLES TO BE TAKEN FROM THE TOP 12"-18" OF SITE SOIL AFTER COMPLETION OF THE DEMOLITION AND ROUGH GRADING.
- 12. ALL PLANTING AREAS SHALL BE LOOSENED TO A DEPTH OF 8". APPLY 4 C.Y. OF ORGANIC AMENDMENT AND 15 LBS. OF 10-10-10 FERTILIZER PER 1000 S.F. AND BLEND WITH THE TOP 6" OF SOIL. THIS AMENDMENT IS FOR BIDDING PURPOSES, AND SHALL BE SUPERCEDED BY RECOMMENDATIONS OF THE SOIL ANALYSIS REPORT.
- PREPARED SOIL MIX SHALL BE USED FOR BACKFILL IN THE PLANTERS. THIS MIX IS FOR BIDDING PURPOSES, AND SHALL BE SUPERCEDED BY RECOMMENDATIONS OF THE SOIL ANALYSIS REPORT. SITE SOIL - 6 PARTS BY VOLUME ORGANIC AMENDMENT - 4 PARTS BY VOLUME SOIL CONDITIONER/FERTILIZER 10-10-10 - 1LB. PER

IRON SULFATE - 2 LBS. PER C.Y. OF MIX

13. FOR ALL TREES AND SHRUB PLANTING, THE FOLLOWING

I AGREE TO COMPLY WITH THE REQUIREMENTS OF THE WATER EFFICIENT LANDSCAPE ORDINANCE AND SUBMIT A COMPLETE LANDSCAPE DOCUMENTATION PACKAGE.

I HAVE COMPLIED WITH THE CRITERIA OF THE ORDINANCE AND APPLIED THEM FOR THE EFFICIENT USE OF WATER IN THE LANDSACPE DESIGN PLANS

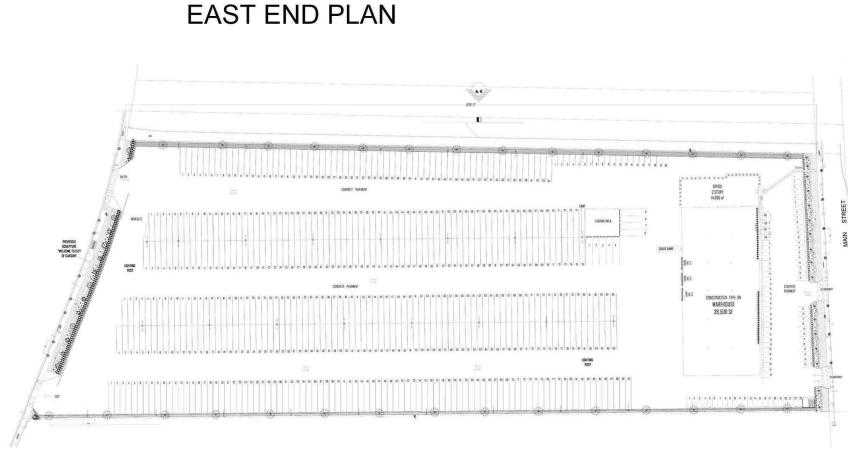
NOTE: ONLY RECIRCULATING WATER SYSTEMS SHALL BE USED FOR WATER

NOTE: A CERTIFICATE OF COMPLETION SHALL BE FILLED OUT AND CERTIFIED BY EITHER THE DESIGNER OF THE LANDSCAPE PLANS, IRRIGATION PLANS, OR THE LICENSED LANDSCAPE CONTRACTOR

A MINIMUM 3-INCH LAYER OF MULCH SHALL BE APPLIED ON ALL EXPOSED SOIL SURFACES OF PLANTING AREAS EXCEPT TURF AREAS, CREEPING OR ROOTING GROUNDCOVERS, OR DIRECT SEEDING APPLICATIONS WHERE MULCH IS CONTRADICTED

FOR SOILS LESS THAN 6% ORGANIC MATTER IN THE TOP 6" OF SOIL, COMPOSET AT THE RATE OF A MINIMUM 4 CUBIC YARDS PER 1,000 SQUARE FEET OF PERMEABLE AREA SHALL BE INCORPORATED TO A DEPTH OF SIX INCHES INTO SOIL

# <del>\$\text{\$\ext{\$\text{\$\exitinx{\$\text{\$\}}}}\\ \text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\exititt{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\texititt{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\text{\$\tex</del> 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 14,050 sf LOADING AREA 13 1 | 2 | 3 | 4 | 5 15 GRADE RAMP 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 **PAVEMENT** 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 CONSTRUCTION TYPE: 3N WAREHOUSE 39,500 SF 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 LIGHTING





PALO VERDE TREE

WEBERS AGAVE

**TREE** 

CA PEPPER TREE

**BLUE GAMMA GRASS** 



WHITE ORCHID

**CORAL ALOE** 

BLUE SPRUCE STONECROP



**GINGKO TREE** 

**BLUE GLOW AGAVE** 

BLUE CHALK STICKS

**BAY LAUREL HEDGE** 



CONCHA CEANOTHUS

BARREL CACTUS

MUSKOGEE CRAPE MYRTLE

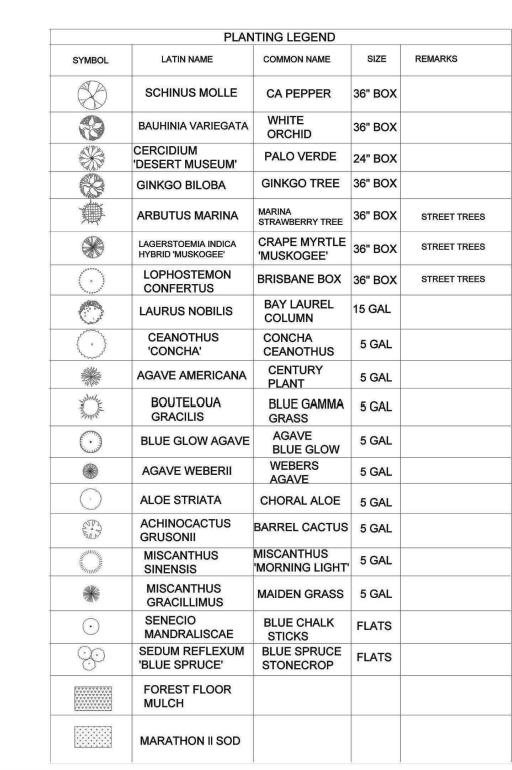
TREE







MISCANTHUS 'MORNING LIGHT



**\* \* \* \* \* \*** 



Tel (310) 546-5550 FAX (310) 546-9250 aga@agarchitecture.com www.agarchitecture.com LIMINA  $\mathcal{L}$ **Project Status** 1/32"=1' 3/17/2020 No. Description **Drawing Number** 

**Architects** 

Landscape Architects

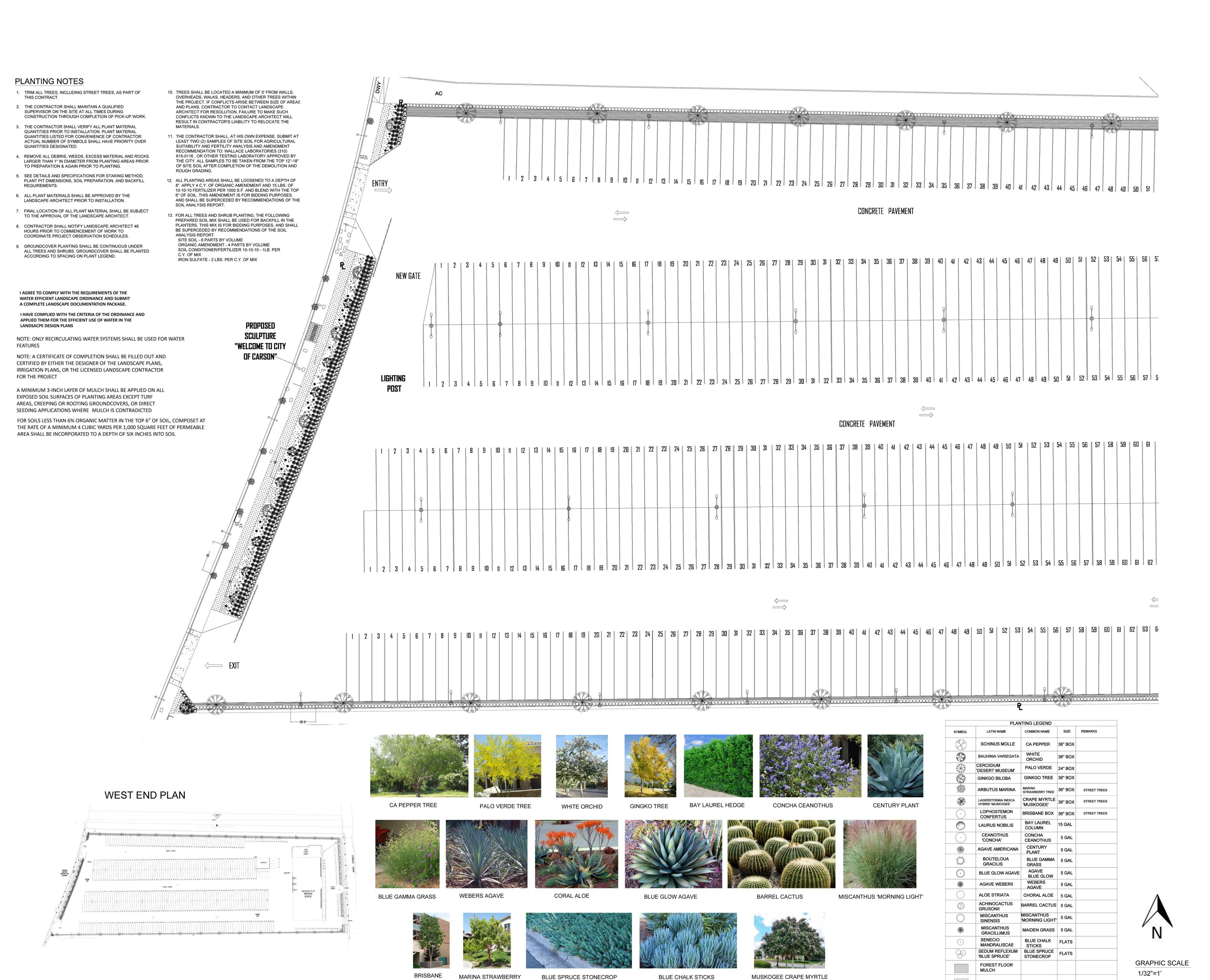
**Planners** 

2100 N. Sepulveda Blvd.

Suite 44, Manhattan Beach, CA

90266

MAIN



TREE

MARATHON II SOD

TREE

GTA Design Group

Architects
Landscape Architects
Planners

2100 N. Sepulveda Blvd. Suite 44, Manhattan Beach, CA 90266

> Tel (310) 546-5550 FAX (310) 546-9250

aga@agarchitecture.com

www.agarchitecture.com

& Location 20601 S MAIN ST CARSON, CA 90745

PRELIMINARY PLANTING PLAN

Project Status

1/32"=1'

Date 3/17/2020

sion:

Description

No. Description Date

Drawing Number

11





RENDERING- MAIN ST



# **RENDERING- MAIN ST**



**RENDERING- FIGUEROA BLVD** 



**RENDERING-MAIN ST** 

# CARGO CONTAINER PARKING SPECIFIC PLAN

July 2020

KL Fenix Corporation 19401 S Main St. Suite 301 Gardena, CA 90248 310.851.5888



Rutan & Tucker, LLP

611 Anton Blvd

Costa Mesa, CA 92626

714.641.5100



T&B Planning, Inc.

3200 El Camino Real Suite 100

Irvine, CA 92602

714.505.6360



AGA Design Group Architects

2100 N. Sepulveda Blvd. Suite 44

Manhattan Beach, CA 90266

310.546.5550



Architects + Landscaps Architects

P.A. Arca Engineering, Inc.

500 E. Carson Plaza Dr. Suite 201

Carson CA, 90746

310.768.3828



Atienza Engineering, Inc.

19641 Hiawatha St.

Chatsworth CA, 91311

747.239.1500



# **TABLE OF CONTENTS**

l.	INTRODUCTION & PROJECT DESCRIPTION	Page 1		
II.	EXISTING & SURROUNDING AREA	Page 2		
III.	PURPOSE & INTENT OF SPECIFIC PLAN	Page 9		
IV.	RELATIONSHIP TO THE CITY'S GENERAL PLAN & ZONING ORDINANCE	Page 10		
V.	SPECIFIC PLAN DEVELOPMENT STANDARDS	Page 13		
VI.	BUILDING FORM & DESIGN GUIDELINES	Page 16		
VII.	SIGNAGE GUIDELINES	Page 18		
VIII.	LANDSCAPE GUIDELINES	Page 19		
IX.	TRAFFIC, CIRCULATION & PARKING DEMAND MANAGENEMT	Page 21		
X.	SUSTAINABILITY FEATURES	Page 23		
XI.	IMPLEMENTATION	Page 25		
APPENDIX – ACCOMPANYING SITE PLAN AND ARCHITECTURE ELEVATIONS Page				

# I. INTRODUCTION & PROJECT DESCRIPTION

This Cargo Container Parking Specific Plan provides development standards and design guidelines for the development of a cargo container facility on a single, 14.3-acre parcel located in northwest Carson between Figueroa Street and Main Street, at the associated address of 20601 Main Street, Carson, California.

The fundamental purpose of this Specific Plan is to establish development standards and design guidelines for the cargo container facility, which is intended to bring economic development and job opportunities to Carson, and facilitate the mobilization of imported and exported goods to and from the nearby Ports of Los Angeles and Long Beach.





By following the standards provided in this Specific Plan, the cargo container facility will contain a building in the eastern portion of the property that supports a large surface parking facility with convenient access to and from the adjacent Interstate 110 (I-110) Freeway. Trucks will access the Specific Plan area using the I-110 on/off ramps located across Figueroa Street directly to the west. Due to the adjacency of I-110 Freeway ramps, it is expected that a limited number of trucks associated with the Specific Plan area will use designated truck routes within the City of Carson's street system.

# II. EXISTING & SURROUNDING AREA

#### A. SURROUNDING AREA

The Specific Plan area is located in a transitional area of Carson – near a mobile home park and industrial uses to the east across Main Street, but otherwise surrounded by large industrial and small retail and institutional uses, and the I-110 Freeway to the west.

As shown in Figure 1, *Location Map*, Figueroa Street and the I-110 Freeway abut the site to the west. To the north of the Site is "Storage Etc... Carson," a self-storage facility. To the east on the opposite side of Main Street are a mobile home park and light industrial uses. The south is a mixed of uses including but not limited to commercial processing and religious places of worship.

The current General Plan designation for the Specific Plan area is Mixed Use – Business Park and the zoning classification is Manufacturing Light with Organic Refuse Landfill (ML-ORL-D).

#### B. EXISTING SITE CONDITIONS AND BACKGROUND

At the time this Specific Plan was prepared, the 14.3-acre Specific Plan area was vacant. Refer to Figure 2, *Photo Key Map*, and Figures 3 through 10, *Site Photos*. The property was the former location of the Gardena Valley Landfill No. 1 & 2. The Gardena Valley Landfill No. 1 & 2 operated from 1956 until 1959 and accepted approximately 75% residential municipal waste and 25% construction or industrial wastes. Land use restrictions were applied to the site in 1989 that require Department of Health Services approval of any excavation or construction activity on the site.

In 2019, the Specific Plan proponent, KL Fenix Corporation, entered into a voluntary oversight agreement with the California Department of Toxic Substances Control (DTSC) to review existing environmental documents for the property and provide input on the remediation needed to comply with the land use restrictions put in place in 1989.

Given the existing conditions, use of the site as a cargo container parking facility is an appropriate land use choice for the property.



Figure 1: Location Map



Figure 2: Site Photo Key Map



Figure 3 North side of the site as viewed from the east



Figure 4 North side of the site as viewed from the west



Figure 5 Site as viewed from the southwest



Figure 6 Main Street facing north



Figure 7 Site as viewed from the southeast



Figure 8 Site as viewed from the northeast



Figure 9 Site as viewed from the west at the I-110 Freeway



Figure 10 Figueroa Street and I-110 Freeway on/off-ramp to the immediate west of the Specific Plan area

# III. PURPOSE & INTENT OF SPECIFIC PLAN

# A. **ECONOMIC AND JOB OPPORTUNITIES**

The proposed project will bring economic development and job opportunities to the City of Carson through the mobilization of imported and exported goods to and from the nearby Ports of Los Angeles and Long Beach. Implementation of the Specific Plan will fulfill General Plan Policy LU – 6.6 by "Attract(ing) land uses that generate revenue to the City of Carson, while maintaining a balance of other community needs such as housing, open space, and public facilities." (See General Plan Land Use Element, p LU-6)

#### B. URBAN DESIGN FRAMEWORK

Provide design standards to promote the development of a dynamic, modern, aesthetically pleasing and sustainable Cargo Container Parking project at this key entry point to the City of Carson.

#### C. PEDESTRIAN NETWORK

Provide walkable pathways along the Main Street and Figueroa Street frontages to encourage the development of a pedestrian network on both frontages and the surrounding areas.

#### D. DESIGN STANDARDS

Encourage design excellence and establish a high-quality standard for future development to occur at this site, particularly along the Main Street frontage.

#### E. SITE CIRCULATION

Enhance Figueroa and Main Street's pedestrian, bicycle, and transit-oriented characteristics while at the same time improving vehicular circulation.

#### F. LAND USE AND EFFICIENT INDUSTRIAL DEVELOPMENT

Implement Carson General Plan Policy LU-1, which calls for the "[p]roductive reuse of brownfield sites" and assist in implementing Policy LU-6 which calls for "[a] sustainable balance of residential and non-residential development and a balance of traffic circulation throughout the City." (See General Plan Land Use Element, p. LU-1)

#### G. SUSTAINABLE COMMUNITIES

Provide an economically sustainable development that includes physical design elements that are consistent with the City of Carson Green Building Code "through use of materials and colors, building treatments, landscaping, open space, parking, environmentally sensitive, and sustainable building design."

# IV. RELATIONSHIP TO THE CITY'S GENERAL PLAN AND ZONING ORDINANCE

#### A. REQUIREMENTS OF A SPECIFIC PLAN

This Specific Plan is a regulatory document prepared pursuant to the provisions of California Government Code §§ 65450 through 65457, which grant local government agencies the authority to prepare Specific Plans for the systematic implementation of their General Plan for all or part of the area covered by the General Plan. While the City of Carson General Plan covers the entire City, the Specific Plan concentrates on the specific development of the approximately 14.3-acre Cargo Container Parking property.

California Government Code §§ 65450 through 65457 establish the authority to adopt a Specific Plan, identify the required contents of a Specific Plan, and mandate consistency with the General Plan. According to California Government Code § 65451:

- (a) A Specific Plan shall include text and a diagram which specify all the following in detail:
  - (1) The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.
  - (2) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.
  - (3) Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.
  - (4) A program of implementation measures including regulations, programs, public works projects, and financing measures, necessary to carry out items (1), (2), and (3).
- (b) The Specific Plan shall include a statement of the relationship of the Specific Plan to the General Plan.

This Specific Plan includes each of the required elements listed above and establishes the essential link between the policies of the City of Carson General Plan and the Cargo Container Parking Specific Plan. All future development plans and implementing construction activities within the Cargo Containing Parking Specific Plan area are required to be consistent with the requirements set forth in this Specific Plan and with all other applicable City regulations.

#### B. GENERAL PLAN CONSISTECY

To ensure consistency between this Specific Plan and the City's General Plan, the General Plan is amended concurrent with adoption of this Specific Plan to establish a "Heavy, Manufacturing" land use designation for the 14.3-acre Cargo Container Parking Specific Plan property to replace the site's existing "Mixed Use — Business Park" designation. Given that the project involves the construction and operation of a cargo container facility, among other uses, the project is consistent with the "Heavy, Manufacturing" land use designation upon approval of this Specific Plan.

This Specific Plan is consistent with the following General Plan Land Use Element goals, policies and objectives:

Goal LU-1 "Productive Reuse of Brownfield Sites."

<u>Consistent:</u> The Specific Plan provides development standards designed to mitigate conditions at this existing "brownfield" site that is currently not usable and is not functioning as an economically-productive parcel that can be incorporated into the City's business community. The Specific Plan's development standards promote the development of a modern "Cargo Container Parking" facility to take advantage of the site's unique location of proximity to the I-110 Freeway and other major transportation corridors.

Goal LU-2 "Rehabilitation and /or removal of abandoned buildings and facilities"

<u>Consistent:</u> The site is an abandoned, vacant parcel that is incompatible with the surrounding area and uses. Implementation of the Cargo Container Parking Specific Plan will transform this abandoned land into a productive economic use and job-generator, and provide for the development of a modern "Cargo Container Parking" facility that will be designed for compatibility with the surrounding area.

Goal LU-5 "Maximize the City's market potential in order to enhance and retain shopping and entertainment opportunities to serve the population, increase revenues to the City, and provide new employment opportunities."

<u>Consistent:</u> The Cargo Container Parking Specific Plan will fulfill General Plan Goal LU-5 with the creation of new employment opportunities and an increase of tax revenues to the City. The Cargo Container Parking use is expected to bring approximately 150 new employment positions into the City of Carson. Revenues will flow to the City in the form of business license tax, increased property tax, utility use tax and sales tax resulting from job creating and employee spending in the local area on goods and services.

Goal LU-6 "A sustainable balance of residential and non-residential development and a balance of traffic circulation throughout the City."

<u>Consistent:</u> The location of the Specific Plan area, with proximity to major transportation corridors and a non-residential land use designation, provides for a unique development opportunity to bring the vacant site into a productive use, consistent with General Plan Goal LU-6. The Cargo Container Parking Specific Plan design standards allow for a non-residential "Cargo Container Parking" facility, with direct access to I-110 Freeway and to other major

transportation corridors. Traffic circulation throughout the City will be minimally impacted because a large majority of truck trips will simply cross Figueroa Street for access onto the I-110 Freeway, using the existing on- and off-ramps.

# C. ZONING ORDINANCE CONSISTENCY

The City of Carson Zoning Code and Map are amended by ordinance concurrent with adoption of this Specific Plan to ensure consistency. Where City's zoning regulations and/or development standards are inconsistent with this Specific Plan, the Specific Plan standards and regulations shall supersede. However, any issue not specifically addressed in the Specific Plan shall be subject to the General Planning and Zoning Code regulations of the City of Carson.

# V. SPECIFIC PLAN DEVELOPMENT STANDARDS

# A. PERMITTED USES

Uses permitted in the Specific Plan area are indicated in the following table. Any use not specifically listed herein shall be subject to the General Planning and Zoning Code regulations for approval.

Regarding operational activity, the unloading and reloading of contents of one trailer to another trailer is permitted in the Specific Plan area.

The maintenance of truck tractors and equipment is prohibited in the Specific Plan area.

# **LEGEND**

СМС	Carson Municipal Code	
Χ	Automatically Permitted Use	
С	Use Permitted Upon City Approval of a Conditional Use Permit	
	NOTE: <u>All</u> uses located less than one hundred (100) feet from any residential zone are subject to the provisions of CMC Section 9148.8, to determine if the use requires a Conditional Use Permit.	

Storage:		
Cargo container (prohibited within 1,000 feet, as measured from lot line to lot line, of residentially zoned property or institutional uses).	С	
Nothing contained herein shall be deemed to authorize or permit the storage of cargo containers containing hazardous materials, substances or wastes which are capable of posing an unreasonable risk to health, safety or property, including, but not limited to, any radioactive material, poison, flammable gas, nonflammable gas, flammable liquid, oxidizer, flammable solid, corrosive material (liquid or solid), irritating materials, combustible liquids, explosives, blasting agents, etiologic agents, organic peroxides, hazardous wastes, and regulated materials of classes A, B, C, D and E, the definitions of which may from time to time be designated by the United States Department of Transportation under Title 49 (commencing with Section 1801) of the United States Code and Title 49 (commencing with Section 107) of the Code of Federal Regulations, and adopted by the Commissioner of the California Highway Patrol pursuant to Section 2402.7 of the Vehicle Code.		
Cold storage plant.	Х	
Warehousing of furniture, household goods, dry goods, clothing, textiles, durable goods, no perishable foods.		
Wireless Telecommunications Facilities (see CMC 9138.16):		
Minor wireless telecommunications facilities, subject to the requirement of CMC 9138.16.	Х	
Major wireless telecommunications facilities, subject to the requirement of CMC 9138.16.	С	

#### B. BUILDING HEIGHT

No height limit, provided additional yard spaces are provided as required in CMC 9146.21 through 9146.29

#### C. SETBACKS

- a. All setbacks abutting Main Street shall be a minimum of twenty-five (25) feet in depth.
- b. All setbacks abutting Figueroa Street shall be a minimum of twenty-five (25) feet in depth.
- c. Building setbacks not abutting a public right-of-way shall be a minimum of fifteen (15) feet in depth.
- d. Setbacks for parking surface not abutting a public right-of-way shall be a minimum of five (5) feet in depth.
- e. No encroachments are permitted in any setback except that any existing legal, nonconforming encroachment may be permitted to remain, subject to the provisions of CMC 9172.23.

#### D. LIGHTING

a. All new lighting shall comply with CMC Section 9147, Exterior Lighting, which requires light sources to be shielded and oriented towards the interior of the property and away from adjacent properties to avoid light trespass.

#### E. TRUCK ACCESS DRIVES

a. Driveways connecting with Main Street shall not be used by trucks. Driveways connecting with Main Sstreet shall be designed for passenger vehicle use only.

#### F. LANDSCAPING AND IRRIGATION

- a. Landscaping and irrigation plans shall be prepared and signed by a licensed landscape architect and approved by the Community Development Director prior to occupancy.
- b. All landscaped areas shall be well maintained at all times and permanently irrigated with an electronic timer preset for early morning hours.
- c. All required yards adjacent to, or visible from, a public right-of-way shall be landscaped utilizing any combination of the following:
  - 1. Drought resistant plants common to this region, including lawn grasses, flowers, ground covers, vines, shrubs in five (5) to fifteen (15) gallon sizes, and specimen trees;
  - 2. Decorative materials such as rock, bark, gravel, boulders, wood, brick, block, tile, stucco, ornamental iron, and chain link; or

3. Artistic features, such as berms, earth mounds, planter beds, fencing, monuments, artwork, sculptures, and fountains.

#### G. CONFIGURATION OF CARGO CONTAINERS

- a. Cargo containers shall not be placed directly on the ground.
- b. Cargo containers shall not be stacked.
- c. Cargo containers shall not be stored within five (5) feet of any required screening wall nor within twenty (20) feet of any structure or building.
- d. All cargo containers shall be arranged in parallel rows.
- e. The cargo container configuration site plan shall be submitted to the Community Development Department for review and approval prior to the commencement of operations. The site plan, as approved by the Director, shall be adhered to at all times.
- f. Vehicular parking, loading, and maneuvering areas shall be constructed and maintained in accordance with the provisions of CMC 9162.0.
- g. Areas utilized for the storage of cargo containers shall be surfaced with materials approved by the Community Development Department which adequately prevent dust from becoming airborne and prevent the tracking of mud onto public rights-of-way. The site shall be graded to drain onto the street or shall otherwise be drained in a manner approved by the Director of Public Works.
- h. All cargo container storage shall be screened from public rights-of-way. The screening shall be designed and scaled so that its mass and height is compatible with other existing or proposed improvements in the area, and the cargo containers are adequately concealed.

# VI. BUILDING FORM AND DESIGN GUIDELINES

#### A. BUILDING PLACEMENT

The preferred location for building placement is at the eastern portion of the property. Building(s) placed in this location will serve as a visual screen from Main Street, blocking views of surface parking areas and operational activities located further to the west such as truck maneuvering and loading/unloading activities. Building(s) placed in the eastern portion of the site along the Main Street frontage also will serve as an acoustical screen for activities occurring to the west of the building.

# B. ARCHITECTURAL DESIGN

The overall concept for exterior building design, such as use of material, articulation to building façades, and projections is to create interest in street-facing elevations, in particular the elevations facing Main Street. Building form and façade elevations facing Main Street shall be designed to create a screen for developments in the surrounding area.



Figure 11 Example of a portion of the building form and façade from Main Street.

The building architecture concept is to provide large areas of glass along the Main Street frontage, on portions of the building façade visible from the public right-of-way in order to provide the appearance of an office building.

The Carson Street Corridor Design Guidelines and Sustainable Standards, identified in Section 9138.17J. of the CMC, are hereby incorporated by reference. However, building awning shapes within the Specific Plan area shall relate to the shape of the window and door openings, and need not comply with the Carson Street Corridor Design Guidelines.

#### C. WALLS AND FENCING

Except for locations where a building façade or passenger vehicle parking is visible from off-site, a solid wall or screen fence is the desired treatment at property lines, at a height of approximately 8 feet, or as determined by City during the site plan review process and approved by the Director,

#### D. WATER, SEWER & STORM DRAIN

Development in the Specific Plan area will connect to the existing municipal sewer system and shall not require a septic or alternative wastewater disposal system. The connection point to the municipal sewer system is at Main Street at the eastern property boundary. From that point,

wastewater could be conveyed by the municipal system to the Joint Water Pollution Control Plant (JWPCP), which is owned and operated by Sanitation Districts of Los Angeles County.

Development in the Specific Plan area requiring domestic water service will connect to the existing municipal water system. The water purveyor is the Rancho Dominguez District of California Water Service. The connection point to the municipal water system is at Main Street at the eastern property boundary.

Storm drain infrastructure with water quality measures are required to be installed on the site to ensure that the rate of discharge does not exceed existing conditions and that water leaving the site meets water quality standards of the Regional Water Quality Control Board. Water discharged from the property would flow into the municipal storm water drainage system.

# **VII. SIGNAGE GUIDELINES**

A monument sign that displays the words "Welcome" and "City of Carson" is planned to be placed on the site's frontage with Figueroa Street, as shown in the concept below.



Figure 12 Welcome Signage

Regarding tenant identification signage, unless specifically addressed below, signage within the Specific Plan area shall be governed by Section 9138.18F of the CMC.

- a. Capital letters shall not exceed a height of thirty-two (32) inches. Lower case letters shall not exceed a height of thirty-two (32) inches. When using a logo, logo size should not exceed fifty-four (54) inches. Two (2) rows of letters shall not exceed sixty-four (64) inches.
- b. The sign area of a monument sign shall not exceed one and one-half (1.5) square foot per each foot of street frontage. Sign placement shall not exceed a maximum of one (1) per every one hundred fifty (150) linear feet of street frontages. Signs shall be located at least seven and one-half (7-1/2) feet from interior lot lines. Monument signs shall be a maximum of sixteen (16) feet high with a maximum forty-eight (48) inch base and should not be a hazard to pedestrian or vehicular traffic. Sign content shall be limited to shopping center and tenant names (with no more than two (2) rows of letters).

# **VIII. LANDSCAPE GUIDELINES**

The landscape concept for the Specific Plan area's development is to provide landscaping around the site perimeter, with generous landscaping at a minimum depth of 25 feet along the Main Street and Figueroa Street frontages, and a minimum depth of five (5) feet of landscaping along the north and south properly lines that do not abut a public street. Landscaping is to include shrubs, and trees that extend over the height of the perimeter walls. Groundcover planting will be continuous under all trees and shrubs. All trees will be located a minimum of 5 feet from walls.

Landscape materials are to be drought resistant, and incorporate plants common to the southern California region. A sample plant palette is provided below.



#### **SAMPLE PLANTE PALLETTE**

LATIN NAME	COMMON NAME
Schinus Molle	California Pepper
Lagerstoemia Indica Hybrid 'Muskogee'	Crape Myrtle Muskogee
Lophostemon Confertus	Brisbane Box
Laurus Nobilis	Bay Laurel Column
Ceanothus 'Concha'	Concha Ceanothus
Bauhinia Variegata	White Orchid
Cercidium 'Desert Museum'	Palo Verde
Ginkgo Biloba	Ginkgo Tree
Arbutus Marina	Marina Strawberry Tree
Agave Americana	Century Plant

LATIN NAME	COMMON NAME
Bouteloua Gracilis	Blue Gamma Grass
Blue Glow Agave	Agave Blue Grass
Agave Weber II	Webers Agave
Aloe Striata	Choral Aloe
Achinocactus Grusonii	Barrel Cactus
Miscanthus Sinensis	Miscanthus 'Morning Light'
Miscanthus Gracillimus	Maiden Grass
Senecio Mandraliscae	Blue Chalk Sticks
Sedum Reflex 'Blue Spruce' –	Blue Spruce Stonecrop
	Forest Floor Mulch
	Marathon II SOD

# IX. TRAFFIC, CIRCULATION AND PARKING DEMAND MANAGENEMT

Prior to the issuance of a building permit, the owner/applicant shall agree to provide and maintain in a state of good repair the following applicable transportation demand management and trip reduction measures.

#### A. **REQUIREMENTS**

- The owner or operator shall provide on-site signage to indicate "No Trucks" are permitted to use the driveway(s) connecting with Main Street.
- 2. The owner or operator shall provide on-site signage in areas where trucks will park, load, or unload, stating the anti-idling restrictions required by the California Air Resources Board (CARB),
- 3. A surveillance video camera shall be installed on the site to monitor the Figueroa and Main Street driveway(s).



- 4. The owner shall provide a bulletin board, display case, or kiosk (displaying transportation information) where the greatest number of employees are likely to see it. The transportation information displayed should include, but is not limited to, the following:
  - a. Current routes and schedules for public transit serving the site;
  - b. Telephone numbers for referrals on transportation information including numbers for the regional ridesharing agency and local transit operations;
  - c. Ridesharing promotion material supplied by commuter-oriented organizations;
  - d. Regional/local bicycle route and facility information;
  - e. A listing of on-site services or facilities which are available for carpoolers, vanpoolers, bicyclists, and transit riders.
- 5. Parking shall be screened from public view, with the exception of passenger vehicle parking associated with a building (for example, employee and visitor parking spaces, bicycle parking, vanpool and carpool parking, EV charging stations, etc.).
- 6. A safe and convenient area shall be designated where carpool/vanpool vehicles may load and unload passengers other than in their assigned parking area;
- 7. A designated parking area for employee carpools and vanpools should be positioned as close as practical to the main pedestrian entrance(s) of the building(s). The spaces are required to be signed and striped sufficient to meet the employee demand for such spaces. The identification of such spaces (signed and striped) shall be maintained during the building's occupancy sufficient to meet employee demand for such spaces. Absent such demand,

- parking spaces within the designated carpool/ vanpool parking area may be used by other vehicles.
- 8. No signed and striped parking spaces for carpool/vanpool parking shall displace any handicapped parking.
- 9. A statement that designated carpool/vanpool spaces are available on-site and a description of the method for obtaining permission to use such spaces shall be included on the required transportation information board.
- 10. Bicycle parking shall be provided for at least five (5) percent of the total number of passenger vehicle parking stalls in conformance with the Carson Municipal Code Section 9138.17.
- 11. Sidewalks or other designated pathways shall be provided from the building(s) to the bicycle parking area(s).
- 12. Sidewalks or other designated pathways shall be provided from the building(s) to the sidewalk located in the Main Street public right-of-way.
- 13. If determined necessary by the City during site plan review, bus stop improvements shall be provided. The City will consult with the local bus service providers in determining appropriate improvements. When locating bus stops and/or planning building entrances, entrances shall be designed to provide safe and efficient access to nearby transit stations/stops.
- 14. If determined necessary by the City during site plan review, coordination with the California Department of Transportation may be required regarding the design of the Specific Plan's access driveway(s) on Figueroa Street in relationship to the I-110 Freeway/Figueroa Street on/off ramps.

# X. SUSTAINABILITY FEATURES

The Cargo Container Parking Specific Plan project shall be based on principles of smart growth and environmental sustainability. The new building shall be designed and constructed to incorporate environmentally sustainable design features equivalent to the minimum mandatory requirements of the most current edition of the California Green Building Code. The Cargo Container Parking Project shall incorporate an environmentally sustainable design using green building technologies utilizing more resource-efficient modes of construction adhering to the principles of energy efficiency, water conservation, environmentally preferable building materials, and overall waste reduction.

Sustainability features are expected to include the following:

#### A. WATER CONSERVATION

The landscaping plan and plant material selection serves the dual purpose of adding visual appeal while being sensitive to the environment and Southern California climate by using drought resistant materials. Refer to Section VIII, Landscape Guidelines.

Development in the Specific Plan area may include:

- Compliance with MWELO requirements.
- Non-residential restroom faucets with a maximum flow rate of 0.5 gallon per minute and non-residential kitchen faucets (except restaurant kitchens) with a maximum flow rate of 1.5 gallons per minute.
- Non-residential restroom faucets of a self-closing design (i.e., that shall automatically turn off when not in use).
- Weather-based irrigation controller with rain shutoff, matched precipitation (flow) rates for sprinkler heads, and rotating sprinkler nozzles or comparable technology such as drip/ micro spray/subsurface irrigation and moisture sensors where appropriate.
- Minimum irrigation system distribution uniformity of 75 percent.
- Use of proper hydro-zoning, turf minimization, zoned irrigation and use of native/drought-tolerant plant materials.
- Use of landscape contouring to minimize precipitation runoff.
- Use of LID flow-through planters within common site areas that are not located above subterranean parking.

#### B. ENERGY CONSERVATION AND EFFICIENCY

Development in the Specific Plan area will meet Title 24, Part 6, California Energy Code baseline standard requirements for energy efficiency, based on the most current Energy Efficiency Standards requirements. Examples of design methods and technologies include, but not be limited to, high performance glazing on windows, appropriately-oriented shading devices, high

efficiency boilers (if single metered), instantaneous water heaters (if individual meters), and enhanced insulation to minimize solar and thermal gain.

Development in the Specific Plan area may include:

- Energy Star labeled products and appliances installed where appropriate.
- Application of energy-saving technologies and components to reduce the project's electrical usage-profile. Examples of these components include compact fluorescent light bulbs (CFL), energy saving lighting schemes such as occupancy-sensing controls (where applicable), use of light emitting diode (LED) lighting or other energy-efficient lighting technologies where appropriate, and energy-efficient heating and cooling equipment.
- During operations, exterior lighting elements controlled by light sensors and/or timeclocks to avoid over lighting as appropriate.
- Commissioning of building energy systems to verify that the project's building energy systems are installed, calibrated, and performing to the owner or operator's requirements.

#### C. TRANSPORTATION EFFICIENCY

Refer to Section IX, Traffic, Circulation and Parking Demand Management, for details on conservation features associated with transportation.

Development in the Specific Plan area may include:

- Preparation and implementation of a Transportation Demand Management (TDM) Plan
  to promote the use of alternative transportation, such as mass-transit, ridesharing,
  bicycling, and walking to reduce employee and visitor trips and/or vehicle miles traveled.
- Provision of on-site bicycle storage for visitors and employees.
- Accessibility to public transportation lines.
- Allocation of preferred parking for alternative-fuel vehicles, low-emitting, and fuelefficient and ride-sharing vehicles.
- As required by the Building Code, provision of electric vehicle charging stations.
- Signs posted on the site reminding drivers that engine idling over 5 minutes is prohibited by the California Air Resources Board.

# XI. IMPLEMENTATION

#### A. SEVERIBILITY

This Specific Plan document enables the City of Carson to facilitate the approval of development plans for the Cargo Container Parking Specific Plan area. If any regulation, condition, program, or portion of this Specific Plan is held invalid or unenforceable, such portions shall be deemed separate, distinct, and independent provisions, and the invalidity of such portions or provisions shall not affect the validity and enforceability of the remaining provisions contained herein.

#### B. SITE PLAN REVIEW REQUIRED

Any future proposed development that is not in substantial conformance with the standards and guidelines contained herein shall be subject to additional Site Plan and Design Review.

# C. SUBSTANTIAL CONFORMANCE

The City of Carson Community Development Director has the discretion to make findings of Substantial Conformance to this Specific Plan, for minor deviations from the guidance provided herein that does not adversely impact the overall intent of the Specific Plan's provisions. Formal Exceptions to this Specific Plan will be considered in the manner specified below.

#### D. EXCEPTIONS TO THIS SPECIFIC PLAN

The procedures for the granting of exceptions to the requirements of this Specific Plan are set forth below. In approving an exception to this Specific Plan pursuant to this Section, the City of Carson Planning Commission granting an approval, and any City body exercising appellate review of an approval, may simultaneously approve any conditional use under their jurisdiction.

- 1. Initiation. Consideration shall be initiated upon the filing of an application by the owner of the subject property or his authorized representative, in accordance with CMC 9173.1.
- 2. Notification of Applicant. The City shall notify the applicant in writing within thirty (30) days of the filing of the application that either the application is complete and has been accepted for processing, or that the application is incomplete and that additional information, specified in the letter, must be provided.
- 3. Commission Hearing Notice. Notice of hearing shall be given by posting and by notice through the United States mail to the applicant, to the owners of the property within seven hundred and fifty (750) feet, and to any person who has filed a written request therefor, all as provided in CMC 9173.22 (California Government Code Section 65905), and in such other manner as prescribed by the laws of the State of California and as the Commission may deem necessary or desirable. The City Clerk may give such additional notice, and in such manner as may be deemed necessary or desirable by the City Clerk or the Council.
- 4. Commission Findings and Decision.

- a. After the hearing, the Commission shall, by resolution, render its decision to approve or disapprove an Exception. In making its decision, the Commission shall adopt written findings with respect to this requirement as follows:
  - that while site characteristics or existing improvements make strict adherence to the zoning regulations impractical or infeasible, the project nonetheless conforms with the intent of those regulations;
  - ii. that in light of the project as a whole, including any mitigation measures imposed, the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and
  - iii. that the project is in substantial conformance with the purpose, intent and provisions of the General Plan, any applicable community plan and any applicable specific plan.
- An Exception shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. (California Government Code Section 65906.)
- Notice of the Commission decision shall be given as provided in CMC 9173.32.
- 5. Conditions. Any Variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated (California Government Code Section 65906), and shall be subject to such conditions as will assure that any potential adverse effects will be mitigated where feasible.
- 6. Effective Date and Appeal.
  - a. The decision of the Commission shall become effective and final fifteen (15) days after the date of its action unless an appeal is filed in accordance with CMC 9173.4.
  - b. An appeal shall be considered by the Council as provided in CMC 9173.4.

#### E. FINANCING AND MAINTENANCE

The financing of site development and the provision of infrastructure improvements to service the development are expected to be provided by the property owner or successor in interest.

All improvements installed on the property are expected to be the maintenance responsibility of the property owner or successor in interest. Improvements installed in the Main Street or Figueroa Street public rights-of-way are expected to be maintained by the City of Carson.

# APPENDIX – ACCOMPANYING SITE PLAN AND ARCHITECTURE ELEVATIONS

Concurrent with the City's consideration of this Specific Plan, the proponent proposed the approval of a site plan for a cargo container parking facility. Consistent with the Cargo Container Parking Specific Plan, the site plan calls for the development of a 42-foot high building in the eastern portion of the property having approximately 53,550 square feet (S.F.) of building space including  $\pm 39,500$  S.F. of warehouse space and  $\pm 14,050$  S.F. of two-story office space, with 6 loading docks on the west-facing side of the building.

Approximately 115 passenger vehicle parking spaces would be positioned near the building, as would bicycle parking. All of the cargo container parking and truck parking spaces are positioned to the west of the building, between the building and Figueroa Street. The building would block views of and attenuate noise in the cargo container parking area. The cargo container parking area is designed to include approximately 400 cargo container parking spaces and 75 tractor trailer parking spaces, with a solid perimeter wall and landscaped screening along the north and south property lines between the Specific Plan area and off-site properties to the north and south.

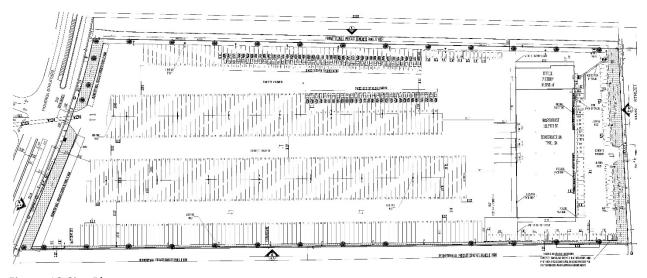


Figure 13 Site Plan

From Main Street, the building would look like an office development. The architectural design of the building is aesthetically compatible to the surrounding area to the east by including large sections of glass and architectural relief on the east-facing façade.



Figure 14 Architectural Elevations

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Carson

701 E Carson Street Carson, CA 90745 Attn: Planning Manager

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

# AGREEMENT REGARDING DEVELOPMENT IMPACT FEES, COMMUNITY FACILITIES DISTRICT, AND OTHER PROJECT DEAL POINTS

This Agreement Regarding Development Impact Fees, Community Facilities District, and Other Project Deal Points ("Agreement") is entered into by and between the City of Carson, a municipal corporation of the State of California ("City"), and KL Fenix Corporation, a California corporation ("Developer"). The City and Developer shall sometimes be referred to jointly within this Agreement as the "Parties" and individually as a "Party."

## **RECITALS**

- A. Orderly Development; Public Benefits. The City Council finds that (i) this Agreement is entered into pursuant to Section 65864 et seq. of the California Government Code, (ii) this Agreement is in the best public interest of the City and its residents, (iii) adopting this Agreement constitutes a present exercise of the City's police power, and (iv) this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project (as defined below) will achieve a number of City objectives, including the orderly development of the Property (as defined below) and the provision of public benefits, or funds therefor, to the City and its residents.
- B. *Moratorium*. On March 21, 2017, the City Council adopted Interim Urgency Ordinance No. 17-1615U, enacting a 45-day moratorium on the establishment, expansion, or modification of truck yards, logistics facilities, hazardous materials and hazardous waste facilities, container storage facilities, and container parking (collectively, "Logistics Facilities") within the City (the "Moratorium"). The purpose of the Moratorium was to give the City the time to fully study the impacts of Logistics Facilities on the City's infrastructure and to develop the appropriate measures to ensure that Logistics Facilities pay their fair share. The Moratorium provides that a developer can seek an exception from the Moratorium by agreeing to mitigate a particular project's impacts. On May 2, 2017, the City Council adopted Interim Urgency Ordinance No. 17-1618U, which extended the Moratorium for an additional 10 months and 15 days. On March 20, 2018, the City Council adopted Interim Urgency Ordinance No. 18-1805U, which extended the Moratorium for an additional 12 months.
- C. *Moratorium Exception*. On August 21, 2018, the City Council adopted Resolution 18-113 ("**Resolution 18.113**") granting Developer an exception to the Moratorium (the "**Exception**") subject to certain conditions.

- D. *Moratorium Expiration*. The twice extended Moratorium expired March 16, 2020.
- E. Adoption of DIF Program. On April 16, 2019, the City Council adopted Ordinance No. 19-1931 to implement the City's Interim Development Impact Fee Program ("DIF Program") to establish an interim Development Impact Fee ("DIF") schedule applicable to new development within the City. DIFs are valuable tools to fund infrastructure needs associated with new/additional development within the City pursuant to Government Code Sections 66000 et seq. DIFs serve the purpose of allowing the City to recover from each new development project a reasonable and proportional share of the cost of public facilities and infrastructure improvements that serve or will benefit that development.
- F. Agreed-Upon Payment of DIF Amount. City staff and its rate consultants have analyzed the DIF Program and fee study data contained therein, and potential impacts upon public facilities and infrastructure attributable to the Project, in order to accurately determine the DIFs that would be applicable to the Project. Project DIF amounts in this Agreement were determined by reviewing the individual Project and its direct relationship to the impacts created by the Project, and the fees collected, and it was determined that the amounts of the fees are roughly proportional to the Project's specific impacts. Based on such analyses, the Parties mutually agree that Project impacts warrant a one-time DIF payment equal to the amount determined from the DIF Program and in effect at the time of issuance of building permits for Cargo Container Parking facilities, as defined in Section 9191.067 of the City's Municipal Code ("Cargo Container Parking"), which, as of the Effective Date, is Seven Hundred Twenty Nine Dollars and Fifty Two Cents (\$729.52) per truck and container space. Based on the number of truck and container spaces of the Project, as of the Effective Date, Developer would be responsible for development impact fees in the amount of Two Hundred Seventeen Thousand Three Hundred Ninety-Six Dollars and Ninety-Six Cents (\$217,396.96). This amount is to be paid prior to issuance of Project building permits. Additionally, all applicable DIF amounts attributable to the warehouse, if any, as more particularly described in Section 3.1 of this Agreement, will be paid at the time applications for business licenses are submitted to City. All payments for DIFs pursuant to this Agreement are hereinafter referred to as the "DIF Amount." The Parties agree that such DIF Amount is (i) directly related to the impacts of the Project, and (ii) roughly proportional to the specific impacts upon public facilities and infrastructure attributable to the Project.
- G. CFD Formation. On November 7, 2018, the City formed a Master CFD entitled City of Carson Community Facilities District No. 2018-01 (Maintenance and Services) (the "Master CFD") for the purpose of funding the maintenance of public infrastructure within the area of the Master CFD which is within the City's jurisdictional boundaries (the "Services"). More specifically, the Services may include, but not be limited to, the provision of general City services and the maintenance of sidewalks, roadways, and parks to enhanced service levels. Additionally, the Master CFD may also fund any other public services as authorized under Section 53313 of the California Government Code. The Master CFD contemplates that the City will annex properties from time to time to the Master CFD to fund Services by unanimous written consent or as otherwise permitted by the Mello Roos Community Facilities Act of 1982 (the "Act"), which properties may be

- annexed as a "Zone" or otherwise with special taxes related to such properties to be assessed on the property owner pursuant to the Act.
- H. CFD Annexation. On April 2, 2019, the City Council adopted Resolution No. 19-009 to: (i) adopt a uniform procedure for annexing future properties into the Master CFD administratively at City staff level, and (ii) adopt uniform tax rates based on land use categories and zones established under the applicable Fiscal Impact Analysis. Pursuant to the Exception, Developer was to form, fund, and participate in an applicable community facilities district and become subject to all special taxes applicable to the Property (the "Property's Special Taxes"), whether administered through the Master CFD or another community facilities district to be formed by the City related to Services to the Property (the "CFD"). With the formation of the Master CFD, the Property may now be annexed into the Master CFD, consistent with the purposes set out in the Exception. Based on an analysis of the Services needed for the Project, Developer agrees the Property will be taxed at the rate in effect at the time of issuance of Project building permits for Industrial - All Other, which, as of the Effective Date, is Four Hundred Eighty Dollars and Seventy-Five Cents (\$480.75) per acre on an annual basis, which means the Property's Special Taxes would be Six Thousand Eight Hundred Eighty-Nine Dollars and Fifteen Cents (\$6,889.15) annually, as adjusted pursuant to Section 3.2b of this Agreement.
- I. Agreement as Development Tool. In light of there being inconsistencies within the City's Zoning Code and General Plan and in light of the interim nature of the proposed use of the Property and the extension to the Initial Term which may be granted Developer, the Parties desire to proceed and enter into this Agreement which they agree is the simplest way to provide Developer its requested entitlements.
- J. The Property. Developer owns the property located at 20601 South Main Street situated immediately east of and adjacent to Figueroa Street, south of Del Amo Boulevard and north of Torrance Boulevard, in the City of Carson, having Assessor's Parcel Number 7336-003043, and legally described and depicted in Exhibit "A" and Exhibit "B," respectively, attached hereto and incorporated herein (the "Property"). The Property is zoned ML (Manufacturing Light) and is approximately 14.33 acres in size. The General Plan land use designation for the site is Mixed Use Business Park. Among the Property's surroundings are those that consist of General Plan land use designations of Mixed Use Business Park within zoning district ML, Mixed Use Business Park within zoning district CG, Light Industrial within zoning district ML, Low Density within zoning district RM, and General Open Space within zoning district ML.
- K. The Project. Developer proposes to develop upon the Property, pursuant to this Agreement, as a temporary use, a logistics facility for use as a Cargo Container Parking facility with up to 53,550 square feet of industrial warehouse building and 223 spaces for cargo containers and 75 spaces for truck parking, totaling approximately 14.33 acres (the "Project"), as more particularly described in Sections 1.29, 4.1, and 4.2 of this Agreement.
- L. *Purpose of Agreement*. The purposes of this Agreement are: (i) to establish the allowable uses of the Property, set forth the parameters under which the term of this Agreement

may be extended, and establish the rights of the Parties, in light of there being inconsistencies within the City's Zoning Code and General Plan and in light of the interim nature of the proposed use of the Property and the extension to the Initial Term which may be granted to Developer; (ii) for the City to grant to Developer a property right for the development and use of the Project in exchange for certain public benefits (e.g., public art installation, prohibition against Developer accessing Main Street and Torrance Boulevard with its trucks, and penalties imposed on Developer for failure to comply with this Agreement) which address the City's concerns that resulted in the Moratorium; and (iii) for the City Council to find that this Agreement establishes substantial compliance by Developer with the Exception and the terms of Resolution 18-113.

M. The Project's Entitlements. City finds and determines that all actions required of City prior to approval of this Agreement have been duly and regularly taken. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, et seq. ("CEQA"), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. Planning Commission, after a duly noticed public hearing originally set for May 26, 2020 and adjourned to May 27, 2020, which was continued to July 28, 2020 and adjourned to July 29, 2020, recommended approval of a Mitigated Negative Declaration for the Project in accordance with CEQA ("MND"). On the same days, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement ("DA 24-18"), General Plan Amendment ("GPA 108-2018"), Specific Plan ("SP 18-2018"), Conditional Use Permit ("CUP 1074-2018"), as well as a Site Plan and Design Overlay Review ("DOR 1745-2018") (collectively, together with the MND, the "Entitlements"), and recommended that the City Council approve said Entitlements. On \_\_\_\_\_\_\_, 2020, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer's application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City. The Entitlements will expire upon expiration or sooner termination of this Agreement, as may be extended.

# **COVENANTS**

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## 1. GENERAL DEFINITIONS.

In addition to those terms defined within the above Recitals and elsewhere within this Agreement, the following terms shall bear the meanings set forth below:

**1.1** "Adjacent Surrounding Parcel" means each of the Surrounding Parcels designated as Parcel 3, Parcel 4 and Parcel 5.

- **1.2** "Adopting Ordinance" means Ordinance No. \_\_\_\_\_ approving this Agreement, introduced on \_\_\_\_\_, 2020 and adopted on \_\_\_\_\_, 2020.
  - **1.3** "Agreement" means this Agreement, including all of its exhibits.
- **1.4** "Annual Review" means the annual review of the Developer's performance under this Agreement in accordance with Article 6 of this Agreement.
  - **1.5** "Applicable Laws" means, collectively, the following:
    - a. The Project Development Approvals, including the Conditions of Approval.
    - b. The Existing Land Use Regulations.
    - c. Subsequent Development Approvals.
    - d. Those Subsequent Land Use Regulations to which Developer has agreed in writing.
- 1.6 "Assignment" shall include any sale, transfer, lease, assignment, hypothecation or encumbrance of the Property and the transfer to any person or group of persons acting in concert of more than thirty percent (30%) of the present ownership and/or control of the Developer in the aggregate, taking all transfers into account on a cumulative basis. In the event Developer or its successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of Developer, or the beneficial interests of such trust; in the event that Developer is a limited or general partnership, such transfer shall refer to the transfer of more than thirty percent (30%) of the ownership and/or control of any such joint venture partner, taking all transfers into account on a cumulative basis.
- **1.8** "**CFD**" means any Community Facilities District that is applicable to the Property and formed pursuant to the Mello Roos Community Facilities Act of 1982.
  - **1.9** "City" means the City of Carson, a California Charter city.
  - **1.10** "City Council" means the City Council of the City of Carson.
- **1.11** "Conditions of Approval" means all conditions imposed on the Project by the City, including those recommended by the Los Angeles County Fire Department, as part of the approval of the Entitlements.
- **1.12** "**Developer**" means KL Fenix Corporation, a California corporation, and its successors and assigns to all or any part of the Property.
- 1.13 "Developer's Vested Right" means Developer's right to complete the Project in accordance with, and to the full extent of, the Project Development Approvals, but only until the

Initial Term expires unless this Agreement is extended, in which event Developer's right to complete the Project will extend until expiration of such extended term, or unless Developer's rights become permanent pursuant to Article 2 of this Agreement.

- **1.14** "**Development**" means the improvement of the Property for the purposes of completing the structures, improvements, and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, and the maintenance, repair, or reconstruction of any building, structure, improvement, landscaping or facility after the construction and completion thereof.
- 1.15 "Development Approvals" means all Project-specific non-legislative approvals. Development Approvals include, but are not limited to, plans, maps, permits, site plans, tentative and final subdivision maps, design guidelines, variances, conditional use permits, grading, building, and other similar permits, environmental assessments, including environmental impact reports and negative declarations, and any amendments or modifications to those matters. "Development Approvals" does not include (i) rules, regulations, policies, and other enactments of general application within the City, (ii) legislative enactments, or (iii) any matter where City has reserved authority under Section 5 of this Agreement. Development Approvals are not Land Use Regulations.
- **1.16** "**DIF**(**s**)" means Development Impact Fees agreed to by Developer pursuant to Section 3.1 hereof.
- **1.17** "**Effective Date**" means the date on which the Adopting Ordinance becomes effective, typically thirty (30) days after the second reading of the Adopting Ordinance.
- **1.18** "Entitlements" means this Agreement, the MND, GPA 108-2018, SP 18-2018, CUP 1074-2018, and DOR 1745-2018.
- **1.19** "Exhibit" means an exhibit to this Agreement, unless otherwise specifically referenced to a different agreement or document. The following exhibits are incorporated into the Agreement by reference as though set forth in full:

Exhibit A Legal Description of the Property

Exhibit B Depiction of the Property

Exhibit C Surrounding Parcels

Exhibit D Site Plan

- **1.20** "Extended Term" means any additional three (3) year period following the Initial Term in accordance with Section 2.3 and Section 2.8 of this Agreement.
- **1.21** "Existing Land Use Regulations" means (i) all Land Use Regulations in effect on the Effective Date and (ii) any changes to Land Use Regulations enacted on or after the Approval Date and before the Effective Date for which Developer has provided its written consent to allow those changes to apply to the Project.

- **1.22** "**Heavy Industrial**" means having a Heavy Industrial General Plan Land Use Designation that is in effect when any General Plan Amendment is approved for the Surrounding Parcels or as otherwise described in the 2040 General Plan or any subsequently adopted General Plan.
- **1.23** "**Initial Term**" means the period of time that is seven (7) years commencing on the date of issuance of the Certificate of Occupancy or final permit for all improvements associated with the Project, subject to any early termination provisions described in this Agreement.
- 1.24 "Land Use Regulations" are laws and regulations enacted through legislative actions of the City Council. Land Use Regulations include ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan, Municipal Code, and Zoning Code which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and construction standards and specifications applicable to the Project. "Land Use Regulations" do not include (i) Development Approvals, (ii) regulations relating to the conduct of business, professions, and occupancies generally, (iii) taxes and assessments, (iv) regulations for the control and abatement of nuisances, (v) health and safety regulations, or (vi) any other matter reserved to the City pursuant to Article 5.
- **1.25** "**Light Industrial**" means having a Light Industrial General Plan Land Use Designation that is in effect when any General Plan Amendment is approved for the Surrounding Parcels or as otherwise described in the 2040 General Plan or any subsequently adopted General Plan.
- **1.26** "Mortgage" means a mortgage, deed of trust, or other security instrument encumbering the Property or any part thereof.
- **1.27** "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender, or each of their respective successors and assigns.
- **1.28** "Other Surrounding Parcel" means the Surrounding Parcels designated as Parcel 1 and Parcel 2.
- **1.29** "**Project**" as described in Sections 4.1 and 4.2 of this Agreement, means the Development of the Property consistent with and to the full extent of the Project Development Approvals, inclusive of the Entitlements, and all applicable Land Use Regulations.
- **1.30** "**Project Development Approvals**" means all Development Approvals, inclusive of the Entitlements, which meet the following criteria:
  - a. Were applied for by Developer;
  - b. Are acceptable to Developer (including all Conditions of Approval); and

c. Are required or permitted by the Applicable Laws in order to complete the Project.

Project Development Approvals include, without limitation, all Development Approvals needed or desired by Developer to complete the Project, provided that those Development Approvals are consistent with Developer's Vested Right, this Agreement, and the City's General Plan and Zoning Code. The Entitlements (minus this Agreement), as examples of Project Development Approvals, have been or are anticipated to be approved prior to or in conjunction with the approval of this Agreement.

- **1.31** "**Property**" means the real property described and depicted in Exhibit "A" and Exhibit "B," respectively.
- **1.32** "Reservation of Authority" means the limitations, reservations, and exceptions to Developer's Vested Right set forth in Article 5 of this Agreement.
- **1.33** "Subsequent Land Use Regulations" means those Land Use Regulations which are both adopted and effective on or after the Approval Date and which are not included within the definition of Existing Land Use Regulations.
- **1.34** "Subsequent Development Approvals" means all Development Approvals issued subsequent to the Effective Date in connection with development of the Property, which shall include, without limitation, any changes to the Development Approvals.
- **1.35** "Surrounding APNs" means (1) the parcels between Main Street and Figueroa Street north of the Property all the way to Francisco Street, and (2) the parcels abutting the Property along the southerly property line; collectively, those parcels are identified as having Assessor's Parcel Numbers 7336-003027, 7336-003028, 7336-003029, 7336-003037, 7336-003038, 7336-003039, 7336-003040, 7336-003041, 7336-003042, 7336-004010, and 7336-004016.
- **1.36** "Surrounding Parcel" means each of the parcels from among the Surrounding APNs identified as the following: "Parcel 1," "Parcel 2," the four parcels identified as Parcel 3 collectively referred to as "Parcel 3," "Parcel 4," and the four parcels identified as Parcel 5 collectively referred to as "Parcel 5," as depicted in Exhibit "C," attached hereto and incorporated herein by this reference.
- **1.37** "**Term**" means the period of time from the Effective Date until expiration of the Initial Term or if applicable, expiration of the Extended Term, unless earlier terminated as provided in this Agreement.

#### 2. TERM & GENERAL COVENANTS.

**2.1 Term**. While this Agreement is effective as of the Effective Date, the term of this Agreement shall be seven (7) years commencing on the date of issuance of the Certificate of Occupancy or final permit for all improvements associated with the Project (the "**Initial Term**"), subject to any early termination provisions described in this Agreement.

2.2 Agreement Compliance Deposit. Prior to issuance of building permits, Developer shall deposit with the City \$100,000 ("Agreement Compliance Deposit") which may be deposited into a separate interest bearing account, to be used by the City to ensure compliance with the provisions of this Agreement (in connection with Developer's breach of this Agreement or otherwise); at no point shall the minimum balance of the Agreement Compliance Deposit fall below \$50,000. If for whatever reason it does fall below \$50,000, Developer shall replenish the deposit no later than seven (7) days of the date of the City's written request to do so. Specifically, whenever in Articles 2 and 4 of this Agreement it is stated that Developer will be fined \$500 per day as a penalty or fined \$1,000 per occurrence or incidence as a penalty, and whenever it is contextually appropriate, such penalty along with any reasonable attorneys' fees and other expenses and fees incurred by the City in connection with City's enforcement of the terms of this Agreement, will be drawn against the Agreement Compliance Deposit until full Developer compliance has been reached, with determination of compliance to be made by the City in the City's sole and absolute discretion. In each such instance, notwithstanding Section 7.2 of this Agreement, prior to the City exacting any penalty against Developer and withdrawing from the Agreement Compliance Deposit, City shall provide Developer with written notice of any such failure to perform and the City's intention to impose the penalty. In the event Developer should fail to cure its default within ten (10) business days of receiving notice ("Penalty Cure Period"), once Developer's deadline to file an appeal passes without a filed appeal, City may impose the fine or penalty. If Developer files a timely appeal then City may impose the fine or penalty after any hearing where there is an adverse ruling against Developer.

Developer may appeal any decision to impose a fine or penalty to the City Manager by filing a notice of appeal with the City Clerk by no later than five (5) business days following the Penalty Cure Period. The City Manager or his or her designee ("City Manager") shall fix a time and place for hearing such appeal and the City Clerk shall give written notice to Developer of the time and place of hearing by depositing it in a facility of the United States Post Office Department in Carson, California, postage prepaid, addressed to Developer, at the address shown in Section 13.2 of this Agreement. The City Manager shall have final authority to review all questions raised on such appeal and make all determinations based thereon.

No other action shall be required of City prior to imposing the penalty. Notwithstanding anything else to the contrary in this Agreement, City will use VSCs (as defined in Section 4.1(i) of this Agreement) as well as any other documentation or evidence, to make its determination of Developer's compliance. If there should remain any monies as part of the Agreement Compliance Deposit at the expiration of the Term, City shall release such remainder amount to Developer within thirty (30) days following such expiration. This Section 2.2 and the City's ability to impose any fine or penalty will survive expiration or sooner termination of this Agreement.

**2.3** Extension of Initial Term; Permanent Cessation of Cargo Container Parking Facility. If within the Initial Term there is no new development on any of the Surrounding Parcels or new development on only one of the Other Surrounding Parcels (whether Heavy Industrial or Non-Heavy Industrial), there will be an automatic three (3) year extension of the Initial Term. After expiration of the initial three (3) year extension, so long as less than two of the Surrounding Parcels is developed as something other than Heavy Industrial calculated cumulatively from the commencement of the Initial Term, then this Agreement shall be

automatically extended by another three (3) years. This process will continue until both of the Other Surrounding Parcels get developed as something other than Heavy Industrial (determined on a cumulative basis starting from commencement of the Initial Term) at which time Cargo Container Parking facility operations will cease permanently. In the event both of the Other Surrounding Parcels are developed where one is developed Heavy Industrial and the other developed as something other than Heavy Industrial (determined on a cumulative basis starting from commencement of the Initial Term), there will be an automatic three (3) year extension of the Term and thereafter, whether Developer shall be required to permanently cease or permitted to permanently operate the Cargo Container Parking facility shall be determined based on how the Adjacent Surrounding Parcels get developed, as detailed below. Notwithstanding anything else in this Article 2 and irrespective of how the Other Surrounding Parcels get developed, if at any time during any review period any of the Adjacent Surrounding Parcels gets developed as something other than Heavy Industrial, the Cargo Container Parking facility operations must cease permanently. By way of example only, if during the Initial Term, both of the Other Surrounding Parcels get developed as Heavy Industrial and one of the Adjacent Surrounding Parcels gets developed as residential or commercial use, then Developer must permanently cease all Cargo Container Parking facility operations.

Prior to thirty (30) but no more than sixty (60) calendar days from expiration of the Initial Term or Extended Term, as the case may be, City shall, on its own initiative, review the then current land uses of the Surrounding Parcels and determine whether the Initial Term or Extended Term should be automatically extended, or whether the Cargo Container Storage facility or warehouse may remain permanently or whether Developer will be required to permanently cease operations and use, and thereafter notify Developer in writing of City's determination.

- **2.4 Requirements After Permanent Cessation of Cargo Container Parking Facility.** Whenever Cargo Container Parking facility operations are required to cease permanently, Developer shall cease all Cargo Container Parking facility operations by no later than ten (10) business days after Developer receives written notice from City that all Cargo Container Parking facility operations must cease permanently; within sixty (60) calendar days thereafter, Developer shall modify the site, architectural features, setbacks, landscaped area, floor area ratio, uses and the like, so that such features can be made to be consistent with the requirements of the City's 2040 General Plan and any general plan adopted subsequent to it, the then current Zoning Code, and uses of the Surrounding Parcels.
- 2.5 Permanent Allowance of Cargo Container Parking Facility. If either (i) both of the Other Surrounding Parcels, or (ii) any of the Adjacent Surrounding Parcels, is developed as new Heavy Industrial calculated cumulatively from the commencement of the Initial Term, then Developer shall be granted permanent use of the Cargo Container Parking facility. Additionally, irrespective of how the Other Surrounding Parcels get developed, if at any time during any review period any of the Adjacent Surrounding Parcels gets developed as Heavy Industrial, Developer shall be granted permanent use of the Cargo Container Parking facility. By way of example only, if during the Initial Term, both of the Other Surrounding Parcels get developed as Non-Heavy Industrial and one of the Adjacent Surrounding Parcels gets developed as Heavy Industrial, then Developer will be permitted to permanently operate the Cargo Container Parking facility.

- **2.6** Developer may request the City to record a partial release of the provisions of this Agreement to evidence such authorization in a form approved by the City Attorney and subject to Developer's reimbursement of City's costs to process such release.
- 2.7 Cargo Container Parking. During any period where development of the Surrounding Parcels is to be reviewed, in the event more than one of the Adjacent Surrounding Parcels is developed during such period whereby at least one of the Adjacent Surrounding Parcels is developed as Heavy Industrial and at least one of the Adjacent Surrounding Parcels is developed as Non-Heavy Industrial, then for purposes of Sections 2.3 and 2.5, the first of the Adjacent Surrounding Parcels to be developed shall determine permanent cessation or allowance of permanent use; provided, however, that if the second of the Adjacent Surrounding Parcels to be developed is developed as residential, such development shall be deemed to have been developed first in time and Developer must permanently cease all Cargo Container Parking facility operations. By way of example only, if the first of the Adjacent Surrounding Parcels is developed as Heavy Industrial, then Cargo Container Parking facility operations shall be allowed permanently unless the Adjacent Surrounding Parcel developed second in time is developed as residential in which event Cargo Container Parking facility operations must cease permanently. Conversely, if the first of the Adjacent Surrounding Parcels is developed as Non-Heavy Industrial, the Cargo Container Parking facility operations shall cease and the provisions of Sections 2.3 and 2.4 shall apply.
- **2.8 Planning Commission Review.** Notwithstanding anything else in this Article 2, in the event at least 50% of the area of the Surrounding Parcels gets developed as Light Industrial, then any time at least sixty (60) calendar days prior to expiration of the Initial Term or any Extended Term, Developer may petition City to have the Planning Commission review the Project in the context of such development, and the Planning Commission will determine whether Developer will be granted permanent use of the Cargo Container Parking facility or will cease operations permanently.
- 2.9 Further Extension of Term; Permanent Cessation of Warehouse Use. The allowable continued use of the warehouse must be determined with the understanding that the warehouse may remain as is so long as Developer is allowed to use the Property as a Cargo Container Parking facility. If and when Developer is required to cease its Cargo Container Parking facility use in accordance with Section 2.3 hereof, if there has been new development on only one of the Other Surrounding Parcels (whether Light Industrial or Non-Light Industrial) calculated from the time the Initial Term commences, there will be an automatic three (3) year extension of the Term as it concerns the use of the warehouse, commencing as of the date of cessation of the Cargo Container Parking facility use. Thereafter, so long as less than two of the Surrounding Parcels is developed as something other than Light Industrial calculated cumulatively from the commencement of the Initial Term, then this Agreement shall be automatically extended by an additional three (3) years. This process will continue until both of the Other Surrounding Parcels get developed as something other than Light Industrial (determined on a cumulative basis starting from commencement of the Initial Term) at which time the warehouse use will cease permanently. In the event both of the Other Surrounding Parcels are developed where one is developed Light Industrial and the other developed as something other than Light Industrial (determined on a cumulative basis starting from commencement of the Initial Term), there will be an automatic three (3) year extension of the

Term and thereafter, whether Developer shall be required to permanently cease or permitted to permanently use the warehouse shall be determined based on how the Adjacent Surrounding Parcels get developed, as detailed below. Notwithstanding anything else in this Article 2 and irrespective of how the Other Surrounding Parcels get developed, if at any time during any review period any of the Adjacent Surrounding Parcels gets developed as something other than Light Industrial, the warehouse use must cease permanently. By way of example only, if during the Initial Term, both of the Other Surrounding Parcels get developed as Light Industrial and one of the Adjacent Surrounding Parcels gets developed as residential or commercial use, then Developer must permanently cease all warehouse use.

- **2.10** Requirements After Permanent Cessation of Warehouse Use. Whenever warehouse use is required to cease permanently, Developer shall cease all warehouse uses by no later than ten (10) business days after Developer receives written notice from City that all warehouse uses must cease permanently; within six (6) months thereafter, Developer shall retrofit and modify the building, architectural features, setbacks, landscaped area, floor area ratio, uses and the like, so that such features can be made to be consistent with the requirements of the City's 2040 General Plan and any general plan adopted subsequent to it, the then current Zoning Code, and uses of the Surrounding Parcels.
- 2.11 Permanent Allowance of Warehouse Use. If either (i) both of the Other Surrounding Parcels, or (ii) any of the Adjacent Surrounding Parcels, is developed as new Light Industrial calculated cumulatively from the commencement of the Initial Term, then Developer shall be granted permanent use of the warehouse. Developer may request the City to record a partial release of the provisions of this Agreement to evidence such authorization in a form approved by the City Attorney and subject to Developer's reimbursement of City's costs to process such release. Additionally, irrespective of how the Other Surrounding Parcels get developed, if at any time during any review period any of the Adjacent Surrounding Parcels gets developed as Light Industrial, Developer shall be granted permanent use of the warehouse. By way of example only, if during the Initial Term, both of the Other Surrounding Parcels get developed as Non-Light Industrial and one of the Adjacent Surrounding Parcels gets developed as Light Industrial, then Developer will be permitted to permanently use the warehouse.
- **2.12 Warehouse.** During any period where development of the Surrounding Parcels is to be reviewed, in the event more than one of the Adjacent Surrounding Parcels is developed during such period whereby at least one of the Adjacent Surrounding Parcels is developed as Light Industrial and at least one of the Adjacent Surrounding Parcels is developed as Non-Light Industrial, then for purposes of Sections 2.8 and 2.10, the first of the Adjacent Surrounding Parcels to be developed shall determine permanent cessation or allowance of permanent use. By way of example only, if the first of the Adjacent Surrounding Parcels is developed as Light Industrial, then the warehouse use shall be allowed permanently. Conversely, if the first of the Adjacent Surrounding Parcels is developed as Non-Light Industrial, the warehouse use shall cease and the provisions of Sections 2.8 and 2.9 shall apply.
- **2.13 Meaning of Developed.** For purposes of Sections 2.3, 2.5, 2.6, 2.7, 2.8, 2.10 and 2.11 only of this Agreement, Surrounding Parcels are developed when the first building permit has been issued thereon.

- 2.14 Penalties Associated with Failure to Cease Use, Remove or Retrofit. Failure to cease operations as required in this Article 2, modify the site, architectural features, setbacks, landscaped area, floor area ratio, uses and the like, so that such features can be made to be consistent with the requirements of the City's 2040 General Plan, Zoning Code, and uses of the Surrounding Parcels, within sixty (60) days, or failure to retrofit the warehouse within six (6) months as required in Section 2.8, shall result in a fine of \$500 per day as a penalty until compliance has been reached.
- **2.15 Binding Effect of Agreement; Termination of Prior Entitlements**. From and following the Effective Date, actions by the City and Developer with respect to the Development of the Property, including actions by the City on applications for Subsequent Development Approvals affecting the Property shall be subject to the terms and provisions of this Agreement.
- **2.16 Agreement Runs with the Land.** This Agreement shall be recorded and shall run with the land. Pursuant to Government Code Section 65868.5, the burdens of this Agreement and each of its provisions shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties, including, but not limited to, all parties that enter into lease agreements with Developer for possession of any part of the Property.
- **2.17 Covenant Against Discrimination.** The Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of this Agreement. The Developer shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry.
- **2.18 Violation of Conditions.** Any violation of the conditions or requirements set forth in this Article 2, including but not limited to failure to replenish the Agreement Compliance Deposit in accordance with Section 2.2, shall result in fines of \$500 per occurrence per day as a penalty until compliance has been reached, with determination of Developer's violation to be made by City upon City's review of VSCs (as defined in Section 4.1(i)) as well as any other documentation or evidence reasonably available to the City. Developer hereby acknowledges and agrees that such fine represents reasonable compensation to the City for, and is not disproportionate to, the actual or anticipated damage to the City resulting from such compliance failure.

#### 3. DEVELOPER'S OBLIGATIONS.

As consideration for the granting of Developer's Vested Right in accordance with Article 4 below and subject to the City's Reservation of Authority set forth in Article 5 below, Developer shall do the following:

3.1 Development Impact Fees. Consistent with the purposes set out in the Exception, Developer shall pay to City the City-wide DIF adopted and in effect at the time of issuance of the building permits applicable to Cargo Container Parking facilities and approved for the Project by the City (as of the Effective Date, such DIF Amount is Seven Hundred Twenty

Nine Dollars and Fifty Two Cents (\$729.52) per truck and container space). The total DIF Amount attributable to the Cargo Container Parking Facility as of the Effective Date, based on the number of truck and container spaces to be developed for the Project for which Developer will be required to pay City, is Two Hundred Seventeen Thousand Three Hundred Ninety-Six Dollars and Ninety-Six Cents (\$217,396.96). Additionally, at the time of application for a business license, if there are two different businesses proposed to be operated between the Cargo Container Parking Facility and warehouse, then an additional DIF payment will be made for the warehouse in the amount of One Hundred Thirty Seven Thousand Eighty-Eight Dollars (\$137,088), calculated at \$2.56 per square foot of building area (calculated at \$2.56 x 53,550 = \$137,088). Such DIF payment will be made at the time applications for the business licenses are submitted to City and the actual payment amounts shall be adjusted as described in Section 3.1(b) below.

The parties agree that each DIF Amount is (i) directly related to the impacts of the Project, and (ii) roughly proportional to the specific impacts upon public facilities and infrastructure attributable to the Project. The parties also agree that Developer's payment of the DIF Amount will satisfy Developer's obligation to enter into the IDIF Agreement required by the City through adoption of Resolution 18-113, and shall be in lieu of such agreement. Developer agrees to release, defend and hold the City harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, which may arise, directly or indirectly, from the City's determination, calculation or imposition of, or Developer's agreement to pay, the DIF Amount.

- a. **Timing of Payment of DIF Amount.** The DIF Amount attributable to the Cargo Container Parking Facility must be paid at the time of issuance of building permits for the Project. The DIF Amount attributable to the warehouse shall be paid, if at all, at the time applications for business licenses are submitted to City in the amount in effect at the time of issuance of the business licenses.
- b. **DIF Amount Adjustments.** All DIF Amounts shall be adjusted annually in accordance with the State of California Construction Cost Index (prior March to current March adjustment) on July 1<sup>st</sup> of each year
- 3.2 CFD Annexation. Consistent with the purposes set out in the Exception, Developer shall annex the Property into the Master CFD. Based on an analysis of the Services needed for the Project, Developer agrees the Property will be taxed at the rate in effect at the time of issuance of Project building permits for Industrial All Other, which, as of the Effective Date, is Four Hundred Eighty Dollars and Seventy-Five Cents (\$480.75) per acre on an annual basis, which means the Property's Special Taxes would be Six Thousand Eight Hundred Eighty-Nine Dollars and Fifteen Cents (\$6,889.15) annually, which amounts shall be adjusted as described in Section 3.2(b) below. Developer understands that there is an impact on the Services provided by the City in connection with its Project, as is evident by the MND and other Project Development Approvals. Developer agrees to become subject to the Property's Special Taxes, which will help finance on-going Services associated with the Project.
  - a. **Timing of Payment of Property's Special Taxes.** Developer shall annex the Property into the Master CFD prior to issuance of any building permits for the Project.

b. **Tax Rate Adjustments.** On each July 1, commencing on July 1, 2020 through and including July 1, 2024, the Maximum Special Tax Rate for Tax Zone No. 4 (which applies to the Property) shall be increased by 7%. On each July 1, commencing on July 1, 2025 and thereafter, the Maximum Special Tax Rate for Tax Zone No. 4 shall be increased by the percentage change in the November annualized Consumer Price Index for Los Angeles-Long Beach-Anaheim for all Urban Consumers.

#### 4. DEVELOPMENT OF THE PROPERTY AND PROJECT.

**4.1 The Project.** The Project means the Development of the Property consistent with and to the full extent of the Project Development Approvals, inclusive of the Site Plan, attached hereto and incorporated herein by this reference as Exhibit "D," and any and all requirements including landscaping for the Project, set out therein.

The Project includes, without limitation, the following:

- a. **Building.** The warehouse floor area shall be a maximum of 39,500 square feet, and the 2-story office floor area shall be a maximum of 14,050 square feet for a maximum total building floor area of 53,550 square feet.
- b. **Loading Areas.** A maximum of 6 truck loading doors for the building shall be allowed.
- c. **Parking Spaces.** Only 223 spaces for cargo container parking and 75 spaces for truck parking (for a total of 298 spaces) shall be allowed on the site. The remainder of the site shall not be striped and shall not be used in any shape or form. Notwithstanding the 298 parking space restriction, in the event Developer is granted permanent use of the Cargo Container Parking facility in accordance with Section 2.5, at that time Developer will be permitted to have up to 475 spaces, 400 spaces for cargo containers and 75 spaces for truck parking.
- d. **Fencing.** Fencing shall be installed on the Property in an east-west direction to create a buffer area ("**Buffer Area**") of at least 150 feet wide between the fence and the southern boundary of the Property bordered on the west by the west Property boundary and on the east by a border near where the warehouse will be constructed with the precise location of the eastern boundary to be approved by the City prior to issuance of any permits. The Buffer Area shall be secured on all sides and the fence shall separate the areas authorized for parking of trucks and cargo containers and the areas not authorized for such parking and shall be installed prior to issuance of any Certificate of Occupancy.

# e. Bifurcation of Project and Restricted Usage.

The Project shall be bifurcated into two general categories ("**Permissible Usage**"), as follows:

- (i) <u>Warehouse Operations</u>: Approximately 53,550 square feet of industrial warehouse building to use as a logistics facility and warehouse related to truck/trailer parking.
- (ii) <u>Cargo Container Parking Facility Operations</u>: For use associated with Cargo Container Parking facility operations as defined in Section 9191.067 of the City's Municipal Code.
- f. Access. The Project shall comply with the following access requirements:
  - (i) All truck ingress and egress to and from the Property shall be via Figueroa Street; and
  - (ii) No trucks shall be permitted to traverse on Torrance Boulevard or Main Street, as those rights of way shall be used for passenger vehicle access only.
- g. **Public Art.** Developer shall install one artistic piece of public art along Main Street prior to issuance of occupancy permits and shall provide details for the same to Planning Division for review and approval prior to issuance of any permits. In case of disagreement on this matter, an in-lieu fee to cover the cost of the artistic piece shall be paid by Developer before the issuance of any permits. The fee shall be determined by the Community Development Director and based on a review of similar artistic pieces installed in and around the City.
- h. **Logos on Trucks.** All trucks entering and exiting the Property shall be marked clearly with large KL Fenix logos (or another appropriate logo in the event Developer should sell or lease the Property and there is a replacement operator) in several locations on the truck including left, right and top to allow identification of the trucks from a distance, as determined by the City. Trucks without the KL Fenix logos (or another appropriate logo if different operator) shall not be authorized to use the site. Notwithstanding the foregoing, logos shall not be required to be placed on any third-party delivery or service vehicles, including any third-party operated trucks that need to access the warehouse for pick-ups or deliveries of such items as letters and small parcels. A Certificate of Occupancy shall not be released until all trucks using the facility have the required logos installed. All trucks must also be in compliance with all applicable port standards during the Term. Proof of certification and compliance shall be available at all times for all trucks and shall be furnished to the City upon request within ten (10) business days.
- i. **Video Surveillance Cameras.** Developer shall retain and pay for a professional commercial security systems company licensed by the Bureau of Security & Investigative Services and carrying all legally required insurance coverages, if any ("VSC Professional"), to install Video Surveillance Cameras ("VSCs") that record 24-7 and save all footage for a

period of 180 days or as approved by the City in writing, at the locations generally set forth in Subsections (i) through (ii) hereinbelow, for the purpose of allowing City to monitor Developer's compliance with Articles 2 and 4 of this Agreement. The locations and number of VSCs shown on the Site Plan, if any, are preliminary and subject to change as determined by City, as provided below. Developer shall provide or cause the VSC Professional to provide, footage from the VSCs within fifteen (15) days of City's written request, it being understood that City may request such footage any time but not more often than once per month unless City has reason to believe in its unfettered discretion that Developer is in violation of any provision of Article 2 and/or 4. If City believes Developer is in violation, City may request footage going back 180 days from the date of City's request. All VSCs shall be high resolution and be installed so they are not blocked by moving or stationary vehicles or any other equipment or objects, and shall be and remain operational at all times. Prior to and as a condition of issuance of any building permit, the VSC Professional will be required to coordinate with City to determine the precise locations and number of all operational VSCs to be installed, and the City shall have final authority to approve such locations, quantities, and the design of the VSC system. When designing the system, the VSC Professional shall take into account all potential objects that may block or impede the proper operation of the VSCs or present obstructions to a clear view. Examples of such objects or obstructions include, but are not limited to, landscaping (taking into account the growth of the landscaping), buildings, signs, fencing, gates, and vehicles in parking stalls. Prior to issuance of occupancy permits, the VSCs will be tested by City Planning staff to ensure that full coverage, as intended under this Section 4.1(i), is provided by the VSCs. If City Planning staff determines adjustments need to be made to provide full coverage, VSC Professional shall make adjustments necessary. Developer expressly acknowledges that determinations made with respect to VSCs will be final unless City deems it necessary to modify the number or locations of the VSCs at any time.

- (i) At Perimeter Locations. Various locations, both within the Property and within public rights of way at the intersections of (a) Torrance Boulevard and Main Street and (b) Torrance Boulevard and Figueroa Street, (both, "ROW Intersections"), to provide clear views of Main Street, Torrance Boulevard, and Figueroa Street travel lanes. The footage from these VSCs will be used to ensure Developer's trucks use only Figueroa Street to enter and exit the Property, do not travel on Torrance Boulevard or Main Street, and to generally monitor and ensure compliance with each and every section of Articles 2 and 4.
- (ii) At Interior Locations. Several locations within the Property showing the interior of the site. The footage from the VSCs shall be used by the City to determine whether trucks or cargo

containers on trailers are parked outside the authorized areas within the Property, whether Developer's use of the Property is deviating from the Permissible Usage, whether Developer is in violation of the permitted hours of operation set forth in Section 4.1(j), and to generally monitor and ensure compliance with each and every section of Articles 2 and 4.

- (iii) Review of Video Footage and Payment. City staff or an outside third party vendor retained by City ("Third Party Video Review Vendor"), will review video footage provided from the VSCs, and if warranted after review of the footage as determined by City in its unfettered discretion, City staff may visit the Property to conduct site inspections to assess whether Developer may be violating the terms of this Agreement beyond what the video footage is able to capture. Developer will pay for all City staff time at whatever hourly rate is accrued by such staff member, or for time spent by Third Party Video Review Vendor, for review of video footage, any resultant site inspections, and any action to enforce the terms of this Agreement; City shall be permitted to pay for all such fees/costs out of the Agreement Compliance Deposit.
- (iv) Automatic License Plate Readers. If City so elects, in lieu of installing VSCs at the ROW Intersections, Developer shall install automatic license plate readers ("ALPRs") which Developer acknowledges are less expensive than VSCs to procure and install. All data gathered from the ALPRs shall be owned by City, and City will be permitted to utilize all such data generally to monitor and ensure compliance with Section 4.1(f) in the same manner and to the same extent City is permitted to monitor compliance where VSCs are installed within the ROW Intersections.
- j. **Hours of Operation.** Hours of operation shall be limited to:
  - (i) Office uses have no limitation on hours.
  - (ii) Cargo Container Parking facility Operations:

Mondays-Fridays 6:00 AM to 2:00 AM;

Saturdays 6:00 AM to 6:00 PM;

Sundays Closed.

k. **Air Quality Standards.** At any given time during operation of the Cargo Container Parking facility operations, all of Developer's trucks shall be in compliance with the Port of Los Angeles and Port of Long Beach air quality standards.

- **4.2 Pavement.** Prior to issuance of occupancy permits, Developer shall complete road improvements to Main Street and Figueroa Street, as follows:
  - a. **Main Street (southbound).** Developer shall construct half street improvements along the eastern property line by removing the existing asphalt section of the road and constructing a new asphalt pavement section per City standards.
  - b. **Figueroa Street** (**northbound**). Developer shall construct half street improvements along the westerly property line by removing the existing asphalt section of the road and constructing a new 8" concrete pavement section per City standards.
  - c. **Figueroa Street** (**southbound**). Developer shall construct half street improvements corresponding to the northerly and southerly boundaries of the site by removing the existing asphalt section of the road and constructing a new 8" concrete pavement per City standards.
  - d. **Main Street Median.** Developer shall install medians on Main Street as required by the Engineering Division.

Prior to issuance of any building permit, improvement plans and bonds acceptable to the City for all improvements included in this section shall be submitted to the Engineering Division and approved.

- **4.3 Scope of Developer's Vested Right.** Subject to the Reservation of Authority set forth in Article 5, Developer shall have the vested right to complete the Project to the full extent permitted under the Project Development Approvals, and to the full extent of Developer's Vested Right.
- 4.4 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to the Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.
- **4.5 Rights under State and Federal Law.** Developer shall retain all rights it has under state and federal law, including, but not limited to, Developer's rights under Government Code Section 65865.2, which provides that subsequent discretionary actions shall not prevent development of the Property for the uses and to the density or intensity of development set forth in the Project Development Approvals.
- **4.6 Apportionment.** Developer shall have the right to apportion the uses, intensities, and densities of the Project between itself and any subsequent owners, upon the sale, transfer, or assignment of all or any portion of the Property, so long as such apportionment is consistent with the Applicable Laws and this Agreement.

- **4.7 Lesser Development.** Without amending this Agreement, Developer shall have the right to elect to develop and construct upon all or any portion of the Property a Project of lesser height or building size than that permitted by the Project Development Approvals provided that the Project otherwise complies with the Project Development Approvals and this Agreement.
- 4.8 Project Development Approvals; Subsequent Development Approvals. The Project Development Approvals for the Project will require the processing of Subsequent Development Approvals. The City shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition. However, unless otherwise requested by Developer, City shall not, without good cause, amend or rescind any Subsequent Development Approvals respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in the Project Development Approvals made pursuant to Developer's application shall not require an amendment to this Agreement. This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.
- **4.9 Role of Project Development Approvals**. Except as provided within this Agreement, the Project Development Approvals shall exclusively control the uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement, and construction standards and specifications applicable to the Project. Pursuant to Government Code Section 66452.6, the term of any tentative map for the Property or any portion thereof, if any, filed within the term of this Agreement shall automatically be extended for the term of this Agreement, as amended by the Project Development Approvals.
- **4.10 Maintaining Property**. The Property, including the Buffer Area, must at all times be maintained and generally kept in a clean condition, in accordance with the City's Code Enforcement regulations.
- **4.11 Violation of Conditions.** Any violation of the conditions, requirements or permitted uses set forth in this Article 4 shall result in fines of \$1,000 per occurrence as a penalty, with determination of Developer's violation to be made by City upon City's review of VSCs as well as any other documentation or evidence reasonably available to the City. Developer hereby acknowledges and agrees that such fine represents reasonable compensation to the City for, and is not disproportionate to, the actual or anticipated damage to the City resulting from such compliance failure.

#### 5. CITY'S RESERVATION OF AUTHORITY.

Notwithstanding Developer's Vested Right, the Project is subject to the following Subsequent Land Use Regulations:

- **5.1** City's Discretion Under Applicable Laws. In considering future applications, if any, for a Subsequent Development Approval, the City may exercise its regulatory discretion to the extent permitted by the Applicable Laws.
- **5.2 Uniform Codes.** Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, or other such Uniform Codes, and also adopted by City as Subsequent Land Use Regulations, but only if applicable City-wide.
- **5.3** Emergencies. Emergency rules, regulations, laws, and ordinances within the City's police power that would limit the exercise of Developer's Vested Right ("Conflicting Emergency Regulations"), provided that the Conflicting Emergency Regulations:
  - a. Result from a sudden, unexpected emergency declared by the President of the United States, Governor of California, County Board of Supervisors and applicable to incorporated areas, including the City, or the City Council;
  - b. Address a clear and imminent danger, with no effective reasonable alternative available that would have a lesser adverse effect on Developer's Vested Right;
  - c. Do not primarily or disproportionately impact development of the Project; and
  - d. Are based upon findings of necessity established by a preponderance of the evidence at a public hearing.
- **5.4** Laws of Other Jurisdictions. Other public agencies not subject to control by City may possess authority to regulate aspects of the Project. This Agreement does not limit the authority of such other public agencies. Therefore:
  - a. Federal, state, county, and multi-jurisdictional laws and regulations (the "Additional Regulations"), including regional impact fees, which City is required to enforce or collect against the Property or the Project, except if the Additional Regulations are for the purpose of mitigating a significant or potentially significant impact that has already expressly and unequivocally been mitigated pursuant to the Project's Mitigated Negative Declaration.
  - b. If an Additional Regulation is enacted after the Effective Date and prevents or precludes compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may be necessary to comply with the Additional Regulation. In that event, this Agreement shall remain in full force and effect to the extent it is not inconsistent with the Additional Regulation and to the extent that the

- suspension or modification necessitated by the Additional Regulation does not deny one of the Parties its primary benefits under this Agreement.
- c. Developer shall apply in a timely manner for such other permits and approvals that are lawfully required by other governmental or quasi-governmental agencies in order to allow the Project to be constructed. City shall provide Developer reasonable cooperation in Developer's efforts to obtain such permits and approvals. The Parties shall cooperate and use reasonable efforts in coordinating the implementation of the Project Development Approvals with other public agencies, if any, having jurisdiction over the Property or the Project.
- 5.5 Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law. In the event that Federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.
- **5.6** Energy Efficient and Sustainable Building Design. All Project buildings shall promote sustainable and energy efficient practices through compliance with California Code of Regulations, Title 24.
- this Project and other major projects within the City is to foster employment opportunities for City residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, the Developer shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction, operation and maintenance of the Project to be advertised in such a manner as to target local City residents and shall make other reasonable efforts at local employment outreach as the City shall approve. Developer shall also notify the City of jobs available at the Project such that the City may inform City residents of job availability at the Project. Nothing in this paragraph shall require Developer to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 5.7 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.
- 5.8 Prevailing Wages. Developer's cost of developing the Project and constructing all of the on-site and off-site improvements, if any, at or about the Property required to be constructed for the Project shall be borne by Developer. Developer is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will defend, hold harmless, and indemnify City in the event Developer fails to do so. As the City is not providing any direct or indirect financial assistance to Developer, the Project should not be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720. Accordingly, it is believed by the parties that Developer is not required to pay prevailing wages in connection with any aspect of the

Development or the construction of the Project. However, to the extent that (contrary to the parties' intent) it is determined that Developer was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, Developer shall defend, indemnify, and hold the City (which, for purposes of this section, shall include its related agencies, officers, employees, agents and assigns) harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

# 5.9 Fees, Taxes, and Assessments.

**Processing Fees**. Developer shall be responsible for, and shall reimburse City for, all direct and indirect costs, fees and expenses of City related to review and processing applications for the Project Development Approvals and for monitoring compliance with any Project Development Approvals granted or issued (the "City Costs"). 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 drafting and reviewing this Agreement; (ii) attorneys' fees, at a rate not to exceed \$350 per hour, and staff time, and all costs related to the review, drafting, and processing of the Project Development Approvals, the Exception application and all related entitlements and agreements, including but not limited to consultant costs which includes, without limitation, consultant fees, costs, and expenses associated with processing Developer's Community Facilities District assessment, noticing and holding public hearings and considering public comments; (iii) all fees, costs and expenses incurred in connection with CEQA review or compliance and the MND, including but not limited to City staff time, attorneys' fees at the rate set forth above, the 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; (iv) all costs related to studies, reports and design services for the development of any Project-related infrastructure; (v) all costs related to investigations of the Property or the Project; and (vi) any other fees and costs deemed necessary by the City in order to process, review, or act upon the Project Development Approvals, the Project, and all related entitlements. Developer's obligation to be responsible for and reimburse City Costs are in addition to Developer's duty to indemnify, defend, and hold harmless City, as set forth in Section 8.1, below.

- b. **Permit Fees**. Except as expressly provided in this Agreement, Developer shall pay all standard permit fees and other fees and charges which are standard and uniformly-applied to similar projects in the City.
- c. **General Charges**. Nothing herein shall prohibit the application of the following:
  - (i) Additional Taxes, Fees, and Charges. Developer, or Developer's Project occupants, shall pay all normal and customary taxes, fees, and charges applicable to all permits necessary for the Project, and any taxes, fees, and charges hereafter imposed by City, which are standard and uniformly-applied to similar properties in the City.
  - (ii) Developer, or Developer's Project occupants, shall be obligated to pay any fees or taxes, and increases thereof, imposed on a Citywide basis such as business license fees or taxes, sales or use taxes, transient occupancy taxes, utility taxes, and public safety taxes.
  - (iii) Developer, or Developer's Project occupants, shall be obligated to pay any future fees or assessments imposed on an area-wide basis (such as landscape and lighting assessments and community services assessments).
  - (iv) Developer, or Developer's Project occupants, shall be obligated to pay any fees imposed pursuant to any assessment district (e.g., a CFD) established within the Project otherwise proposed or consented to by Developer or the owner(s) of the Property.
  - (v) Developer, or Developer's Project occupants, shall be obligated to pay any fees imposed pursuant to any Uniform Code.
  - (vi) Developer, or Developer's Project occupants, shall be obligated to pay any utility fees and charges, including amended rates thereof, for City services such as electrical utility charges, water rates, and sewer rates.
- **5.10** Inconsistencies. It is expressly agreed that in the event of any inconsistency between the provisions or conditions of the Existing Land Use Regulations or Conditions of Approval and the provisions of this Agreement, the provisions of this Agreement shall govern. The conditions of such Existing Land Use Regulations and Conditions of Approval shall be interpreted insofar as possible to prevent such inconsistency, and in the event this Agreement is silent concerning an issue, the conditions of the Existing Land Use Regulations and Conditions of Approval shall govern. As between several instruments and regulations governing the Project, in the event of a clear and explicit conflict which cannot be resolved through interpretation, the following interpretive priorities shall apply: (i) the terms of this Agreement shall prevail over the provisions of the Existing Land Use Regulations and Conditions of Approval; (ii) the terms of the Project Development Approvals shall prevail over the terms of the Existing Land Use Regulations, except where such Existing Land Use Regulations are legally preemptive; and (iii)

the terms of the Project Development Approvals shall take priority over the provisions of the CEQA instruments and MND approved in conjunction with the Project, except where the MND is legally preemptive.

#### 6. ANNUAL REVIEW.

- **6.1 Timing of Annual Review.** Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Developer with the terms of this Agreement ("**Annual Review**"). No failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement, nor shall it be deemed a breach on the part of Developer. The cost of the Annual Review shall be borne by Developer and Developer shall pay the actual and reasonable costs incurred by the City for such review.
- **6.2 Special Review.** The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such Special Reviews.
- **6.3 Standards for Annual Review.** During the Annual Review, Developer shall demonstrate good faith compliance with the terms of this Agreement. Good faith compliance shall be established if Developer is in substantial compliance with the material terms and conditions of this Agreement.
- **6.4 Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. The procedure for an Annual Review or Special Review shall be as follows:
  - a. As part of either an Annual Review or Special Review, within ten (10) days of a request for information by the City, the Developer shall deliver to the City all information and supporting documents reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement, and (ii) as required by the Existing Land Use Regulations.
  - b. The City Manager, or his/her designee, shall prepare and submit to Developer a written report on the performance of this Agreement and identify any perceived deficiencies in Developer's performance. The Developer may submit written responses to the report and Developer's written response shall be included in the City Manager's report. If the City Manager determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual Review or Special Review shall be concluded.
  - c. If any deficiencies are noted, or if requested by a Councilmember, a public hearing shall be held before the City Council at which the Council will review the City Manager's report. The report to Council shall be made at

- a regularly-scheduled City Council meeting occurring as soon as possible, subject to the requirements of the Brown Act, after the commencement of the Annual Review or Special Review process outlined in this Section 6.4. If the City Council finds and determines, based on substantial evidence, that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Article 7.
- d. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "force majeure" as defined in, and subject to the provisions of, Section 13.10.
- Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon written request by Developer, issue a Certificate of Agreement Compliance ("Certificate") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager, Planning Commission, and City Council that (i) this Agreement remains in effect and (ii) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, and shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer shall at its cost record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.
- **6.6** Review Process Not a Prerequisite to Declaring a Default. Neither the Annual Review nor Special Review procedure is a prerequisite to either party declaring a default and initiating the default and cure procedure in Article 7. In other words, either party may declare a default at any time without first undertaking the Annual Review or Special Review process.
- **6.7 Public Hearings.** The public hearing prescribed by Section 6.4 is independent of, and in addition to, any further hearing procedures relating to defaults and remedies prescribed in Article 7 below. Thus, if the City Council finds that the Developer has not substantially complied with the terms and conditions of this Agreement as part of a review process pursuant to Section 6.4 and determines to declare a default, the City Council is still required to follow the notice/cure process (Section 7.2) and the termination hearing process (Section 7.4) before terminating this Agreement.

# 7. DEFAULTS AND REMEDIES.

7.1 Specific Performance Available. The parties acknowledge and agree that other than the termination of this Agreement pursuant to Article 7, specific performance is the only remedy available for the enforcement of this Agreement and knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, Developer shall not be entitled to any money damages from City by reason of any default under this Agreement. Further, Developer shall not bring an action against City nor obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in

value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which the Developer knew of or should have known of prior to the time of entering into this Agreement, Developer's sole remedies being as specifically provided above. Developer acknowledges that such remedies are adequate to protect Developer's interest hereunder and the waiver made herein is made in consideration of the obligations assumed by the City hereunder.

# 7.2 Declaration of Default & Opportunity to Cure.

- a. Rights of Non-Defaulting Party after Default. The parties acknowledge that both parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein except as provided in Section 7.1. Before this Agreement may be terminated or action may be taken to obtain judicial relief the party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of this Section 7.2.
- b. Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("Defaulting Party") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure (the "Default Notice"). The Defaulting Party shall be deemed in default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary default cannot be cured within such thirty (30) day period, the Defaulting Party shall not be in default as long as it does each of the following:
  - (i) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
  - (ii) Notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the default;
  - (iii) Promptly commences to cure the default within the thirty (30) day period;
  - (iv) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
  - (v) Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

- Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may seek termination of this Agreement, in which case the Nondefaulting Party shall provide the Defaulting Party with a written notice of intent to terminate this Agreement ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default or a copy of the Default Notice) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, if Developer is the Defaulting Party, the Nondefaulting Party's election to terminate this Agreement will only be rescinded if so determined by the City Council pursuant to Section 7.4.
- Party pursuant to Section 7.3, then the City's Termination Notice to Developer shall additionally specify that Developer has the right to a hearing prior to the City's termination of this Agreement ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, Developer shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:
  - a. Decide to terminate this Agreement; or
  - b. Determine that Developer is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
  - c. Impose conditions on a finding of default and a time for cure, such that Developer's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has caused or will cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, or such other interests that the City and public may have in the Project.

**7.5 Rights and Duties Following Termination.** Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (iii) the indemnification provisions of Article 8. Termination of this Agreement shall not affect either party's rights or obligations with respect to any Development Approval granted prior to such termination.

- **7.6 Waiver of Breach**. By not challenging any Development Approval within ninety (90) days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any Condition of Approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.
- 7.7 Interest on Monetary Default. In the event Developer fails to perform any monetary obligation under this Agreement, Developer shall pay interest thereon at the rate of six and one-half percent (6.5%) per annum from and after the due date of said monetary obligation until payment is actually received by City.
- **7.8 Penalties.** The provisions of this Article 7 shall be separate from and not affect the City's rights to impose penalties upon Developer for violation of requirements of this Agreement, including but not limited to those set forth in Articles 2 and 4 above.

#### 8. THIRD PARTY LITIGATION.

# 8.1 Indemnification; Hold Harmless.

- a. Developer hereby agrees to indemnify, defend, and hold City, its officers, agents, employees, members of its City Council and any commission, partners and representatives ("City Indemnitees") harmless from any and all claims, actions, suits, damages, liabilities, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature) (collectively, "Claims"), asserted against City or City Indemnitees arising out of or in connection with this Agreement, including, without limitation, (i) City's approval of this Agreement and all documents related to any of the Project Development Approvals, Entitlements, Conditions of Approval, permits, or other entitlements for the Project and issues related thereto (including, City's determinations regarding CEQA compliance and/or any other development incentives granted to the Project), (ii) the development of the Project, and (iii) liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from, or are attributable to, Developer's (or Developer's contractors, subcontractors, agents, employees or other persons acting on Developer's behalf ("Developer's Representatives")) performance of its obligations under this Agreement and/or the negligence or misconduct of Developer or of Developer's Representatives which relate to the Project or the Property.
- b. The City shall provide the Developer with notice of the pendency of such Claims within ten (10) days of being served or otherwise notified of such Claims and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. In all cases, City shall have the right to utilize the City Attorney's office in any legal action. The Developer 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. If the Developer fails to provide the deposit, and after compliance with the provisions of this Section 8.1, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. City agrees that it shall fully cooperate with the Developer in the defense of any matter in which the Developer is defending and/or holding the City harmless.

- 8.2 Loss and Damage. City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature. Nothing herein shall be construed to mean that the Developer shall bear liability for the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.
- **8.3** Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or for breach of any obligation of the terms of this Agreement.
- **8.4 Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.
- **8.5 Survival of Indemnity Obligations.** All indemnity provisions set forth in this Agreement shall survive expiration or sooner termination of this Agreement for any reason other than a default by City.

#### 9. INSURANCE.

# 9.1 Types of Insurance.

a. Public Liability Insurance. Prior to commencement and until completion of construction of improvements by Developer on the Property, Developer shall, at its sole cost and expense, keep or cause to be kept in force, for the mutual benefit of City and Developer, comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the

Property or for property damage. Such policy shall provide protection of a least \$5,000,000 for bodily injury or death to any one person, at least \$5,000,000 for any one accident or occurrence, and at least \$25,000,000 for property damage, which limits shall be subject to such increases in amount as City may reasonably require from time to time.

- b. **Builder's Risk Insurance**. Prior to commencement and until completion of construction of improvements by Developer on the Property, Developer shall procure and shall maintain in force, or cause to be maintained in force, "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with Section 9.1(a). City shall be designated as a Loss Payee.
- c. **Worker's Compensation**. Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.
- d. **Automobile Liability Insurance**. Developer shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Developer arising out of or in connection with work performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.
- e. **Pollution Liability Insurance**. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and \$2,000,000 in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
- f. **Products/Completed Operations**. Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. The policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for

- claims or suits expressly excluded from coverage. The policy shall specifically provide for a duty to defend on the part of the insurer. The City, its officials, officers, agents, and employees, shall be included as additional insureds under the policy.
- g. **Other Insurance**. Developer may procure and maintain any insurance not required by this Agreement, but all such insurance shall be subject to all of the provisions hereof pertaining to insurance and shall be for the benefit of City and Developer.
- 9.2 Insurance Policy Form, Sufficiency, Content, and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates together with endorsements evidencing the insurance. In the event the City's Risk Manager determines that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates an increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the insurance policies required by Section 9.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that Developer shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.
- 9.3 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies together with endorsements required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:
  - a. For insurance required above, within thirty (30 days) after the Effective Date.
  - b. For any renewal or replacement of a policy already in existence, at least ten (10) days before the expiration or termination of the existing policy.
  - c. If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that

insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

- **9.4 Waiver of Subrogation.** Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any loss or damage to Developer or to any person or property, except as specifically provided hereunder and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.
- **9.5 Broader Coverages and Higher Limits.** Notwithstanding anything else herein to the contrary, if Developer maintains broader coverages and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverages and/or higher limits maintained by Developer.

#### 10. MORTGAGEE PROTECTION.

- 10.1 The parties agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the rights and privileges set forth in this Article 10.
- 10.2 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, unless otherwise required by law.
- 10.3 The Mortgagee of any Mortgage, where Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.
- 10.4 If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.
- 10.5 Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the Mortgage or deed in lieu of foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement.

#### 11. ASSIGNMENTS.

- The experience, knowledge, capability and reputation of Developer, its principals, employees and affiliates were a substantial inducement for the City to enter into this Agreement. Except as otherwise provided herein, Developer shall not sell, transfer, lease or assign this Agreement, the Property, or any part thereof without the prior written consent of the City Council, and then only upon presentation of reasonably satisfactory evidence demonstrating the following criteria: that the person or entity to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated (1) has the financial strength and capability to perform its obligations under the Agreement, as evidenced by, among other things, transferee's audited financials for at least the immediately preceding three (3) operating years; (2) has the experience and expertise to develop the Project, as evidenced by, among other things, documentation that the transferee has experience with operations and projects with a similar scale of the Project; and (3) has key principals with no felony convictions. The proposed transferee shall execute and deliver to the City an assumption agreement assuming Developer's Project obligations, which assumption agreement shall be in a form approved by the City Manager and City Attorney. No approved transfer shall release the Developer or any surety of Developer of any liability hereunder without the express consent of City.
- 11.2 City Consideration of Requested Assignment. The City agrees that it will not unreasonably withhold, condition, or delay approval of a request for approval of an Assignment required pursuant to this Article 11, provided that:
  - a. Developer delivers written notice to the City requesting that approval prior to the completion of the Assignment (the "Consent Request"); and
  - b. The Assignment is not completed until either (i) City has provided its written consent or (ii) sixty (60) days have passed after delivery by Developer to City of the Consent Request without the City having rejected the Consent Request in writing.
  - c. The Consent Request shall be accompanied by (i) a proposed draft of the Assignment and Assumption Agreement in a form acceptable to the City Attorney and City Manager, and (ii) evidence regarding the proposed assignee's development qualifications and experience and its financial commitments and resources in sufficient detail to enable the City to evaluate the proposed assignee's ability to complete the Project.
- 11.3 Assignments Permitted Without City's Consent. Notwithstanding any other provision of this Agreement, Assignments related to the following property conveyances and other transactions shall not require City consent:
  - a. The granting of easements or permits to facilitate construction of the Project or any public improvements.
  - b. The granting of easements or permits for utility purposes.

- c. Transactions for financing purposes, including the grant of a deed of trust to secure the funds necessary, but not to exceed the amounts reasonably required, for land acquisition, construction, and/or permanent financing of any portion of the Project.
- d. The acquisition of some or all of the Property by a Mortgagee in its capacity as a Mortgagee, such as through foreclosure or a deed in lieu of foreclosure.
- e. A sale or transfer resulting from, or in connection with, a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.
- f. A sale or transfer between members of the same family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist primarily of family members of the trustor, or transfers to a corporation or partnership in which the family members or shareholders of the transferor own at least ten percent (10%) of the present equity ownership and/or at least fifty percent (50%) of the voting control of Developer.
- g. If Developer is a trust, corporation, real estate investment trust, or partnership, a transfer of stock or other interests, provided there is no material change in the actual management and control of Developer.
- h. Transactions with any member, partner, officer, employee, or affiliate of Developer or any trust or family member, provided that, following the transaction, the management of Developer on the Effective Date shall, subject to normal and customary business practices and personnel changes, remain the primary Developer representative(s) for purposes of communication with the City.
- i. A sale or transfer after City issues a Certificate of Occupancy for all improvements that comprise the Project.

## **11.4 Effect of Assignment.** Unless otherwise stated within the Assignment, upon an Assignment:

a. The assignee shall be liable for the performance of all remaining obligations of Developer with respect to those portions of the Property which are transferred (the "Transferred Property"), but shall have no obligations with respect to any portions of the Property not conveyed (the "Retained Property").

- b. The owner of the Retained Property shall be liable for the performance of all obligations of Developer with respect to the Retained Property, but shall have no further obligations with respect to the Transferred Property.
- c. The assignee's exercise, use, and enjoyment of the Transferred Property shall be subject to the terms of this Agreement to the same extent as if the assignee were the Developer.

#### 12. AMENDMENT AND MODIFICATION.

- **12.1 Initiation of Amendment.** Either party may propose an amendment to this Agreement.
- **12.2 Procedure**. Except as set forth in Section 12.4, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance as set forth in Government Code Section 65867.
- **12.3 Consent.** Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the parties hereto and recorded in the Official Records of Los Angeles County.
- 12.4 Minor Modifications. The provisions of this Agreement require a close degree of cooperation between the Parties, and minor changes to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. The anticipated refinements to the Project and the development of the Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications ("Minor Changes"), as described in Section 12.4(a) of this Agreement, shall not require amendment of this Agreement.
  - Minor Changes. A modification will be deemed non-substantive, nona. material, and/or procedural if it does not result in a material change in fees, the Property's Special Taxes, maximum building density, maximum intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and construction standards and specifications for the Project. A "non-material change" is generally one that does not change the standard by ten percent (10%) or more. For example, for a height limit of 20 feet, a change of less than two feet is deemed non-material. Where it is unclear if a change is non-material, the Community Development Director may, in light of all Building Code standards and the relative physical impact of the proposed change to the overall Project, make the determination as to whether the proposed change is material or nonmaterial. For example, subject to Building Code requirements, design changes to color, facade finish textures or surfaces, minor changes to

height, landscaping or building configuration, or type of construction materials will generally be deemed "non-material" because they do not impact the overall character of the Project or adversely affect adjacent The Developer may appeal the determination of the Community Development Director pursuant to this subsection to the City Council within fifteen (15) days of receiving such determination in writing, in accordance with the provisions of Section 9173.4 of the Carson Municipal Code.

- b. Hearing Rights Protected. Notwithstanding the foregoing, City will process any change to this Agreement consistent with state law and will hold public hearings thereon if so required by state law and the parties expressly agree nothing herein is intended to deprive any party or person of due process of law.
- 12.5 Effect of Amendment to Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either party under this Agreement.

#### 13. MISCELLANEOUS PROVISIONS.

- **Recordation**. The City Clerk shall cause a copy of this Agreement to be recorded against the Property with the County Recorder within ten (10) calendar days after the Effective Date. The failure of the City to sign and/or record this Agreement shall not affect the validity of this Agreement.
- Notices. Notices and correspondence required or permitted by this Agreement 13.2 shall be in writing and either personally delivered or sent by registered, certified, or overnight mail or delivery service. Notices shall be deemed received upon personal delivery or on the second business day after registered, certified, or overnight mailing or delivery, or email if such email notice is acknowledged as received by the receiving party. Notices shall be addressed as follows:

To City: City of Carson

> 701 East Carson Street Carson, California 90745 Attn: Planning Manager

With copy to: Aleshire & Wynder

18881 Von Karman Avenue, Suite 1700

Irvine, CA 92612 Fax: 949-223-1180 Attn: Sunny Soltani

To Developer: **KL** Fenix Corporation

> 19401 South Main Street Gardena, CA 90248

Attn: Young Kim

A Party may change its address by giving written notice to the other Party. Thereafter, notices shall be addressed and transmitted to the new address.

- 13.3 Estoppel Certificates. Either Party (or a Mortgagee) may at any time deliver written notice to the other Party requesting an Estoppel Certificate stating:
  - a. The Agreement is in full force and effect and is a binding obligation of the Parties:
  - b. The Agreement has not been amended or modified or, if so amended, identifying the amendments; and
  - c. There are no existing defaults under the Agreement to the actual knowledge of the Party signing the Estoppel Certificate.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The City Manager may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees.

- 13.4 Project as a Private Undertaking. It is specifically understood and agreed by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect, and that each Party is an independent contracting entity with respect to this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of property owned by a private party. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the public improvements set forth herein.
- **13.5 Eminent Domain.** No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.
- 13.6 Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter of this Agreement. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.
- **13.7 Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement.
- **13.8 Severability.** If any term, provision, covenant or condition of this Agreement is determined invalid, void, or unenforceable by a court of law, then this Agreement shall terminate

in its entirety, unless the Parties otherwise consent in writing, which consent shall not be unreasonably withheld.

- 13.9 Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.
- 13.10 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes, and other labor difficulties beyond the Party's control, government regulations, pandemics, court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of the impacts on the Project of each such event.
- **13.11 Waiver.** All waivers of performance must be in a writing signed by the Party granting the waiver. Failure by a Party to insist upon the strict performance of any provision of this Agreement shall not be a waiver of future performance of the same or any other provision of this Agreement.
- **13.12 Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
- 13.13 Governing Law and Venue. This Agreement shall be governed and interpreted in accordance with California law, with venue for any litigation concerning this Agreement in Los Angeles, California.
- **13.14 Interpretation.** This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.
- 13.15 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.
- 13.16 Attorneys' Fees. If either party to this Agreement is required to initiate or defend litigation against the other party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and, in addition, a

party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

- 13.17 Recitals. The recitals in this Agreement constitute part of this Agreement and each party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.
- 13.18 Joint and Several Liability. In the event Developer should sell, transfer, lease or assign this Agreement, the Property, or any part thereof, Developer shall bear ultimate responsibility for all obligations, conditions, and restrictions set forth under this Agreement, it being understood that both Developer and any transferee, assignee, or lessee shall be jointly and severally liable.
- 13.19 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement arising out of agreements by the indemnifying party to pay any commission or finder's fee.
- 13.20 Counterparts. This Agreement may be executed by the Parties in counterparts, which together shall have the same effect as if each of the Parties had executed the same instrument.

Developer and City have executed this Agreement on the dates set forth below.

	CITY: CITY OF CARSON, a California Charter City
ATTEST	Albert Robles, Mayor
Donesia Gause, City Clerk	
APPROVED AS TO FORM ALESHIRE & WYNDER, LLP	
Sunny K. Soltani, City Attorney	

DEVELOPER:
KL Fenix Corporation,
a California corporation
Ву:
Name:
Its:
By:
Name:
Its:

#### 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.

#### 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				
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 INDIVIDUAL  DESCRIPTION OF ATTACHED DOCUMENT				
CORPORATE OFFICER				
TITLE(S)  PARTNER(S) LIMITED	TITLE OR TYPE OF DOCUMENT			
GENERAL	NUMBER OF PAGES			
☐ ATTORNEY-IN-FACT				
TRUSTEE(S)	<u></u>			
☐ GUARDIAN/CONSERVATOR	DATE OF DOCUMENT			
OTHER				
	SIGNER(S) OTHER THAN NAMED ABOVE			
SIGNER IS REPRESENTING:				
(NAME OF PERSON(S) OR ENTITY(IES))				

STATE	E OF CALIFORNIA	
SIAIL	LOFCALIFORNIA	
COUN	TY 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.		
	y under PENALTY OF PERJURY under the law d correct.	ws of the State of California that the foregoing paragraph is
WITNI	ESS my hand and official seal.	
Signatu	ıre:	-
	the data below is not required by law, it may put fraudulent reattachment of this form.  CAPACITY CLAIMED BY SIGNER	TIONAL rove valuable to persons relying on the document and could DESCRIPTION OF ATTACHED DOCUMENT
	INDIVIDUAL CORPORATE OFFICER	
]		TITLE OR TYPE OF DOCUMENT
	TITLE(S) PARTNER(S)  LIMITED	THE SKITTE OF BOOCHERY
	GENERAL	NUMBER OF PAGES
	ATTORNEY-IN-FACT	
	TRUSTEE(S)	DATE OF DOCUMENT
	GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
	OTHER	
CICNE		SIGNER(S) OTHER THAN NAMED ABOVE
	ER IS REPRESENTING:	
(NAMI	E OF PERSON(S) OR ENTITY(IES))	

#### **EXHIBIT "A"**

#### PROPERTY LEGAL DESCRIPTION

PARCEL 4, IN THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 62 PAGE 68 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING FROM THAT PORTION INCLUDED WITHIN LOTS 38, 39, AND 44 OF TRACT NO. 6378, ALL OIL, GAS, HYDROCARBON SUBSTANCES AND OTHER MINERALS IN AND UNDER SAID LAND WITH THE RIGHT TO DRILL FOR, MINE, EXTRACT, TAKE, AND REMOVE THE SAME FROM ANY WELLS OR SHAFTS LOCATED ON ANY LAND ADJACENT TO THE ABOVE DESCRIBED LAND WITHOUT ACCOUNTING TO THE GRANTEE FOR ANY RENTALS, ROYALTIES OR PROCEEDS FROM THE SALE OF SUCH MINERALS, AS RESERVED IN DEED FROM SUNSET OIL COMPANY, RECORDED AUGUST 2, 1944 IN BOOK 20925, PAGE 72 OF OFFICIAL RECORDS.

ALSO EXCEPT ALL OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES AND ALL OTHER MINERALS IN AND UNDER SAID LAND (EXCEPT THE SOUTH 350 FEET OF LOTS 36 AND 37), AS RESERVED BY SUNSET OIL COMPANY, A CORPORATION IN DEED RECORDED JULY 1, 1955 IN BOOK 48230, PAGE 289 OF OFFICIAL RECORDS AND BY SUNSET INTERNATIONAL PETROLEUM CORPORATION, A CORPORATION IN DEED RECORDED JULY 20, 1960 IN BOOK D-916 PAGE 193 OF OFFICIAL RECORDS.

ALSO EXCEPT FROM SAID LAND THAT PORTION LYING WITHIN THE LINES OF LOT 91 TRACT NO. 4671, ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES WHICH LIE BELOW A PLANE OF 500 FEET FROM THE SURFACE OF SAID LAND AS EXCEPTED IN THE DEED FROM DEL AMO ESTATE COMPANY, A CORPORATION, RECORDED NOVEMBER 8, 1963 IN BOOK D-2250 PAGE 748 OF OFFICIAL RECORDS.

ASSESSOR'S PARCEL NUMBER: 7336-003043

# EXHIBIT "B" DEPICTION OF THE PROPERTY

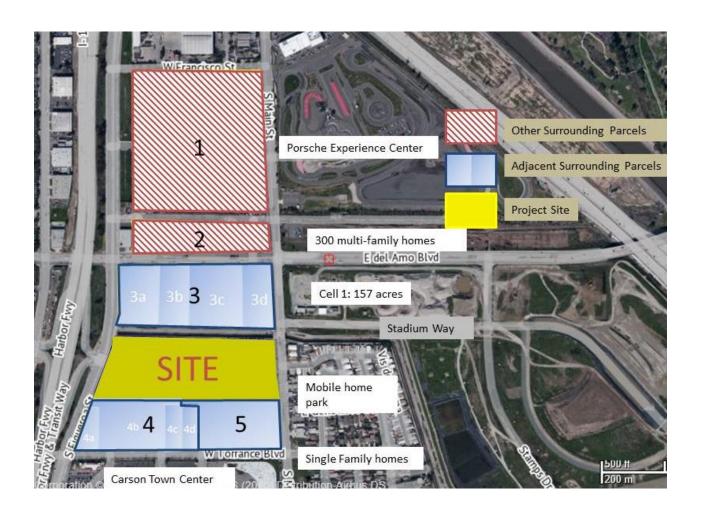


#### **EXHIBIT "C"**

#### SURROUNDING PARCELS

#### **ASSESSOR'S PARCEL NUMBERS:**

 $7336-003028, 7336-003029, 7336-003039, 7336-003041, 7336-003042, 7336-004010, AND\\ 7336-004016$ 



# EXHIBIT "D" SITE PLAN SEE ATTACHED

01007.0592/659996.1 rjl D-1



#### **CITY OF CARSON**

#### PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING: May 27, 2020

SUBJECT: Site Plan and Design Review (DOR) 1745-18

Conditional Use Permit (CUP) 1074-18

Specific Plan (SP) 18-18

General Plan Amendment (GPA) 108-18, Entitlement

Agreement (DA) 24-18.

APPLICANT: KL Fenix Corporation

19401 S. Main Street Gardena, CA 90248 Attn: Segovia Felipe

PROPERTY OWNER: Young Kim

KL Fenix Corporation 19401 S. Main Street Gardena, CA 90248

REQUEST: Consideration of applicant's proposal for construction

of 53,550-square-foot structure with 39,500 square feet of warehouse space, 14,050 square feet of office space, 6 loading docks, an open-air loading dock with 9 loading docks, 115 passenger vehicle parking

spaces, 475 cargo container/truck spaces

PROPERTY INVOLVED: 20601 S. Main Street

#### **COMMISSION ACTION**

AYE	NO		AYE	NO	
		Chairperson Pimentel			Palmer
		Vice-Chair Madrigal			Rahman
		Cainglet			Rashad
		Fe'esago			Valdez
		Mitoma			Alt. Diaz Alt. Hellurud Alt. Zuniga

Item No. 5A

#### I. Introduction

Applicant KL Fenix Corporation 19401 S. Main Street

Gardena, CA 90248 Attn: Segovia Felipe Property Owner
Young Kim
KL Fenix Corporation
19401 S. Main Street
Gardena, CA 90248

#### Site History

The subject property was occupied by the Gardena Valley Landfill No. 1 & 2 from 1956 until 1959 and accepted approximately 75% residential municipal waste and 25% construction or industrial wastes. Industrial waste included crude oil derivatives (crude oil and tank bottoms), paint sludge, auto wash sludge, latex, molasses, cutting oil, and other semi-liquids. The average depth of the waste materials is approximately 25 feet. The former landfill was capped with approximately 5 feet of soil at the termination of landfill operations in 1959. The site has remained vacant ever since.

#### **Project History**

On March 20, 2018, the City Council adopted Interim Urgency Ordinance No. 18-1805U, extending a moratorium for 12 months on the establishment, expansion, or modification of truck yards, logistics facilities, hazardous materials or waste facilities, container storage, and container parking (Moratorium). Section 6 of this Ordinance allowed the City Council to grant exceptions.

On June 6, 2018 and July 24, 2018, the applicant filed a request for an exception to the moratorium and the City Council granted the exception at its regularly scheduled meeting of August 21, 2018. The exception enabled the applicant to file for the required entitlement applications.

The exception was granted with the following conditions:

- Site Planning- Building area limited to 53,550 square feet; no truck traffic on Torrance Boulevard or Main Street; no truck access to the subject property from Main Street; minimum 25' foot landscaped setback on Main Street and 20' foot setback on Figueroa Street; the Main Street setback to include two artistic sculptures or equivalent; minimum of 5' foot landscaped interior setback, 50' foot building setback from the street and 140' foot setback for truck loading areas from the southerly property line; architecture to include large areas of glass along the streets and areas visible from streets to offer an office building appearance; maximum of 6 truck loading doors for the warehouse building and 9 docks for the open air loading dock; minimum 8' foot high solid wall at the perimeter of the subject property; the location and design of driveways may change as determined by staff;
- Use The use will be temporary in nature initially to be permitted for seven years from the date of issuance of the Certificate of Occupancy or final permit and with the possibility of three year automatic extensions; at the end of this period if the project is found to be consistent with Carson 2040 General Plan, Zoning Ordinance, and surrounding uses, an extension can be provided, alternately, the applicant would be required to make the project including all structures, architecture, setbacks, landscaped area, FAR, uses, etc. consistent with the

City's 2040 General Plan, Zoning designations, and surrounding areas at the time of the expiration of permits.

• Operations - Restrictions on operating hours for both Office Uses and Truck Operations; City to have access to all video surveillance cameras at all times to ensure trucks do not travel on Torrance Boulevard and Main Street; possibility to include language in the Development Agreement to levy fines of up to \$1,000 per occurrence if trucks originating or going to the site use Torrance Boulevard or Main Street; applicant to form, fund and participate in a Community Facilities District (CFD) and pay the Development Impact Fee (DIF) per established rates; the applicant is to deposit \$100,000 with the City which will be used to ensure compliance with the provisions of the Development Agreement as it relates to compliance during the operations as permitted under the Development Agreement; applicant's failure to accomplish any of the imposed deadlines will result in fines of \$500 per day and this would be deducted from the applicant's deposited funds of \$100,000.

#### **II.** Project Description

#### Use

The applicant is proposing a "cargo container parking" facility on the project site. The Specific Plan defines this use as "the parking of a trailer, detached from the tractor unit, on which is loaded one (1) or more cargo containers. On-site operational activities would include the mobilization of either imported goods that have just arrived from the Ports of Los Angeles and Long Beach or exported goods that are in transit to the Ports. The project also includes a warehouse component within the proposed building.

Hours of operation for the proposed office are not restricted. Hours of operation for the proposed cargo container parking facility would be 6:00 a.m. to 2:00 a.m. Monday through Friday and 6:00 a.m. to 6:00 p.m. on Saturdays, and closed on Sundays, refer to COA # 57.

#### Structures and Vehicle Parking and Storage Spaces

The proposal includes a 53,550-square-foot structure on the eastern portion of the 14.33 acre property with 39,500 square feet of warehouse space, 14,050 square feet of office space and 6 loading docks within a two-story building. The proposal also includes an open-air loading dock with 9 loading docks. The site plan includes 115 passenger vehicle parking spaces, 400 cargo container parking spaces and 75 truck parking spaces for a total of 475 cargo container/truck spaces (Truck Spaces).

#### Access

The applicant's proposed Specific Plan and Site Plan are inconsistent with each other with respect to the number and location of the access points. Conditions of approval have been included to rectify this inconsistency (COA #18 & 60(d)). The site plan proposes vehicular access from two existing driveways on Main Street and two existing driveways on Figueroa Street.

#### Setbacks

The proposed facility has a 25-foot setback along Main Street, a 20-foot setback along Figueroa Street and 5 foot of landscaped setbacks along Northern and Southern property lines. The building is setback 50 feet from the Southern property line and the loading docks are setback 150 feet from the same.

#### Fencing

The Developer proposes an 8-foot high fencing all around the property. Fencing materials will be a combination of pre-cast concrete panel walls and wrought-iron fencing. Main Street will have only wrought-iron fencing, Northern and Southern property lines will have concrete panel walls which Figueroa Street side will have a combination of the two materials.

#### Landscaping and Art

Since the site is a former landfill, landscaping will be provided in raised planter beds installed along the northern and southern perimeter wall. Developer will install new or will replace existing trees along Main Street and Figueroa Street.

In addition, the applicant is required to provide two artistic features along Main Street. (COA #27)

#### **III. Required Applications**

The applicant is proposing the following concurrent applications:

#### • General Plan Amendment

The General Plan Land Use Designation for the subject property is MU-BP (Mixed-Use Business Park). There are two types of Business Park Designations in the General Plan. Carson General Plan section 4.3 defines these land use designation as follows:

Business Park: "The Business Park designation is intended to provide an attractive, high quality industrial/business park primarily for offices, light manufacturing and assembly, and research and development. Warehousing of a small scale (for example, no more than one ground level loading door per x square feet of building) in conjunction with a permitted primary use will be allowed.......Both scales of Business Park are intended to provide harmonious transition to residential development and neighborhoods by:

- 1) conducting all business activities and essentially all storage inside buildings
- 2) consisting of low profile, high quality, and attractive buildings that are compatible with existing and anticipated development in the area,
- 3) providing open space, quality landscaping, and berms that achieve a park-like setting,
- 4) including buffering of parking, loading doors, and other similar functions."

Mixed Use Business Park: "All areas southwest of I-405 and north of Torrance Boulevard and the Carson Marketplace Specific Plan site are designated MU-BP,

with a combination of regional commercial and business park/ limited industrial uses. No residential uses would be allowed."

In addition the General Plan contains the following language for the MU-BP: "A new zoning overlay will be created for each of the Mixed Use areas. These zoning overlays could be patterned after the existing Carson Street Mixed Use Overlay Zone."

The current proposal is not allowed within the Mixed-Use Business Park General Plan land use designation. However, the proposed could be considered to be consistent with other similar uses such as truck yards and truck terminals allowed in the HI (Heavy Industrial) General Plan Land Use Designation. Carson General Plan Section 4.3 defines this land use designation as follows:

"The Heavy Industrial designation is intended to provide for the full range of industrial uses that are acceptable within the community, but whose operations are more intensive and may have nuisance or hazardous characteristics, which for reasons of health, safety, environmental effects, or general welfare, are best segregated from other uses. Extractive, primary processing, construction yards, rail operations, truck yards and terminals, and food processing industries are typical of this designation."

The proposed project requires a General Plan Amendment to change the land use designation of the site from MU-BP to HI.

#### • Zone Change (Specific Plan)

The zoning for the site is Manufacturing Light with a Landfill Overlay (ML-ORL). Since the General Plan Land Use Designation of the site is required to be changed to Heavy Industrial to allow the proposed use, the ML-ORL zoning designation would no longer be consistent with the HI land use designation. Therefore, a zone change is required for the project. Rather than changing the zoning of the site to Manufacturing Heavy (MH) which would allow a host of uses not appropriate for this area, the Exception approval required the applicant to file for a Specific Plan to allow the proposed use. The Specific Plan allows the proposed use with a Conditional Use Permit. In addition, the Specific Plan provides for development standards and design guidelines to ensure an orderly development.

#### Entitlement Agreement

The approval of the Exception Resolution by the City Council contemplated the temporary nature of the use to be monitored and enforced through a Development Agreement. The Exception Resolution required the applicant to file for a Development Agreement application to ensure the City can terminate the use if the project is not in full compliance of the approvals.

#### Conditional Use Permit

Two Conditional Use Permits are required for the project, one for the proposed use and the other to allow development on a Landfill Overlay (ORL) designated site.

CMC Section 9141.12 requires approval of a Conditional Use Permit by both the Planning Commission and the City Council for all developments with the ORL designation. More specifically, CMC Section 9141.12.A. states:

"No use except as hereinafter provided shall be permitted on property designated as ORL (Organic Refuse Landfill) without the approval of a conditional use permit by both the Commission and the Council. Such conditional use permit shall require, as a condition precedent to use of the property under the conditional use permit, approval by the Building and Safety Division and the Council of a report submitted by the applicant pursuant to the applicable provisions of the Building Code, prepared by a licensed civil engineer designated by the applicant and approved by the City, which shall provide and include plans for a protective system or systems designated to eliminate or mitigate the potential hazards and environmental risks associated with the proposed use. Approval of such report by the Building and Safety Division shall be in the discretion of the Building Official, who shall evaluate any risks and hazards associated with the site and proposed use and who may grant approval only if he finds that the report and plans adequately provide for protection against such associated risks and hazards. The Building Official's approval shall be submitted to the Council for final approval which will be in the discretion of the Council."

Prior to issuance of a Certificate of Occupancy, the applicant is required to submit a report, prepared by a licensed civil engineer, to the Building Official for review and approval. The Building Official shall then submit the report to the City Council for their consideration, with the final approval to be at the discretion of the City Council, refer to COA #17.

#### CMC section 9141.12 (D) also states:

"D. Whenever both subsection A and any other Section of this Chapter require a conditional use permit for a particular property, only one (1) conditional use permit shall be required, which shall be applied for, processed and considered pursuant to the provisions of subsection B. The application and conditional use permit, if approved, shall refer to both Sections which are applicable."

Based on this, COA# 60(k) requires the Specific Plan to add language referencing this section of CMC, and consequently requiring only one CUP application.

#### • Site Plan and Design Review

Carson Municipal Code Section 9172.23 (Site Plan and Design Review) requires Planning Commission review of projects within the Design Overlay District having construction valuation of \$50,000 or more.

#### IV. Project Site and Land Uses

The subject property is located in the ML-ORL-D zone with a General Plan Land Use Designation of "Mixed-Use Business Park". The subject property is located between Main Street and Figueroa Street, south of Del Amo Boulevard.



Figure (a) Project Site in context to surrounding zoning.

The following table provides a summary of information regarding the project site:

Site Information		
General Plan Land Use	Mixed-Use Business Park	
Zone District	ML-ORL-D (Manufacturing, Light; Organic Refuse	
	Landfill; Design Overlay District)	
Site Size	624,200 square feet (14.33 ac)	
Present Use and Development	Vacant land	
Surrounding Zoning/General	North: Light Industrial, ML-ORL-D/MU-BP	
Plan	South: Commercial General, CG-D/MU-BP	
	East: Residential, RS	
	West: I-110 Freeway	
Access	Ingress/Egress: Main Street and Figueroa Street	

#### V. Analysis

#### **Submittal of Revised Documents**

As will be discussed below, staff has several concerns with the specific plan, site plan, and elevations that the applicant has not addressed by revising these documents. The applicant has insisted to be scheduled for a Planning Commission hearing without making these revisions. The conditions of approval include

provisions to address staff's concerns. These conditions of approval require significant changes to the specific plan, site plan, and elevations. Furthermore, the conditions of approval require the applicant to submit the revisions to the site plan, elevations, and the specific plan prior to scheduling the item for City Council. Since these revisions are significant, the Planning Commission may determine that the revisions must be made prior to Planning Commission action. Staff would like to emphasize that the approval of General Plan Amendment, Entitlement Agreement, Specific Plan, DOR, and CUP are discretionary and Planning Commission does not have to approve these requests.

#### Land Use Compatibility

Land uses surrounding the subject property include residential and Cell 1 of the 157 acre site to the east, mini storage to the north, Figueroa and I-110 to the west, and a variety of uses to the south including five churches with associated childcare programs and other children related activities catering to preschool through 12<sup>th</sup> grade students, a dance school, an after school program, an adult day care, printing museum, an indoor sports facility, light industrial uses, and commercial uses. The proposed use is considered a heavy industrial use as it proposes a truck intensive facility and inconsistent with some of the existing land uses that are considered sensitive uses. The City's General Plan only allows this type of truck intensive use in the Heavy Industrial (HI) designation. The following are the three nearest HI General Plan Land Use Designation properties in relation to the project site:

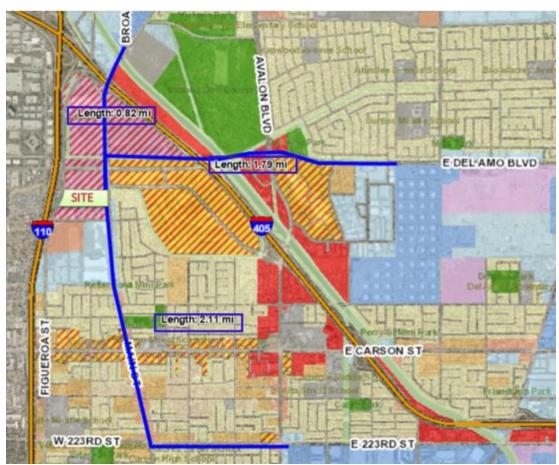


Figure (b) Distance to nearest heavy industrial parcels

- 0.82 Mile to the north (north on Main Street, property owned by KL Fenix);
- 1.79 Miles to the east (north on Main Street and east on Del Amo Boulevard, Shell tank farm);
- 2.11 Miles to the southeast (south on Main Street and east of 223<sup>rd</sup> Street, Watson Industrial Park).

#### Area of Concern:

At first glance, the proposed use is not compatible with the surrounding uses. However, a more careful analysis reveals important characteristics of the surrounding areas. The site and most of its surroundings are former landfills. From experience, the City is aware that development on these sites can be challenging and expensive. This is evident from the abundance of vacant properties in the surrounding areas-all former landfill sites. However, history also tells us that some former landfill parcels can be developed such as the former Kmart site. Therefore, for over two years staff has analyzed this proposal to determine whether it is a good fit for the area and the City. This analysis has not been easy. It is critical for the City to make the correct decision on this property since it is one of the first ones to move forward. Once this project is built, it would greatly influence the future development of the area. On the other hand, if it is not developed, the surrounding areas may not develop either as they have not in the past.



Figure (c) Surrounding parcels and area

Given the difficulty and the expense of developing this former landfill site, staff has had to take a creative approach in determining whether the proposed project is an

appropriate land use for this site, is compatible with the surrounding areas, and will have a long term benefit to the City. This approach includes several different components to achieve land use compatibility now and in the future:

- Compatibility with existing residential areas, Cell 1, and the 300-unit MBK multifamily complex currently under construction to the east: Through site design truck access to Main Street has been eliminated. In addition, the trucks for the project are prohibited from using Main Street and Torrance Boulevard. The building is placed in a manner to shield the properties to the east and also provide an aesthetically pleasing facade with generous landscaping including two artistic features along the street. This design creates an illusion of a business park from the street even though the truck operations are proposed behind the building. Furthermore, this design allows approximately 350' separation between the residential areas and the truck operations. Staff believes this separation is adequate to make the proposed project compatible with the residential areas to the east.
- Compatibility with the mixture of uses to the South: The properties to the south include a variety of uses including sensitive uses as mentioned above. In addition, a proposal for a Zone Change has been submitted to allow future development of residential on approximately half of the property closest to Main Street. However, the property has a recorded covenant prohibiting residential uses. This restriction does not preclude development of the site as residential; it just means the property owner has to go through a process with DTSC and if approved, residential can be constructed on the site. Therefore, the proposed KL Fenix project poses some compatibility concerns both now and in the future. Therefore, staff is proposing a significant reduction of Truck Spaces to make the proposed use more compatible with the areas to the south and reduce the traffic, noise, and air quality impacts associated with the proposed use. Eliminating two rows of Truck Spaces together with the most southerly drive aisle would provide an approximately 155' buffer between the truck operations and the uses to the south. This would reduce the number of Truck and Container Spaces from 475 to 298, a reduction of 177 spaces, refer to COA #15. To achieve even more separation between the potential residential development and this site, staff will require the residential project to place the parking structure on the northerly property line between the residential units and the KL Fenix site. Depending how these parcels develop, the proposed truck operations may cease permanently or could expand to the currently proposed 475 spaces by the applicant and be vested permanently.
- The portion of the Site remaining unused cannot be used by the Developer for any purpose and will be fenced off until such time that the project is permitted to expand into that space. COAs #16 and 34 have been drafted to address this issue.
- Staff has also required additional safeguards to ensure long term compatibility of the proposed use with the surrounding areas. Through the Entitlement Agreement (EA), staff has identified a geographic area surrounding the site to establish this long term compatibility. Again, through the EA, the proposed use is considered temporary and only becomes permanent if the surrounding areas develop as heavy industrial. On the other hand, if the surrounding areas develop

as anything other than heavy industrial, the proposed use must cease operations and a different use will be required to be proposed consistent with the surrounding area. Sections 2.3 to 2.13 of the EA provide more detailed provisions to accomplish this long term compatibility. The following provides a summary of the provisions included in the EA:

- Initial Term is 7 years.
- There are 5 Surrounding Parcels:
  - 3 Adjacent Surrounding Parcels; and
  - 2 Other Surrounding Parcels.
- 3-year automatic extension will be granted at the end of 7 years:
  - If within 7 years no new development occurs on the Adjacent Surrounding Parcels; or
  - No new development or only one new development occurs in Other Surrounding Parcels.
- o Automatic 3-year extensions will be granted until one of the following occurs:
  - One new development occurs in Adjacent Surrounding Parcels:
    - If the new development is heavy industrial, the use will be vested and continues for perpetuity; or
    - If the new development is non-heavy industrial, the use will cease operation for perpetuity.
  - There are two new developments (cumulative) on Other Surrounding Parcels
    - If both new developments (cumulative) are heavy industrial, the use will be vested and continues for perpetuity; or
    - If both new developments (cumulative) are non-heavy industrial, the use will cease operation for perpetuity.

Staff has determined with the above provisions, the project would be considered compatible with the surrounding uses both now and in the future.

#### 2040 General Plan

It should be noted that the draft 2040 General Plan Preferred Land Use Plan does not contemplate allowing heavy industrial uses such as the proposed use by the applicant in this area. This Preferred Land Use Plan still needs to go through community input and presented to the Planning Commission and City Council. At this time staff is not suggesting the Planning Commission base their decisions on the Preferred Land Use Plan; however, it is another component that should be considered among other facts surrounding the proposed project and other future projects.

#### Site Plan

The subject property measures approximately 14.33 acres. The proposal includes a 53,550-square-foot warehouse on the eastern portion of the subject property with 39,500 square feet of warehouse space, 14,050 square feet of office space and 6 loading docks within a two-story building. The proposal also

includes an open-air loading dock with 9 loading docks. The site plan includes 115 passenger vehicles parking spaces, 400 cargo container parking spaces and 75 truck parking spaces for a total of 475 Truck Spaces. The applicant was originally proposing 475 Truck Spaces.

#### Stormwater Management

The subject property adjoins the Torrance lateral of the LA County Flood Control District along its northerly property line.

#### Area of Concern:

The applicant has indicated their intent to drain run-off water into the flood control channel and claim to have District approval but has yet to provide written confirmation from the District. Without formal confirmation of District approval, the applicant must redesign the proposed stormwater management system to the satisfaction of the Department of Public Works Engineering Division and the LA County Flood Control District prior to issuance of any permits; refer to COA# 31, 76.

#### Access

The applicant's proposed Specific Plan and Site Plan are inconsistent with each other with respect to the number and location of the access points. Conditions of approval have been included to rectify this inconsistency (COA# 18 & 60(d)). The site plan proposes vehicular access from two existing driveways on Main Street and two existing driveways on Figueroa Street.

#### Area of Concern:

The City Traffic Engineer has expressed concerns regarding the safety of proposed driveways on Figueroa Street and has also questioned the necessity of having two driveways on Main Street.

The subject property is adjacent to Caltrans signalized intersection which will be adversely impacted due to the proposed facility. Caltrans has provided written comments requiring a single, signalized ingress/egress point immediately across from the 110 Interstate Figueroa on/off ramp. To date, the applicant has not submitted a revised Site Plan incorporating the requirement. Therefore, COA #18(c), 89 and 111 will address Caltrans's comments that may eventually only allow one driveway on Figueroa directly across from the signalized existing interchanges. In addition, the revised site plan will eliminate the northerly driveway on Main Street; refer to COA# 18(d).

#### Parking & Traffic

Carson Municipal Code Section 9162.21 (Parking Spaces Required) requires 1 parking space for every 1,500 square feet of warehouse and 1 parking space for every 300 square feet of office area. The proposed use will require 74 parking spaces (27 spaces for warehouse use and 47 spaces for office use). The applicant proposes a total of 115 parking spaces including 4 handicapped stalls and 10 EV stalls. Therefore, it exceeds the minimum parking requirements for passenger vehicles.

#### Area of Concern:

Staff has concerns about the maneuverability of trucks in the area between loading docks, the building, and the parking aisles. Staff requested the applicant to submit a revised site plan demonstrating safe truck turning templates. However, the applicant has yet to submit a revised site plan confirming safe truck turning maneuvers. COA #18(b) has been added to require the applicant to submit a revised site plan to address this issue.

#### **Building and Architecture**

The proposed building lacks the design quality and thoughtfulness expected from a project of this nature. The City's Design Consultant team (RRM) reviewed and provided detailed comments and suggestions for improvements that the applicant has not incorporated into the proposed development.

#### Area of Concern:

The applicant shall work with a licensed architect specializing in tilt-up construction in order to address all comments provided by RRM prior to issuance of building permits COA#20.

In addition, the applicant has yet to submit a color and material board and a rendering of approved design elevations. COA#20 & 21 address these issues by requiring the applicant to submit revised elevations, a materials board, and color renderings.

#### Signage

Due to the unique nature of the project, the project shall be required to submit for a Sign Program for all signs to be permitted on the property. The standards incorporated in the Specific Plan are not comprehensive and thus COA # 52 and 60 requires the applicant to edit the Specific Plan to remove all sign standards from the Specific Plan and file for a Sign Program instead.

#### Fencing

The entire perimeter of the subject property includes 8-foot high walls and fencing. The developer is proposing a combination of wrought-iron fencing and pre-cast concrete panel walls as fencing material. The building entrance on Main Street will include wrought-iron fencing. Pre-cast concrete panels will be installed along the Northern and Southern property lines and a combination of both materials is proposed along Figueroa Boulevard.

#### **Area of Concern:**

The proposed wall on the North side is offset 10 feet to the south of the property line. Staff is concerned about the maintenance of the area between the wall and the North property line. The applicant has not provided an explanation to address this concern other than placement of the water filtration system on the north side of the wall and draining run-off water into the flood control channel which staff believes is not permissible, refer to Stormwater Management section of the staff report under Site Plan for additional information. To address this issue, COA # 31 has been added to require the applicant to build the wall on the property line and submit a revised site plan.

The applicant has been requested to match the colors of the concrete panels to the colors of the building and provide a paint and material board for the fencing and walls for Staff's review. Since this information has not been provided, COA# 28 has been drafted.

In addition, the applicant will be required to build an 8-foot high fence along the last truck/container parking spaces securing the buffer area created by eliminating two rows of container parking spaces and the associate drive aisle. This fence is at least 150 feet from the Southern property line to fence off the unused portion of the Site due to reduced truck/container parking spaces. Refer to COA#34.

#### Landscaping

Carson Municipal Code Section 9162.52 (Landscaping Requirements) requires automobile parking facilities and any parking facilities visible from the public right-of-way to have interior landscaping of not less than 5% or in this instance 31,210 SF (14.33 acres X 5%= 31,210 SF.) Due to the ORL nature of the site, landscaping will be provided in raised planter beds installed along the northern and southern perimeter wall. Developer will install new or replacing existing trees along Main Street and Figueroa Street.

The proposed project includes significant perimeter landscaping in the setbacks areas along Figueroa and Main. Therefore, the proposed project provides an aesthetically pleasing street scene along both streets. In addition, the applicant is required to provide two artistic features along Main Street. These features will be reviewed by staff prior to issuance of the building permits and will be installed prior to issuance of the certificate of occupancy, refer to COA#27.

#### Specific Plan

Specific plans are planning tools included in state law that allow cities to adopt different development standards than those in specific zones included in the City's zoning code. The implementation of the proposed project requires different development standards and uses than those included in the Carson Municipal Code Chapter 1, Part 4, Heavy Industrial Zone; therefore, the applicant proposes the KL Fenix Cargo Container Parking Specific Plan (Exhibit 3). The following provides development standards outlined in the KL Fenix Cargo Container Facility Specific Plan:

#### KL Fenix Cargo Container Parking Specific Plan Zoning Regulations

Development Standards			
Topic	Proposed Standards	Source	
FAR	0.5	SP 18-18	
Street Access  Passenger vehicle access from Main Street, Truck access from Figueroa (COA #18 (c) & (d))		SP 18-18	

Development Standards				
Topic	Proposed Standards	Source		
Building Height	75 feet maximum (COA#60(m))	SP 18-18		
Front yard setback (Main Street side)	25 feet; 2 artistic features to be incorporated in the setback area (COA#27)	SP 18-18		
Rear setback (Figueroa Street side)	20 feet (COA # 60(n))	Reso 18-113		
Building setback	Minimum 50 feet from southern property line (COA # 60(n))	Reso 18-113		
Side Yard setback	Minimum 5' landscaped set back (COA # 60(n))	Reso 18-113		
Loading dock setback	Minimum 140' from southern property line (COA # 60(n))	Reso 18-113		
Parking standards	Parking ratios for Warehouse Use- 1:1500, Office Use – 1:300 (COA 60(o))	CMC 9162.21		
Streetscape Design & Public Spaces	8-12 foot wide sidewalk along Main Street and Figueroa Street (COA 60, 87)	SP 18-18		
Surveillance Cameras	Installed at access point on Main Street to monitor truck movement Also installed in the Cargo Container parking area to monitor no more than 75 trucks to be parked at the facility.	SP 18-18		
Signage- Building	Two rows allowed to a maximum of 64 inches; each row of Capital letters or small letters not to exceed 32 inches; logo to not exceed 54 inches. (COA#52, 60(p))	SP 18-18		
Signage- Monument Sign	Not to exceed 1.5 times of street frontage. Placement at least 150 feet apart on street frontage Placed at least 7.5 feet from interior lot line Maximum of 16 feet high with maximum 48 inch base.(COA#52, 60(p))	SP 18-18		
Signage – Maximum square footage	Total maximum area allowed will be two square feet of signage for every one linear foot of lot frontage for the first one hundred (100) feet, plus	CMC 9146.7		

Development Standards		
Topic	Proposed Standards	Source
	one-half (1/2) times the frontage in excess of one hundred (100) feet. (COA#52, 60(p))	

#### Areas of Concern:

Furthermore, the Specific Plan prepared by the developer includes statements that reveal the document has not been prepared professionally. The following are some examples:

- A General Plan Amendment to "Cargo Container Parking" land-use designation which does not exist in the City's General Plan.
- Parking standards for condominiums are included when the Specific Plan does not permit residential projects.

The Permitted Uses Section of the proposed Specific Plan has been modified by staff to only include the following permitted uses:

- Cargo Container Parking facility, with a CUP with no containers on the ground and no stacking of containers (COA#60(j));
- Warehousing and Distribution: including Cold Storage, Warehousing of furniture, household goods, dry goods, clothing, textiles, durable goods (no perishable foods) but excluding any type of hazardous material storage, as permitted by right uses;
- Wireless telecommunications facilities, minor facilities to be permitted by right, major telecommunications facilities to be permitted with a CUP.

Therefore, staff has included COA# 60 and 61 to address these issues prior to scheduling the Specific Plan for City Council.

It should be noted that the CMC includes a definition for a cargo container parking facility; however, it is not included as a permitted use or a use requiring a Conditional Use Permit. Therefore, since the zoning code is a permissive code meaning that if a use is not specifically mentioned as permitted or conditionally permitted, it is not permitted by the zoning code. Therefore, a Specific Plan is the proper tool to allow the proposed cargo container facility.

#### **Entitlement Agreement Terms and Conditions**

In addition to the provisions stated above to ensure compatibility of the proposed use with the surrounding areas, the following provides a summary of the major Terms and Conditions included in the Entitlement Agreement:

#### Compliance with EA, Fines

Prior to issuance of building permits, the developer is required to deposit with the City \$100,000. This deposit will be used by the City, if necessary, to ensure compliance with

the provisions of the EA. In addition, the following fines/penalties will be levied in case of violations from the terms of the EA:

- Only a total of 298 spaces (220 container parking spaces and 75 truck parking spaces) spaces shall be allowed on the site. Failure to comply shall result in fines of \$5,000 per occurrence as a penalty.
- Any use of the Property not in strict compliance with the Permissible Usage shall result in fines of \$5,000 per occurrence as a penalty.
- All truck ingress and egress to and from the Property shall be via Figueroa Street.
  Violation of this requirement will result in fines of \$5,000 per occurrence as a
  penalty, with determination of Developer's violation to be made by City upon City's
  review of VSCs as well as any other documentation or evidence reasonably
  available to the City.
- No trucks shall be permitted to traverse on Torrance Boulevard or Main Street. Violation of this restriction will result in fines of \$5,000 per occurrence as a penalty.
- Developer is required to install Video Surveillance Cameras ("VSCs") that record 24 7. Failure to properly maintain the VSCs will result in fines of \$5,000 per occurrence as a penalty
- Developer has stated that a maximum of 50 trucks per day will enter and exit the site for a maximum of 100 trips. Any number above 100 trips per day shall be a violation with a \$5,000 per incidence penalty.
- Developer's trucks do not travel into or from the Property using Torrance Boulevard and Main Street. The penalty for this violation shall be \$5,000 per incidence.
- If the developer does not cease the operation the use if required by the EA, it shall result in a fine of \$500 per day as a penalty until compliance has been reached.
- Trucks without the KL Fenix logos shall not be authorized to use the site. The penalty for this violation shall be \$5,000 per incidence.
- Failure to comply with the allowed hours of operation shall result in fines of \$5,000 per occurrence as a penalty.
- All VSCs shall be installed and operational at all times. Failure to have operational VSCs shall result in a penalty of \$5,000 per incidence.
- The Property, including the Buffer Area, must at all times be maintained and generally kept in a clean condition. Failure to comply will result in a penalty of \$5,000 per incidence.

#### Public Improvements

Prior to issuance of occupancy permits, Developer is required to complete improvements to Main Street and Figueroa Street, as follows:

• Main Street (southbound). Developer shall construct half street improvements along the eastern property line by removing the existing asphalt section of the road and constructing a new asphalt pavement section per City standards.

- **Figueroa Street (northbound).** Developer shall construct half street improvements along the westerly property line by removing the existing asphalt section of the road and constructing a new 8" concrete pavement section per City standards.
- **Figueroa Street (southbound).** Developer shall construct half street improvements corresponding to the northerly and southerly boundaries of the site by removing the existing asphalt section of the road and constructing a new 8" concrete pavement per City standards.
- **Main Street Median.** Developer shall install medians on Main Street as required by the Engineering Division.

#### VI. CFD/DIF Discussion

Interim Development Impact Fee: In accordance with Article XI of the Carson Municipal Code (Interim Development Impact Fee Program), the applicant must pay an estimated one-time development impact fee of \$207,044.44 (currently \$694.78 per truck/container space based on 298 Truck Spaces) to fund the development's proportional share of city-wide capital infrastructure improvements. The fee paid will be proportional to the number of truck Spaces ultimately approved for the project and the fee in effect when building permits are issued, refer to COA #1.

Funding Mechanism for Ongoing Services / Community Facilities District: The applicant, property owner, and/or successor to whom these project entitlements are assigned ("Developer") is responsible to establish a funding mechanism to provide an ongoing source of funds for city services including the maintenance of parks, roadways, and sidewalks. A uniformed-standardized rate for ongoing city services was adopted by the City pursuant to Resolution No. 19-009 and accompanying Fiscal Impact Analysis ("FIA") report. Under the adopted Resolution and FIA report, the subject property falls under "Other Industrial Zones" with a current rate of \$449.30 per acre per year. Based on a 14.33-acre site, the current estimated annual amount is \$6,438.47. The actual amount of the CFD will be based on the fee in effect at the time the building permits are issued. Developer is required to mitigate its impacts on city services either through: 1) Annexing into a City established Community Facilities District (CFD) or 2) Establishing a funding mechanism to provide an ongoing source of funds for ongoing services, acceptable to the City, refer to COA#2.

Additionally, at the time of application for a business license, if there are two different users between the Cargo Container Parking Facility and warehouse, then an additional DIF payment will be made for the warehouse in the amount of One Hundred Thirty Thousand Six Hundred Sixty Two Dollars (\$130,662.00), calculated at \$2.44 per square foot of building area (calculated at \$2.44 x 53,550 = \$130,662). Such DIF payment will be made at the time applications for the business licenses are submitted to City.

#### VII. Zoning and General Plan Consistency

The proposed Cargo Container Parking use is not allowed within the Mixed-Use Business Park General Plan Land Use designation. Therefore, to implement the

proposed project, a General Plan Amendment is required to change the General Plan Land Use Designation to Heavy Industrial. This change would make this parcel, the only parcel in the vicinity of the site with a HI designation.

Since the current zoning of the site is not compatible to the HI land use designation, a zone change is required. Typically, the implementing zone for the HI designation is Manufacturing Heavy (MH) zone. However, since the MH zone allows a variety of uses not desired in this area, Staff requested the applicant to file for a specific plan which provides more control over the possible uses of the site.

#### VIII. Environmental Review

Pursuant to the California Environmental Quality Act (CEQA), a Draft Mitigated Negative Declaration was prepared and made available for public review from April 14, 2020 through May 13, 2020. A Notice of Intent to Adopt a Draft Mitigated Negative Declaration was posted with the City Clerk, LA County Clerk, Carson Library, on-site, and sent to responsible agencies. An electronic copy of the document was also posted on the Planning Division website (<a href="http://ci.carson.ca.us/CommunityDevelopment/KLFenix.aspx">http://ci.carson.ca.us/CommunityDevelopment/KLFenix.aspx</a>). No comments were received recommending that an Environmental Impact Report (EIR) should be prepared.

During the Initial Study phase, the project's location on a previous landfill was also evaluated as potentially significant impact under Hazards and Hazardous Materials section. It was determined that several previous investigations, including remedial investigations and feasibility studies for the waste and groundwater, human health risk assessment, and a remedial action plan (RAP) for the former landfill waste were completed. The RAP for the waste proposed the construction of a cover and the addition of a landfill gas collection system and flare. The remedial design document to implement the RAP was prepared in 1999; however, to date, closure of the landfill in accordance with the 1999 Remedial Design and other remedial documents (e.g., the groundwater remedial investigation and feasibility study) has not occurred.

In 2019, the project applicant entered into a voluntary oversight agreement with the DTSC to review the existing environmental documents for the project site and to provide opinions on the site remediation needed in order to comply with the requirements of the land use restrictions and complete the project. DTSC oversight is currently ongoing and the applicant and DTSC are continuing to coordinate on the exact means, methods, and scope of onsite. (COA#109)

Additionally, potentially significant impacts of Air Quality, Cultural Resources, Geology and Soils, Noise, Transportation and Tribal Cultural Resources were identified during the Initial Study. Per the Negative Declaration, with the inclusion of the proposed mitigation measures, adverse impacts are mitigated to the maximum extent feasible and below a level of significance. The MND was circulated for public review from April 14, 2020 to May 13, 2020. At the close of the review period, comments from Caltrans, LA County Fire Department and LA County Sanitation District have been received which are addressed in the Final MND, also available at the link above, and potential concerns have been addressed via Conditions of Approval for the project (COAs # 18, 31, 67 73, 89 and 111).

#### IX. Public Notice & Community Meeting

Notice of public hearing was published in the newspaper on April 30, 2020. Notices were mailed to property owners and occupants within a 750' radius and posted to the project site by April 30, 2020. The agenda was posted at City Hall no less than 72 hours prior to the Planning Commission meeting.

Typically, similar projects involving General Plan Amendment, Zone Change (Specific Plan) and Conditional Use Permit applications are required to have Community Meetings as part of the approval process. In light of COVID-19 and to practice responsible social distancing, it was not possible to hold a community meeting for this project,

#### X. Recommendation

That the Planning Commission:

 ADOPT Resolution No. 20-2696, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON APPROVING SITE PLAN AND DESIGN OVERLAY REVIEW NO. 1745-18, CONDITIONAL USE PERMIT NO. 1074-18 AND RECOMMENDING APPROVAL TO CITY COUNCIL FOR GENERAL PLAN AMENDMENT NO. 108-18, SPECIFIC PLAN NO. 18-18, ENTITLEMENT **AGREEMENT** NO. 24-18, MITIGATED **NEGATIVE** DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR A PROPOSED CARGO CONTAINER PARKING FACILITY AT 20601 S. MAIN STREET"

#### XI. Exhibits

- 1. Draft Resolution
  - A. Legal Description
  - B. Conditions of Approval
- 2. Development Plans
- 3. Specific Plan
- 4. Entitlement Agreement
- 5. Public Comments

Prepared by: Manraj G. Bhatia, Assistant Planner



#### WEDNESDAY, May 27, 2020

# <u>PLEASE NOTE</u>: This is an adjourned regular meeting (adjourned from the May 26, 2020 regular meeting)

701 East Carson Street, Carson, CA 90745 6:30 p.m., Via Zoom

#### **MINUTES**

### ADJOURNED REGULAR MEETING OF THE PLANNING COMMISSION

Members:

Alex Cainglet Uli Fe'esago Ramon Madrigal

(Vice-Chair)

Michael Mitoma Chris Palmer Ramona Pimentel

(Chair)

Myla Rahman Karimu Rashad Daniel Valdez

Alternates:

Louie Diaz Patricia Hellerud Paloma Zuniga

Staff:

Planning Manager Assistant City Betancourt Attorney Jones

"In accordance with the Americans with Disabilities Act of 1990, if you require a disability related modification or accommodation to attend or participate in this meeting, including auxiliary aids or services, please call the Planning Department at 310-952-1761 at least 48 hours prior to the meeting." (Government Code Section 54954.2)

#### 1. CALL TO ORDER

Chair Pimentel called the meeting to order at 6:37 p.m.

#### 2. ROLL CALL

Planning Commissioners Present: Cainglet, Fe'esago, Madrigal, Mitoma, Palmer, Pimentel,

Rahman, Rashad, Valdez

Planning Commissioners Absent: None

Planning Commission Alternates Present: None

Planning Staff Present: Planning Manager Betancourt, Community Development Director Naaseh, Assistant City Attorney Lee, Assistant Planner Bhatia, Recording Secretary Bothe

#### 3. ORAL COMMUNICATION FOR MATTERS NOT ON THE AGENDA

The public may at this time address the members of the Planning Commission on any matters within the jurisdiction of the Planning Commission. No action may be taken on non-agendized items except as authorized by law. Speakers are requested to limit their comments to no more than three minutes each, speaking once. None

\*DUE TO CORONA VIRUS COVID-19, NO MEMBERS OF THE PUBLIC WILL BE ALLOWED INTO CITY HALL DURING THE PLANNING COMMISSION MEETING. THE MEETING WILL BE CONDUCTED VIA REMOTE TELECONFERENCING USING THE ELECTRONIC "ZOOM" APPLICATION.

Any members of the public wishing to provide public comment for the items on the agenda may do so as follows:

- 1. Live via Zoom Application. Members of the public wishing to provide public comment in real-time will be invited to join the Zoom meeting remotely to provide their public comment live with their audio/video presented to the Planning Commission. Members of the public wishing to do so must email <a href="mailto:planning@carson.ca.us">planning@carson.ca.us</a>, providing their real name and the phone number they will use to call in from, no later than 3:00 p.m. on the date of the meeting. For further details/requirements and meeting invite information, please email <a href="mailto:planning@carson.ca.us">planning@carson.ca.us</a> no later than 3:00 p.m. on the date of the hearing.
- 2. Email: You can email comments to <a href="mailto:Planning@carson.ca.us">Planning@carson.ca.us</a> no later than 3:00 p.m. before the meeting. Please identify the Agenda item you wish to address in your comments. Your comments will be read into the record.
- 3. Telephone: You can record your comments at (310) 952-1761 no later than 3:00 p.m. before the meeting. Please identify the Agenda item you wish to address in your comments. Your comments will be read into the record.
- 4. Box outside of City Hall: You can provide hand-written comments by dropping off a note at the box located in front of City Hall (701 East Carson Street) no later than 3:00 p.m., on the date of the meeting. Please identify the Agenda item you wish to address in your comments. Your comments will be read into the record.

NOTE: Members of the public wishing to observe the meeting live without providing public comment will be able to do so by watching it on the City's PEG television channel (Channel 35 on Charter or Channel 99 on AT&T for Carson residents) or via live streaming on the City's website, <a href="http://ci.carson.ca.us/">http://ci.carson.ca.us/</a>).

#### 4. CLOSED SESSION

#### CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

A closed session will be held pursuant to Government Code Section 54956.9 (d)(2) or (d)(3) and (e)(1) because there is significant exposure to litigation in one potential case.

The closed session commenced at 6:42 p.m. and reconvened at 7:39 p.m.

Assistant City Attorney Lee stated no reportable action was taken.

# 5. CONTINUED PUBLIC HEARING

A) Site Plan and Design Review (DOR) 1745-18, Conditional Use Permit (CUP) 1074-18, Specific Plan (SP) 18-18, General Plan Amendment (GPA) 108-18 and Entitlement Agreement (DA) 24-18

# Applicant's Request:

The applicant, KL Fenix Corporation, is requesting consideration of applicant's proposal for construction of a 53,550-square-foot structure with 39,500 square feet of warehouse space, 14,050 square feet of office space, 6 loading docks, an open-air loading dock with 9 loading docks, 115 passenger vehicle parking spaces, 475 cargo container/truck spaces. The subject property is located at 20601 S. Main Street.

# **Staff Report and Recommendation:**

Assistant Planner Bhatia presented staff report and the recommendation to ADOPT Resolution No. 20-2696, entitled, "A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON APPROVING SITE PLAN AND DESIGN OVERLAY REVIEW NO. 1745-18, CONDITIONAL USE PERMIT NO. 1074-18 AND RECOMMENDING APPROVAL TO CITY COUNCIL FOR GENERAL PLAN AMENDMENT NO. 108-18, SPECIFIC PLAN NO. 18-18, ENTITLEMENT AGREEMENT NO. 24-18, MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) FOR A PROPOSED CARGO CONTAINER PARKING FACILITY AT 20601 S. MAIN STREET."

Chair Pimentel opened the public hearing.

Josh Canales, Sr. Pastor Mission Ebenezer, stated that this site has been abandoned for over 60 years; and expressed his belief Mr. Kim is very interested and committed to this proposed project.

Felipe Segovia, representing KL Fenix, stated that this landfill has been abandoned since 1959; and that it has become an eyesore, with illegal dumping and homeless trespassers. He pointed out that this is not a truck yard and that a truck operation is not its main use. He stated there will be one truck trip in and one truck trip out every 5 minutes, using Figueroa Street. He stated this operation contributes to the Long Beach Port system; and added that they will be working with Caltrans. He commented on the 2-story office building and the landscaping that will help beautify the area; stated there is limited impact to the nearby mobile home park because the trucks will not be traveling on the City's streets other than to get to the freeway; and he mentioned that if the Rand conceptual project were to go forward, he would need to clean up the site, including the methane emissions with the adjoining properties, and stated that this project is going to help the Rand project.

Jeffrey Farano, attorney representing KL Fenix, stated that he was retained by KL Fenix within the past couple of weeks and that he just submitted an 8-page comment letter this afternoon. He expressed his belief the conditions of approval in the Entitlement Agreement are extremely onerous and at times heavy-handed and appear to be designed to prohibit the project and not necessarily make it more compatible with the surrounding uses nor mitigate its impacts. He added that he does not believe the conditions represent City Council's approval in 2018 nor is consistent with the City's municipal code; and he highlighted the recent approval of a cargo container storage project located at 2315 Dominguez Street which received an exception from

the moratorium in 2018 and subsequently approved in 2019 after the moratorium expired, pointing out that project didn't have many of these conditions placed upon it. He explained that the conditions placed on this project appear to be trying to continue the logistics moratorium that expired in 2019 which was not subsequently renewed or permanently implemented.

Mr. Farano stated they are seeking conditions which are fair and reasonable, that help to implement this project, make it compatible with the neighborhood but at the same time allows KL Fenix to operate as economically as is feasible, reiterating that some of the proposed conditions do not allow that. He noted that, in particular, staff is proposing to reduce the number of parking spaces from 475 down to 298 spaces; and staff is justifying that reduction based on incompatibility with the surrounding land uses. He stated those particular uses would be to the south, and more particularly, a hypothetically proposed residential project on the Rand property that requires a rezoning, which has yet to have a completed application or DTSC approval for the cleanup or to remove the restricted covenant that prohibits residential uses on that property because of the former landfill.

Mr. Farano added that staff report barely identifies the surrounding area to the south as commercial or two-thirds of that property being zoned light-industrial and is partially occupied by a manufacturing facility that also has an outdoor tire storage area; and that the rest of the property immediately adjacent to the project is a parking lot, with the nearest allegedly incompatible building being over 100 feet away and separated by the existing parking and storage areas. He expressed his belief the added conditions are unfair and further restricts the project from being economical due to the increased costs associated with the DTSC mitigation that is required.

Mr. Farano stated what they are currently proposing is that if the Rand residential project to the south receives building permits that are approved prior to the certificate of occupancy for this project, then at that time they would reduce the number of parking spaces from 475 to 300, at that point when there actually is a realistic project and not a hypothetical use that is adjacent; and stated they do recognize at that point, there might be some need to adjust the use and have an expanded buffer on the southern end.

Mr. Farano stated the temporary nature of the use as originally proposed was a result of the moratorium that was in effect at the time and is no longer in effect; and that it also was based on a less extensive and less expensive cleanup process for the landfill. He stated the current process as proposed has 3 different possible scenarios, one of which could continue the use as a temporary use indefinitely into the future, believing this is unfair because it provides no permanent or definitive path to having a permanent use and could theoretically get kicked down the road for a number of years which can cause a number of problems, such as financing or general business planning, and also repaying the extraordinary costs that are required to clean up the site.

Mr. Farano stated they are proposing an initial term of 7 years from the certificate of occupancy date and at the end of that term, if any two of the surrounding parcels were to be developed with non-heavy industrial uses, then the use would terminate, otherwise, it would become permanent; that it would become permanent if only one would be developed or none of them would be developed or if they are developed with a heavy-industrial use. He added that, however, even if two of the surrounding parcels are developed with non-heavy-industrial uses, they would propose that the warehouse use should be permanent because its use is currently an automatically permitted use.

Mr. Farano expressed his belief the fines listed in the Entitlement Agreement (EA) are extremely onerous and not consistent with the municipal code or any similar facility that has been recently approved; he stated that in 2018, City Council approved fines up to \$1,000, which is also allowed in the City's municipal code; advised that staff is proposing fines of \$5,000 for a myriad of reasons, such as not keeping the site clean; that the conditions also require a deposit of \$100,000 which the City can draw from that fund to pay such fines/violations and provides no method for cure or reasonable means for appeal of those violations; and noted his concern with the City being the sole judge and jury on those fines. He asked that any fines and the process by which they are implemented be consistent with the City's municipal code and with prior City Council approval, which is \$1,000, and to add an opportunity for cure and a reasonable appeals process.

Sheri Repp, representing Richard Rand, stated this proposed truck yard is an incompatible use; pointed out that the Planning Commission, City staff, and City Council over many years have been very cautious about allowing any new heavy industrial areas to be formed within the City; and mentioned that most of the heavy industrial use is located on the eastern side of the City, noting you don't see new areas being formed especially along the west side of the City. She questioned whether staff is aware of any new heavy industrial designations being designated that would be next to commercial and/or in close proximity to sensitive land uses, such as the church, various children's activities, a museum, and residential; and pointed out that the resolution indicates this proposed use is not compatible with the characteristics of the surrounding area. She highlighted the applicant's comment that they believe the conditions are too onerous, that they are not in agreement with staff, that they are pushing back and stating they should have more flexibility; and she expressed her belief that the applicant's stance/position on the recommendations is ill-advised because she believes they're on shaky ground as it is and then to ask for even more leniency is inappropriate.

Ms. Repp confirmed that Mr. Rand has submitted an application to the City proposing a mixed use development which is focused on residential with up to 356 housing units, an application that is pending; that they have submitted all responses to staff's comments; that an environmental consultant has been retained to perform the MND; and added that Mr. Rand has spent \$225,000 so far to investigate and pursue the reports and the applications that are necessary to build a residential project, so the applicant's comment that it's not a real application has no merit. She confirmed that Mr. Rand is sincerely interested in building this residential project; and that Mr. Rand sees the vision for the city of Carson, sees opportunities for areas around his property to further develop the site, such as the 157-acre site, the Porsche project, the MBK 300 apartment units which are currently under construction, all which lend themselves to improving the area, not staying stagnant and not going to heavy industrial uses.

Ms. Repp advised that this morning, Mr. Rand was speaking with DTSC over the phone; that they have confirmed the residential project could, in fact, go forward subject to the appropriate standards being met with DTSC and the covenant restriction being able to be removed from the property, which is not unusual and is their typical process; and stated there is nothing to suggest the residential development cannot go forward on Mr. Rand's property. She added that DTSC did indicate because the landfill that's on the KL Fenix site spills over onto the Mission Ebenezer property as well as the Rand property, there will have to be coordination among the property owners, noting her hope that everyone will be able to collaboratively work towards the best interests of the City, have these landfills remediated and bring positive land uses and businesses to this area.

Ms. Repp stated that the truck yard use is not appropriate and she does not see why the city of Carson would settle for something that has already been determined not to be compatible; that while she appreciates this property has been vacant for many years, she can also appreciate that over the last several years, just before and during the time KL Fenix purchased the property out of bankruptcy, there were a number of developers who were interested in this site who proposed uses that were not truck yards; and expressed her belief KL Fenix will have other opportunities to do something that will be better for this property and this area, an area that has been steadily improving, not degrading. She expressed her belief that for Carson to throw away an opportunity to improve the area by having a truck yard use is not sound planning or good stewardship. She added that she has not seen the Planning Commission approve something like this in the past and hopes that this evening the Planning Commission will be much more protective.

Ms. Repp stated that if the Planning Commission is interested in going forward with this project, she would strongly advise that staff revise the project; and pointed out that with all the changes proposed by the applicant's representative this evening, she is unclear on what is being proposed before the Planning Commission at this point, noting it sounds like they want more truck parking and more container storage than what staff is recommending; and stated that staff should be given an opportunity to revise their report/recommendation.

Ms. Repp expressed her belief that there has not been enough community outreach; mentioned that when City Council went through the moratorium process and allowed KL Fenix to submit an application, it was with the expectation there would be a community meeting; and while we are in a COVID crisis that can't be controlled, it still should not mean there doesn't need to be adequate community outreach. She questioned why this applicant is pushing so hard to rush through this project; and reiterated it should be done correctly and with the residents' participation in order to reach a decision that is best for both the short and long term. She added that this project is stated to be short term, but in reality, if they go forward, she believes there is such a disincentive for anybody else to want to develop with anything other than heavy industrial uses; and added the City may be setting a precedent in terms of its future for the west side. She urged the Commission not to approve this project.

Amy Freilich, attorney representing Carson El Camino, LLC, noted her opposition to the request for a general plan amendment for heavy industrial on this site and the applicant's other requests before the Commission this evening, mentioning she provided a comment letter. She explained that Carson El Camino is the owner of Site 5 where the 365-unit housing development has been proposed; and that they are also the owner of a portion of Site 4 where there are 5 churches, a number of school and after-school activities, adult daycare, dance school, and other commercial and industrial uses. She explained that from her client's perspective, they are developers who typically don't oppose other development projects, and they believe they have no other choice in this case but to oppose this proposed truck and container use because this heavy industrial use is completely out of character and inconsistent with what is happening with the growth and development of the surrounding properties, including the 300 residential units currently under construction immediately across from this proposed project.

Ms. Freilich expressed her belief this project will create a nuisance by bringing in truck traffic, stating that 480 truck trips per day is a significant number of trucks; noted the applicant does not specifically indicate how many trucks will actually be on the City's streets, saying "not that many and that most will use the freeway"; mentioned there is no analysis in the documents

which looks at impacts to right-of-ways in the City and no analysis provided to make sure the Caltrans requested solution to the freeway ramps can actually be developed; and stated there are a number of truck and traffic impacts which haven't been evaluated.

Ms. Freilich stated there are a number of noise impacts from this project; noted this project is proposed to operate Monday through Saturday until 2:00 a.m.; she pointed out that an outdoor cargo container operation is a very noisy operation with the backing up of trucks, people shouting, containers being hooked/unhooked to/from trailers, a very noisy environment; and noted her concern all this is being placed right next to current housing and approved future housing in the immediate area.

Ms. Freilich stated they are also concerned with air pollution; and noted there's not been a real discussion with the idling of trucks and any health risk assessment in the MND that fully meets the requirements. She expressed her concern it appears the project description changes and is never particularly clear, even though there is a specific plan that has been proposed by the applicant which allows all sorts of uses, such as petroleum storage onsite as a right, natural gas storage onsite as a right, all sorts of things embedded in the specific plan that are never fully evaluated. She added that while staff is not even recommending those be as-right uses, it is clear the applicant is challenging many of staff's recommendations; and that staff has not weighed in on those proposals and none of those have been evaluated in the MND.

Ms. Freilich pointed out that the City's general plan is very clear about heavy industrial uses, specifically saying these proposed uses are to be placed in areas that are not adjoining sensitive uses; and she quoted staff report, "these are uses that may have nuisance or hazardous characteristics which for reasons of health, safety, environmental effects, or general welfare are best segregated from other uses."

Ms. Freilich stated if this project goes forward particularly with the proposal on temporary use that was brought forward by the applicant this evening, they do not believe it's going to be feasible for anybody to continue the type of development being seen in this vicinity with a heavy industrial use in the center; stated that financial and banking interests don't need to lend on a residential project next to a heavy industrial site because there are many other opportunities those institutions can pursue; and that it is clear this project will significantly discourage the lending community. She pointed out that the concept they wait 7 years to see if this becomes a heavy industrial corridor or becomes a residential corridor is a false choice for the future; stated they would like to see this property as residential and mixed use; that they are not opposed to light industrial and other uses compatible with this area; and that they would welcome a different proposal from this developer that is more in keeping with the surrounding uses. She urged the Commission to deny the applicant's request.

Assistant Planner Bhatia read the late submittal comment letters into the record.

Chair Pimentel closed the public hearing.

Commissioner Mitoma stated that Carson has the worst air pollution in this area; that it has 41 million square feet of industrial uses, 4 refineries, in-and-out trucking activity from the nearby ports, and water pollution; and stated that 400 extra trucks coming in and out of Carson is unacceptable. He stated that staff needs to work with the applicant on revising their plans for this property.

Vice-Chair Madrigal asked if a pre-COVID traffic study has been done on this project for this area.

Assistant Planner Bhatia stated that a traffic study was done for the project as part of the CEQA Initial Study.

Dennis Pascua, traffic consultant from Dudek, explained that under the CEQA analysis, they have prepared a vehicle miles traveled analysis which is consistent with the current CEQA guidelines; that they also prepared a separate standard traffic analysis which did look at levels of service of the proposed project; and stated that study was done in coordination with City staff on the intersections to be analyzed. He added they also received comments from Caltrans, noting some of those comments were incorporated into the traffic study which addressed queuing impacts along the ramps for the project site; that they looked at a revised access, recommending to have a single point of entry at the Figueroa Street 110 Freeway ramps; and it also covered cumulative impacts in terms of all the approved and pending projects in the study area, including the projects just south of the site.

Vice-Chair Madrigal asked for further clarification on what route these trucks will take if they need to go south on the 110 Freeway.

Mr. Pascua explained that if traveling southbound on I-110, the truck would exit on the opposite side of the freeway, off Hamilton Avenue, then either turn right/north to Del Amo Boulevard and then south on Figueroa Street or the truck would turn left/south off Hamilton Avenue, make a left turn onto Torrance Boulevard, and then another left turn on Figueroa Street. He mentioned there is a current Caltrans improvement taking place to signalize the ramps at Hamilton Avenue and I-110. He stated this operation will generate truck traffic in this area; advised that the level of service analysis found there are 3 intersections that would be inconsistent with the City's and Caltrans' level of service policies – 1) Figueroa Street/I-110 at the ramps; 2) Hamilton Avenue and Del Amo Boulevard; and 3) Hamilton Avenue and the I-110 ramps.

Commissioner Fe'esago asked if an EIR was done; and noted his concern with the current poor conditions of the City's roadways at Del Amo and Torrance Boulevards and the proposed increase in truck traffic, asking if that has been addressed.

Assistant Planner Bhatia explained for Commissioner Fe'esago that an EIR was not required for this project, and that there were mitigation measures incorporated in the MND and conditions of approval; and added that the Entitlement Agreement also includes measures to mitigate the impacts and improve those two roadways, along with Main Street.

Commissioner Fe'esago asked what revenue the City will get from this project and what employment numbers the applicant is seeking for this site.

Planning Manager Betancourt indicated the only revenue he is aware of is a business license fee

Mr. Segovia stated that if everything goes as planned, they intend to bring in 150-200 jobs into the City, noting these are higher paying truck driving jobs; that they will pay for their business license; and that through the Development Impact Fees, they will be contributing to the maintenance of the City's streets. He explained that the truck traffic they will be generating will mostly be concentrated traffic from their site directly onto the I-110 freeway; that yes, there will

be southbound truck traffic; mentioned that one of the conditions of approval is they will have to repave both northbound and southbound streets nearby; and that they have to modernize the traffic signal and make improvements to that intersection. He stated that none of their trucks can originate from this site and use Main Street or Torrance Boulevard. He clarified that they are not proposing a truck yard, that this is not a truck operation; and that their project is a cargo container storage facility and that the trucking operation is an accessory to that use and not the main function of the operation. He stated they are proposing 75 truck spaces, which is a significant investment; explained that the trucks typically leave in the morning prior to peak a.m. traffic hours, and most will return early evening after peak p.m. traffic hours; and that the allowance for the 2:00 a.m. hour is for those few stragglers who arrive late in the evening, early morning. He noted for Commissioner Fe'esago that the cargo containers cannot be taken off the trailer nor stacked on top of each other; and explained that their business model is to move their inventory out in a short period of time, typically a day or two at the most and then off to its destination.

Chair Pimentel expressed her desire to see this item continued because there appears to be too much unfinished business between the applicant and staff, suggesting it be continued to the second meeting in July. She expressed her desire for a better solution than what has been proposed.

# **Planning Commission Decision:**

Chair Pimentel moved, seconded by Commissioner Mitoma, to continue this matter to the second Planning Commission meeting in July 2020.

Vice-Chair Madrigal offered a friendly amendment that there be further community outreach and, if possible, hold a community meeting.

Planning Manager Betancourt explained that conventionally done in the past, there has been a community meeting, but because of COVID 19, those efforts have been hampered; and he explained that depending on how long the City is on COVID-19 lockdown, staff will do all they can for greater community outreach, including the possibility of a Zoom community meeting if need be.

Planning Manager Betancourt recapped the motion to continue this matter to the second meeting in July due to a number of differences from what the applicant has proposed and what the Planning Department has recommended with the conditions of approval for operations, improvements, and conditions for policy documents being improved; and that this meeting is being continued because of the deficiencies and the differences between what the applicant has proposed and what staff has recommended for approval.

Mr. Segovia stated that the applicants are not rushing through this project; that they applied for this project 5 years ago; and noted that through the course of this application process, multiple things have happened, such as lost applications and misplaced packages. He stated they would like to see the Commission vote on their project this evening.

Vice-Chair Madrigal called for the motion.

The makers of the motion accepted the friendly amendment, and the motion for continuance carried, 7-2, as follows:

AYES: Cainglet, Fe'esago, Madrigal, Mitoma, Pimentel, Rashad, Valdez NOES: Palmer, Rahman ABSTAIN: None None ABSENT: 6. MANAGER'S REPORT None 7. COMMISSIONERS' ORAL COMMUNICATIONS The Commissioners urged everyone to be safe and well. Commissioner Mitoma noted his disappointment that the Boy Scouts were not being allowed to place flags at the soldiers' graves to honor the fallen this Memorial Day due to COVID-19, believing this activity helps the youth understand the ultimate sacrifice paid for this country. Vice-Chair Madrigal urged people to wear masks and to be safe. 8. **ADJOURNMENT** At 9:44 p.m., the meeting was adjourned to Tuesday, June 9, 2020, 6:30 p.m. Chair

Attest By:
Secretary





Jared Blumenfeld Secretary for **Environmental Protection** 

# Department of Toxic Substances Control

Meredith Williams, Ph.D. Director 5796 Corporate Avenue Cypress, California 90630



Gavin Newsom Governor

July 7, 2020

Mr. Young Kim President KL FENIX CORPORATION 20601 S. Main Street Carson, California 90745

CONSTRUCTION QUALITY ASSURANCE PLAN (CQAP) FOR GARDENA VALLEY 1 & 2 LANDFILL SITE, CARSON, CALIFORNIA

The Department of Toxic Substances Control (DTSC) has completed review of the Construction Quality Assurance Plan (CQAP) Installation of Pavement System and Cover System dated May 28, 2020, prepared by Earthcon Consultants, Inc.

The CQAP summarizes the activities associated with the installation of the pavement system and cover system at the KL Fenix Corporation in Carson, California. The activities shall be completed in general accordance with the design drawings, the 2018 Standard Specifications of the State of California Department of Transportation (Standard Specifications 2018) and its applicable revisions in the Revised Standard Specifications dated April 17, 2020 (Revised Standard Specifications 2020), the applicable standards of Sections 20323 and 20324 of the Combined State Water Resources Control Board (SWRCB) and the California Department of Resources Recycling and Recovery (CalRecycle), specifications established by the Geotechnical Research Institute (GRI) GM13 and manufacturer of the Flexible Membrane Liner (FML), and the manufacturer specifications for the Liquid Boot ® vapor barrier membrane described in this document and displayed in the Appendices.

The payement system shall be comprised of the following components:

- 6-inch thick reinforced concrete pavement (CP) layer;
- · 12-inch thick Class 2 aggregate base (AB) layer; and
- Boen SF-4100 Safety Snow Fence, or an engineer approved equivalent.

The cover system shall be comprised of the following components:

12-inch thick gravel layer composed of AASTHO #8 gravel;

EXHIBIT NO. 7

Mr. Young Kim July 7, 2020 Page 2 of 2

8-ounce non-woven geotextile;

- Smooth 60-mil high density polyethylene (HDPE) flexible membrane liner (FML);
- 8-ounce non-woven geotextile; and
- Foundation soil layer (FSL) with a minimum thickness of 24 inches.

Based on the DTSC review of the CQAP, the plan meets the state guidance and requirements, therefore it is hereby approved. The plan must be implemented and completed in general according to the project plans and specifications and all major deviations from the plan must be approved by DTSC prior to implementation.

If you have any questions, please contact me at <a href="mailto:robert.senga@dtsc.ca.gov">robert.senga@dtsc.ca.gov</a> or the Project Manager, Mr. Safouh Sayed at (714) 484-5478 or e-mail <a href="mailto:safouh.sayed@dtsc.ca.gov">safouh.sayed@dtsc.ca.gov</a>.

Sincerely,

Robert M. Senga,

Senior Project Supervisor

Site Mitigation and Restoration Program



May 27, 2020

# VIA E-MAIL AND FIRST CLASS MAIL

Chairperson Ramona Pimentel and Honorable Members of the Planning Commission City of Carson 701 E. Carson Street Carson, CA 90745

Email: cityclerk@carson.ca.us Email: planning@carson.ca.us

Saied Naaseh Community Development Director City of Carson 701 E. Carson Street Carson, CA 90745

Email: snaaseh@carson.ca.us

Re: Applicant Comments re May 27, 2020 Planning Commission Agenda Item 4A

Dear Chairperson Pimentel and Honorable Planning Commissioners:

My firm represents the KL Fenix Corporation ("KL Fenix") in regards to its application to develop a cargo container parking facility and warehouse (the "Project") at 20601 S. Main Street (the "Property") in the City of Carson ("City"). The Project includes requests for the following Entitlements: Site Plan and Design Review (DOR) 1745-18; Conditional Use Permit (CUP) 1074-18; Specific Plan (SP) 18-18; General Plan Amendment (GPA) 108-18; and, an Entitlement Agreement.

The Property, and much of the surrounding area, is a former landfill and has sat vacant since 1959. As a result, the Property, as well as the adjacent property requires significant environmental clean-up and is not suitable for most non-industrial development. KL Fenix has worked closely with the DTSC on a clean-up plan and is ready to invest millions of dollars to remediate and develop a property that has been a blight on the community for over 60 years and has no other legitimate options for development.

Over the last two years we have been working closely with staff to implement the project that the City Council approved on August 21, 2018 and have made great progress. We greatly appreciate all of staff's efforts, but there are still some items that are at issue which are discussed

EXHIBIT NO. 8





below. We will continue to work closely with staff but feel that it is time for some of these items to be decided by the policy makers. The purpose of this letter is to provide our comments on the Staff Report for the May 27, 2020 Planning Commission hearing, the proposed Conditions of Approval, and other Exhibits to the Staff Report.

# 1. Surrounding Uses, Zoning, and Land Use Designation

The Staff Report does not accurately describe all of the surrounding uses and zoning and general plan land use designations. The Staff Report states that the property to the south is Commercial General. However, more than half the property is zoned Light Industrial (the commercially zoned portion is on Main Street away from the proposed cargo container parking) and the immediately adjacent uses are parking lots and outdoor storage. The nearest non-industrial building is approximately 100 feet from the property line. Also, the churches and childcare related activities that are located on the light industrial zoned property do not appear to be permitted in that zone, even with a CUP. Additionally, the Staff Report fails to mention that half of the property immediately adjacent to the east is light industrial.

# 2. Project Reduction

Reducing the Project from 475 spaces to 298 spaces is unnecessary and unreasonable based on the existing surrounding uses. Currently, the adjacent uses are compatible with the proposed cargo container and truck parking uses. The "proposed residential development" has not submitted a complete application at this time and is purely hypothetical. The other proposed conditions are already unreasonably restrictive and go well beyond what the City Council approved in 2018. To further restrict the project for a hypothetical project that will likely never be developed is unreasonable and arbitrary.

We propose that COA #34 be revised so that the final number of truck and cargo container parking spaces be determined at the first Certificate of Occupancy. If at the time the first Certificate of Occupancy is issued building permits have been issue for a residential project on the "Rand Parcel", the Project will be reduced to 300 truck and cargo container parking spaces and the applicant will provide an additional buffer along the southern property line.

# 3. Permanent Use

KL Fenix proposes an initial term of 7 years from issuance of the last Certificate of Occupancy. At the end of the initial term the cargo container parking use will terminate if two of the Surrounding Parcels are developed with non-heavy industrial uses, otherwise the use becomes permanent. However, if two of the Surrounding Parcels are developed with non-heavy industrial



uses, the warehousing use will still remain permanent as it is an automatically permitted use under the existing land use and zoning designations.

The temporary nature of the use originally proposed was a result of the moratorium that was in effect at the time but has since expired. Additionally, the landfill clean up required by the DTSC is more extensive and significantly more expensive than originally anticipated.

As such, KL Fenix requires a more definitive path towards a permanent use that does not potentially subject it to years of uncertainty if the surrounding area does not develop. Furthermore, limiting the term of the use even if incompatible uses are not developed would prevent him from recovering those costs and make the project economically infeasible.

# 4. Storm Water

KL Fenix will continue to coordinate with the Los Angeles County Flood Control District regarding draining directly into the flood control channel. Following Planning Commission approval, the applicant will submit for the proper clearance from Flood Control and revise the site plan if necessary.

# 5. Access

The revised site plan submitted on April 23, 2020 as part of the Specific Plan resubmittal shows only one driveway on Main Street. While the site plan still shows two driveways on Figueroa St, KL Fenix will comply with MM-TRA-1 and coordinate with Caltrans to reconfigure the site plan to their satisfaction.

# 6. Parking & Traffic

KL Fenix has submitted a revised site plan and is awaiting comments from staff. We will continue to work with staff to demonstrate that the proposed operation will be safe and comply with all applicable regulations.

# 7. Fencing

KL Fenix will work with Flood Control to get the approvals necessary to construct the Project. If Flood Control grants the approvals necessary to construct the northern wall on the property line, KL will revise the site plan accordingly. However, if they are unable to reasonably acquire the necessary approvals, KL will construct the wall as shown on the current site plan. We request that COA #31 be revised accordingly.



KL Fenix submitted a color and materials board on May 26, 2020. They will continue to work with staff to ensure that the project is architecturally consistent pursuant to COA #28.

As previously discussed, KL Fenix does not agree with the reduced project proposed by staff or the additional 150 foot setback proposed by COA #34. We requested that it be revised as discussed above.

# 8. Specific Plan

Many of the Entitlement Agreement's terms and conditions and the Conditions of Approval are still points of disagreement between staff and KL Fenix. However, the applicant agrees to engage a professional planning firm to revise the specific plan and will comply with all applicable laws and regulations. We request that COA #60 & 61 be combined and revised accordingly.

# 9. Entitlement Agreement

Many the terms and conditions in the Entitlement Agreement ("Agreement") are extremely unreasonable and are not consistent with the Municipal Code, City Council's decision and direction in 2018, or the conditions imposed on any other similar use or contained within any other development agreement that we been able to access. For example, the 5.5 acre container yard located at 2315 E. Dominguez Street was similarly granted an exception to the Logistics Moratorium on August 1, 2018 and was approved pursuant to Resolution No. 19-165 on October 15, 2019 (after the moratorium expired), but has none of the onerous penalties and conditions placed on this project. In general, we request that the Agreement and Conditions of Approval be revised so that the Project is conditioned in a manner that is consistent with the Code, City Council's prior direction and other similar projects. The following is a non-exhaustive list of the terms and conditions that are at issue.

- a. **Fine Amount:** The Agreement imposes fines of \$5,000 per occurrence for an assortment of violations created in the Agreement. This is not consistent with the Municipal Code, the City Council's 2018 decision permitting fines "up to \$1,000", or the regulation of other similar projects (2315 E. Dominguez is not subject to any unusual fines and can commit up to 20 violations before any action is taken). We request that all fines be consistent with the amounts and processes identified in the Code.
- b. **Fine Prepayment:** The Agreement requires the prepayment of fines in the amount of \$100,000 and provides no process by which to cure or appeal the fines. This requirements is unreasonable and inconsistent with the



Municipal Code, similar projects or due process. We request that the process be consistent with the Municipal Code.

- c. Truck Routes: The Agreement creates multiple fines for using the City's lawful truck routes (Main Street and Torrance Boulevard) even though the site plan has been redesigned to prohibit access to these streets. Therefore, the potential for Project trucks to access these street is highly unlikely. We request that all truck route violations be enforced pursuant to the Municipal Code.
- d. **Trips per Day:** KL Fenix has never agreed to limiting truck trips to a maximum of 50 inbound and 50 outbound trips per day. This condition is inconsistent with the proposed 75 truck parking spaces and the MND's traffic study which assumed "In terms of average daily trips, the project would generate approximately 546 passenger vehicle trips, 72 2-axle truck trips, 165 3-axle truck trips, and 404 4-or-more axle truck trips." (KL Fenix MND, p. 62.) We request that this condition be deleted.
- e. **Logos:** The logo requirement creates a number of problem such as potential prohibiting delivery vehicles, service vehicles, and trucks that could be accessing the warehouse which has been acknowledged to potentially be an independent use. We request this condition be revised accordingly or deleted in its entirety.
- f. Video Surveillance Cameras (VSC): The multiple VSC conditions/penalties are duplicative and create the potential for multiple fines for a single instance and are onerous. We propose that the VSC conditions be combined into a single condition and that there is an opportunity to cure any violations. As previously discussed, we request that there be an opportunity to cure all violations.
- g. **Maintenance:** The Project's maintenance requirements should not be governed differently than all other projects in the City; there is no legitimate reason for this condition. We request this condition be eliminated.
- h. **DIF Payment:** In prior discussions with staff, it was agreed that payment of the CFD would be in accordance with the Municipal Code. Pursuant to § 11504 and consistent with our proposal to determine the final parking count at Certificate of Occupancy, we request that the DIF payments be made prior to issuance of the Certificate of Occupancy. The fee should be



calculated on the actual number of spaces approved and constructed. Furthermore, the DIF should only be applied to the number of truck space, not cargo container spaces, consistent with DIF ordinance.

- i. **CFD Annexation and Payment**: We agree that the Property will be annexed into the CFD prior to buildings permits per Ord. 19-009. However, we request that the Property be de-annexed if the use is terminated because it is not fair to pay a CFD for a use that is no longer permitted. Furthermore, if KL Fenix is prohibited from using a portion of the site as proposed by COA #16, the CFD obligation should be reduced accordingly.
- j. Assignment Clause: The Agreement currently contains an extremely restrictive assignment clause that allows the City to control to whom, and even if, the Developer can sell the Project. However, the Conditions of Approval and the Agreement run with the land so all terms and conditions would pass on to the assignee. While we would prefer that the Assignment Clause be deleted all together, we understand that the City has a legitimate interest in ensuring that the Project improvements, including public improvements and DTSC clean up, are completed by a financially viable company. As such, we propose that the assignment clause terminates once the Project is built and the landfill clean is complete. Upon assignment, Developer would be released of all duties and responsibilities under the Agreement because they would be assumed by the assignee.

# 10. Conditions of Approval

Many of the Conditions of Approval appear to be intended to discourage and make infeasible the development of the Project, as opposed to ensuring that the Project is compatible with the surrounding area. We respectfully request that we are able to work with staff to revise the Conditions before the Project goes before City Council to craft conditions that are reasonable, feasible, and effective, and consistent with other similar projects. Below is a non-exhaustive list of our comments on the proposed Conditions of Approval.

- a. **COA #15 & 16:** As discussed above, these conditions are not consistent with the proposed Project or the Project approved by the City Council in 2018. We request they be deleted, or revised to appropriately reflect the Project.
- b. **COA #17:** This condition is vague and unreasonable. It gives no explanation as to the "report" it requires, and it forces KL Fenix to go back for City Council approval for a third time and creates unnecessary delays. There is no reason for the



City Council to approve a ministerial report that the Building Official the qualified party to approve and has not been required of any other project. We request the condition be deleted.

- c. COA #18(c): The condition should be revised to read "Redesigning the Figueroa Street entrances per comments received from CalTrans."
- d. **COA** #18(d): This has been done and the condition should be deleted.
- e. COA #18(e), (f): As previously discussed, we request these conditions be deleted.
- f. **COA #19:** The Figueroa driveway will be designed and operated as coordinated with Caltrans. We request that his condition should be deleted or revised accordingly.
- g. **COA** #27: This is inconsistent with Res. No. 18-113 approved by City Council on August 21, 2018 in which staff only requested one artistic sculpture. We request this condition be revised accordingly.
- h. **COA** #30, 32, 33, and 34: The Project's fencing and walls are controlled by the Specific Plan and other plans approved by the City Council. Staff should not have discretion to change requirements and development standards after the Project is approved. We request that these conditions should be revised to require the fencing and walls be installed pursuant to the approved Specific Plan and Site Plan.
- i. **COA** #34: This condition should be deleted in its entirety.
- j. **COA #48, 49, and 50:** These conditions are not consistent with the proposed Project nor are they required of any other container yards recently approved by the City. We request these conditions be deleted in their entirety.
- k. **COA #51:** This condition is not consistent with the proposed site plan which has off-street parking adjacent to Main Street. We request it be deleted in its entirety.
- 1. COA #52: The Specific Plan governs the Project's signage. It is unduly burdensome and unnecessary to force a single building project to go through another discretionary process that will further delay the Project, cost more money, and subject them to additional unnecessary restrictions. KL Fenix has agreed to work with a planning firm to revise the Specific Plan so the standards will be consistent with the Code. We request that his condition be deleted and the signage controlled by the approved Specific Plan.



- m. **COA** #53: Requiring trucks that are two years old or newer is not consistent with the Ports' standards or other City standards and is unduly burdensome and unnecessary. We request that the second sentence be deleted and the condition read "All of Developer's trucks shall be in compliance with the Port of Los Angeles and Port of Long Beach air quality standards."
- n. **COA #59**: The terms and conditions of the Agreement are still at issue, and an Entitlement Agreement may never be finalized as it does not appear to be required by law nor has it been required of similar projects. We request that this condition be deleted.
- o. **COA** #60 & 61: The final Specific Plan will be prepared by a planning firm of KL Fenix's choosing and will comply with Government Code 65451 and any other applicable law. Developer does not agree to any other requirement. We request that all other requirements be deleted and the conditions revised accordingly.
- p. **COA** #83: Whether or not the Project requires CC&Rs should be at the Developer's sole discretion. If Developer determines, at its sole discretion, that the Project requires CC&Rs, they will be submitted to the City for review and approval shall not be unreasonably withheld. We request the condition be revised accordingly.

We respectfully request that you approve the Project and to be able to work with staff prior to the City Council hearing to incorporate and address our comments and concerns. Thank you for your consideration and the opportunity to present our comments.

Respectfully submitted,

**RUTAN & TUCKER, LLP** 

Jeffrey L. Farano, Jr.

JF

cc: Sunny Soltani, City Attorney (via email: ssultani@awattorneys.com)
Robert Lee, Assistant City Attorney (via email: rlee@awattorneys.com)

500 Carson Town Center, L.P 201 Wilshire Blvd, 2<sup>nd</sup> Floor Santa Monica, Ca 90401

May 26, 2020

Carson Planning Commission City of Carson 701 E. Carson Street Carson, CA 90745

Re: Pending Application for KL Fenix Corporation

Dear Planning Commission,

I am submitting this letter to encourage the Planning Commission to deny the KL Fenix application to operate a truck yard at 20601 S. Main Street.

In 2019, 500 Carson Town Center revamped itself from a former K-Mart to a brand-new shopping center that is now the home for three (3) large national retailers: Floor and Décor, Planet Fitness Gym, and John's Incredible Pizza. Sharing the same parking lot, we have close-knit neighbors like Wells Fargo, Starbucks and nearby, The International Printing Museum. Since the completion of our project, we observe ongoing-positive changes to the area and its proximity as our shopping center continues to attract happy retail consumers and family friendly crowds. It is therefore, Carson would be better served supporting development that leads to stronger residential and commercial opportunities. The KL Fenix project does the opposite by bringing heavy traffic and pollution to our neighborhood. We strongly believe our neighborhood should be protected from the intrusion of heavy industrial uses and port-related trucking intensive businesses.

As the approval of this project would be a step in the wrong direction to the City of Carson, I strongly urge the Carson Planning Commission to protect the community by **not approving** the KL Fenix Cargo Container Project.

Sincerely,

500 Carson Town Center, L.P By:

SHAOUL LEVY

Name: Shaoul Levy Title: Member.

EXHIBIT NO. 9

LAND USE ENTITLEMENTS IN LITIGATION IN MUNICIPAL ADVOCACY

12100 WILSHIRE BOULEVARD, SUITE 1600 LOS ANGELES, CA 90025

E-MAIL: Amy@AGD-LandUse.com WEB: www.AGD-LandUse.com

May 27, 2020

# VIA E-MAIL

AMY E. FREILICH

DIRECT DIAL: (310) 254-2260

City Planning Commission City of Carson 701 E. Carson Street Carson, CA 90745

Planning@carson.ca.us

Re: <u>City Planning Commission May 27, 2020 Agenda Item No. 5.A) Site Plan and</u>

<u>Design Review (DOR) 1745-18, Conditional Use Permit (CUP) 1074-18, Specific Plan (SP) 18-18, General Plan Amendment (GPA) 108-18 and Entitlement</u>

Agreement (DA) 24-18

Honorable City Planning Commissioners:

I am writing on behalf of Carson El Camino LLC, which owns the property labeled in the staff report as site 5 and a portion of site 4, both located immediately to the south of the KL Fenix project site, to oppose this project. (See attached site plan from the staff report.)

Sites 4 and 5 have as current uses that include five churches with associated childcare programs and other preschool through 12<sup>th</sup> grade student activities, a dance school, an after school program, an adult day care, and other commercial uses. On Site 5, an application has been filed for construction of up to 356 units of housing, consistent with the City's Urban Residential designation. (See site plan and elevations for that project attached.)

My client and surrounding neighbors do want to see development on the KL Fenix site, but this intensive heavy industrial trucking use is a shocking and absolutely wrong choice for this neighborhood.

The proposed project is incompatible with existing and proposed future uses in the neighborhood. It does not follow the law, does not comply with the general plan requirements for heavy industrial uses, will create a nuisance and will bring an end to the ongoing redevelopment of the Main Street corridor with housing and commercial development. The staff report clearly reflects these concerns.

Although we believe the Planning Commission should for all of these reasons deny the project outright, should you decide to further evaluate this project, an EIR must be prepared that fully and correctly evaluates its substantial impacts on the neighborhood and the City.

Tel: (310) 209-8800

Fax: (310) 209-8801

City Planning Commission November 2, 2016 Page 2

# I. Nuisance.

This project creates a nuisance for Sites 4 and 5 that no walls will keep out. The project will bring up to 400 cargo laden trucks per day (per the Air Quality analysis attached to the MND) to idle on the site with loading activities taking place until 2 a.m. 5 days a week and with additional hours on Saturday. These uses, including the noise, air quality and traffic impacts they bring, are not compatible with and will be dangerous to the surrounding residential and school uses, including the Vista Del Loma Mobile Estates and the 300-unit Evolve Apartments (under construction). It will also have enormous impacts on future development of housing on our project site.

# II. Inconsistent with General Plan and Laws.

Under the Carson General Plan, the Heavy Industrial designation is intended to provide for uses that "may have nuisance or hazardous characteristics, which for reasons of health, safety, environmental effects, or general welfare, are best segregated from other uses." Rather than being segregated from other uses, this heavy industrial truck yard project is plopped down as an island in the midst of a variety of incompatible uses. In fact, the proposed project is classic spot zoning which is prohibited by law. It creates an "island" in the middle of a larger area of other uses. (Foothill Communities Coalition v County of Orange (2014) 222 CA4th 1302). As noted in the staff report, the nearest Heavy Industrial sites are miles away from this site and are clustered with other heavy industrial uses. The project also raises equal protection and uniformity issues by creating a special class of heavy industrial use.

Also, the specific plan is inconsistent with the proposed general plan amendment. The applicant has rushed this project through, and the specific plan does not even identify the correct general plan designation, make accurate general plan findings or restrict uses on the site to those addressed in the Mitigated Negative Declaration.

The Specific Plan also allows a variety of uses by right that are wholly incompatible with the neighboring uses, including petroleum and natural gas storage.

Finally, the Specific Plan itself requires findings which are clearly contrary to the record and cannot be made by this Commission, including a finding that in light of the project as a whole, including any mitigation measures imposed, the project is compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety. In light of the record before you, this finding cannot be made.

# III. Granting Temporary Heavy Industrial Use of the Project Site Is Still Inconsistent with the General Plan and This Approach Cannot Be Successfully Maintained

The staff report indicates that the heavy industrial uses are not consistent with the General Plan or surrounding uses, but can be made compatible for a temporary period of time. Something non-compatible in the long term cannot be made compatible in the short term. The concept is that

Carson City Planning Commission May 27, 2020 Page 3

the project uses will not be automatically renewed if any housing is developed on the adjoining sites. But the approach proposed by staff to address these issues is doomed to fail. It does not preclude continuing use of the site for heavy industrial use. And if the City seeks to terminate the use, it will face years of litigation. The enforcement mechanisms proposed are simply not sufficient to ensure compliance with the requirements the City seeks to impose.

We have tested the market and bringing heavy industrial uses onto the project site will reduce or remove the availability of financing for future residential development in the area and will result in redevelopment of the corridor with heavy industrial rather than residential uses, which will not only affect our project and surrounding uses, but will also affect the ability of the City to comply with RHNA requirements. This makes the short-term nature of the initial authorization unlikely, as the project will inevitably deter the types of uses the City wants to see in the area, and a short term heavy industrial designation will make a long term heavy industrial use in the area inevitable.

# IV. The MND is Inadequate and An EIR Must be Prepared for this Project

The Mitigated Negative Declaration does not adequately address the Project. A full EIR is required.

# A. The MND Does Not Analyze Specific Plan Uses and Does Not Contain an Accurate or Stable Project Description.

The MND fails to evaluate the specific plan, focusing on only one of the permitted uses among the many uses authorized by the Specific Plan, including oil and gas storage uses and contains an inadequate project description. The project is variously described as a cargo container parking facility, a warehouse for transfer of goods and a logistics site but there is no consistency in the description or in the analysis. The MND fails among other things to properly analyze air quality, traffic, noise and construction impacts and fails to properly describe the impacts of each on surrounding sensitive uses.

# **B.** Noise Analysis is Inadequate

Actual construction techniques to develop a building on the landfill site are not analyzed. For example, pile construction is not analyzed even though pile construction is required by the geotechnical report and was found in other city EIRs to be a significant and unavoidable impact. Construction noise impact analysis focuses on the easterly boundary of the site and does not analyze impacts at the southerly boundary. For operations, the noise analysis uses Leq, rather than the appropriate CNEL standard, which minimizes the real impacts on the community because it does not catch noise impacts from trucks idling and the constant banging from the connecting and disconnecting of trailers on the site. This is especially magnified during evening and nighttime hours in a residential neighborhood. The use Leq fails to look at these impacts of the project.

Carson City Planning Commission May 27, 2020 Page 4

# C. Air Quality Analysis is Inadequate.

The project's analysis of air quality impacts also fails due to lack of an adequate project description. Although the MND identifies a total 546 average daily trips from passenger vehicles and 641 average daily trips from heavy duty trucks are identified in the AQ report only 24 trucks idling at the warehouse for loading per day were assumed in the CEQA analysis, vastly underestimating the impacts of trucks idling on site was not taken into account in the health risk assessment despite the presence of existing sensitive uses, including school children, immediately south of the project site. There is no operational Toxic Air Contaminant analysis provided despite the presence and idling of up to 641 trucks daily on the site.

# D. Land Use Analysis is Inadequate

Based on the discussion above, the conclusion of consistency with the General Plan Land Use Element made in the land use analysis is incorrect. The Heavy Industrial Land Use designation is not separated from other uses as is required by the General Plan and is inconsistent with overall General Plan requirements.

# E. Mitigations Proposed Are Woefully Insufficient.

The mitigations proposed are wholly inadequate. For example, the noise mitigation proposed, to stop back up signaling after a certain hour, likely violates OSHA requirements and does not address the enormity of the problem presented by the project.

# F. No Cumulative Impacts Analysis.

The MND fails to analyze the cumulative impacts of the project, identifying the housing project on my client's property as speculative even though there is an application on file for the proposed residential uses and omitting any cumulative impacts analysis.

For all of these reasons, we urge you not to adopt the requested actions this evening. Neither a truck and container storage yard or any other industrial land use should be considered for this property which is surrounded by residential and church and school uses.

Very truly yours,

Amy E. Freilich

# Planning Commission Staff Report

# KL Fenix Project

Figure (c) Surrounding parcels and area



# CHAPTER 3: LAND USE ILLUSTRATIVE

The development standards and guidelines contained within the Specific Plan permit multiple dwelling units, mixed-use and commercial. To gain an understanding of what could be developed under the Specific Plan, the following illustrative presents conceptual drawings of building footprints and heights for a residential, market rate apartment project. It is important to note that the illustrative site and building height plans (Figure 3-6) are conceptual and that a final plan may vary provided it complies with the regulations proposed herein, as described in Chapter 2.





Figure 3-6 Illustrative Site Plan and Building Heights

TORRANCE/MAIN SPECIFIC PLAN 18









Figure 3-7 Representative Elevation Types



# 255-B Torrance Blvd. Carson, CA 90745 (310) 515-2217

May 21, 2020

Dear Planning Commission,

On behalf of Faith in Christ Church organization and our members. I myself have been a Carson resident for 29 years. We would like to express our strong opposition to allow truck parking, truck loading and container storage.

The proposed facility would be 100 feet from our Church and we estimate 10 feet from where our members park their vehicles. I am shocked and somewhat concerned that as some of the people that would be most affected by this proposal, we have never been notified by anyone from the City. We have recently heard of this by word of mouth from our neighbors.

There is a great concern for the environment and conservation of our community. While we are an organization with members our issues are not special interests. They affect every Carson resident and people beyond our city. Clean air is fundamental to our City's physical well-being, economic vibrancy and quality of life.

Another issue that also does not seem to be considered is the noise. Our small Church area is so close to the proposed site where noise travels freely. The noise would be unacceptable for our church community.

Finally, we are especially concerned that all this is being proposed during the most crucial time we have ever experience due to the COV19 outbreak, what is the environmental impact of this proposed area to our citizen of Carson?

We ask you to stand strong and we object to additional trucking as there is already too much in our neighborhood.

Blessings,

Pastor Avelina V. Kuwaye
On behalf of all members

	1	وونة	٩.
i.	1	1	'n
1	-	-	e.
	×.,		_

		PETITION TO CA	PETITION TO CARSON PLANNING COMMISSION	
Petition S	Petition Summary:	Request to deny the pro	Request to deny the proposed KL Fenix Container Parking Specific Plan	
Action Pe	Action Petitioned For:	We, the undersigned, are proposed KL Fenix trucki trucks on the 14.3-acre le community. The Carson truck intensive uses in are on residential and common businesses, commercial logistics and port related and the well-being of the yard or truck terminal is not harm our community.	We, the undersigned, are concerned citizens who urge the Planning Commission to act to deny the proposed KL Fenix trucking facility application. The parking and storage of 475 cargo containers and trucks on the 14.3-acre located at 20601 S. Main Street will not be compatible with the surrounding community. The Carson General Plan – Land Use Element states a policy to locate heavy industry and truck intensive uses in areas where the location and circulation pattern will provide minimal impacts on residential and commercial uses. Our community is improving so much with the addition of new businesses, commercial activities and residential developments. While Carson recognizes the value of logistics and port related trucking facilities, there must be a balance of the interests of such businesses and the well-being of the community. The request to allow the KL Fenix property to be used as a truck yard or truck terminal is inconsistent with past and current community goals and objectives. Please do not harm our community by allowing so many trucks into our neighborhood.	to act to deny the Irgo containers and th the surrounding e heavy industry and de minimal impacts he addition of new cognizes the value of sts of such businesses to be used as a truck objectives. Please do
Date   Pr	Printed Name	Signature	Address	
5	WITHBINE Kecho,	Charman Keoko	142 Jessicaln, Corna 928	
12 Q	Rock Later Mingali	Menderal Olderal.	1 1381 (entra) ave garden grave CA 92844	
1.2	Tremeto Vinia	House Made	1627 HOYES AVE LOWING	
2)	Comes Cross	All Jours	27 Heyes Ave Lan	0
37	This desses	Cler 15	Torban 30504	so truffic
<u> </u> _4-7				

DELIVER THIS PETITION TO CARSON CITY HALL OR EMAIL TO MBATHIA@CARSON.CA.US NO LATER THAN 3:00 P.M., MAY 27, 2020. THE PLANNING COMMISSION WILL CONDUCT A PUBLIC HEARING ON MAY 27, 2020.

<sup>1</sup>72

	PETITION TO CA	PETITION TO CARSON PLANNING COMMISSION	IMISSION
Petition Summary:	Request to deny the pro	Request to deny the proposed KL Fenix Container Parking Specific Plan	Specific Plan
Action Petitioned For:	We, the undersigned, are proposed KL Fenix trucki trucks on the 14.3-acre le community. The Carson truck intensive uses in are on residential and common businesses, commercial logistics and port related and the well-being of the yard or truck terminal is not harm our community.	We, the undersigned, are concerned citizens who urge the Planning Commiss proposed KL Fenix trucking facility application. The parking and storage of 45 trucks on the 14.3-acre located at 20601 S. Main Street will not be compatible community. The Carson General Plan – Land Use Element states a policy to learner intensive uses in areas where the location and circulation pattern will poor residential and commercial uses. Our community is improving so much worsinesses, commercial activities and residential developments. While Carso logistics and port related trucking facilities, there must be a balance of the in and the well-being of the community. The request to allow the KL Fenix propyard or truck terminal is inconsistent with past and current community goals not harm our community by allowing so many trucks into our neighborhood.	We, the undersigned, are concerned citizens who urge the Planning Commission to act to deny the proposed KL Fenix trucking facility application. The parking and storage of 475 cargo containers and trucks on the 14.3-acre located at 20601 S. Main Street will not be compatible with the surrounding community. The Carson General Plan – Land Use Element states a policy to locate heavy industry and truck intensive uses in areas where the location and circulation pattern will provide minimal impacts on residential and commercial uses. Our community is improving so much with the addition of new businesses, commercial activities and residential developments. While Carson recognizes the value of logistics and port related trucking facilities, there must be a balance of the interests of such businesses and the well-being of the community. The request to allow the KL Fenix property to be used as a truck yard or truck terminal is inconsistent with past and current community goals and objectives. Please do not harm our community by allowing so many trucks into our neighborhood.
Date   Printed Name	Signature	Address	Comment , , , ,
5/4/20 Geralding Brigoli	Inselfin Dige	25718 Gray Aw Cerson	CA. POTS - go to Water than
Shire Onvid Bromfield 1	Constant Super	27714 Gence AVE CANOT.	
5/17/20 Dave Samfield	Tan Mandiell	22716 Gave Are cason	
1	C K-OV	22718 Grace Ave, Carson POTK	as elsewhere, different city
5/17/26 Deben Drumfreld	CHALL .	22718 Grace Ave Carson 90745	7
Stalk Lemon Thaci	- Lawrence good on the	120 0.22300 St. ATO Wason 90445	relocate into water Area.
Starbo Jestrich Brindfull	J. M. M. S. W. Wooded	120 N 237454 HOGEN	Petalists into worth
1			

DELIVER THIS PETITION TO CARSON CITY HALL OR EMAIL TO MBATHIA@CARSON.CA.US NO LATER THAN 3:00 P.M., MAY 27, 2020. THE PLANNING COMMISSION WILL CONDUCT A PUBLIC HEARING ON MAY 27, 2020.

#### **MEMORANDUM**

To: Manraj Bhatia, City of Carson

From: Collin Ramsey, Dudek

**Subject:** KL Fenix Cargo Container Parking Specific Plan – Response to Comment Letter Authored By

Armbruster Goldsmith & Delvac LLP

**Date:** June 23, 2020

Dudek has reviewed the comment letter authored by Amy E. Freilich at Armbruster Goldsmith & Delvac LLP dated May 27, 2020 and have the following responses to the comments pertaining specifically to the Initial Study/Mitigated Negative Declaration (IS/MND).

#### Comment

A. The MND Does Not Analyze Specific Plan Uses and Does Not Contain an Accurate or Stable Project Description.

The MND fails to evaluate the specific plan, focusing on only one of the permitted uses among the many uses authorized by the Specific Plan, including oil and gas storage uses and contains an inadequate project description. The project is variously described as a cargo container parking facility, a warehouse for transfer of goods and a logistics site but there is no consistency in the description or in the analysis. The MND fails among other things to properly analyze air quality, traffic, noise and construction impacts and fails to properly describe the impacts of each on surrounding sensitive uses.

# Response

The project description provided in Section 2 of the IS/MND is based on the project information provided to the City of Carson by the Project applicant. The project description is clear in identifying the proposed project characteristics and clearly defines the project as consisting of an approximately 53,550-square-foot warehouse/office building (comprised of 39,500 square feet of warehouse space and 14,050 square feet of office use), 115 parking spaces for passenger vehicles, 400 spaces for cargo containers, 75 spaces for truck parking, 6 loading docks, and designated exterior and interior areas for the unloading and loading of goods between containers. This is the same project description that was referenced by technical specialists while conducting the air quality, greenhouse gas emissions, noise, and traffic studies for the Project.

Given that the IS/MND presents a Project-level analysis (as opposed to a Program-level evaluation), and because the Project applicant did not propose oil or gas storage in their development applications, these use/activities were not analyzed as part of the Project. Assuming that the proposed on-site uses/activities are defined (as was done in this case), the IS/MND need not evaluate each and every permissible use/activity allowed under the Specific Plan. This is consistent with the City's analysis of other projects that may fall within the boundaries of a Specific Plan.

Subject: KL Fenix Cargo Container Parking Specific Plan – Response to Comment Letter Authored By Armbruster Goldsmith & Delvac LLP

#### Comment

# B. Noise Analysis is Inadequate

Actual construction techniques to develop a building on the landfill site are not analyzed. For example, pile construction is not analyzed even though pile construction is required by the geotechnical report and was found in other city EIRs to be a significant and unavoidable impact. Construction noise impact analysis focuses on the easterly boundary of the site and does not analyze impacts at the southerly boundary. For operations, the noise analysis uses Leq, rather than the appropriate CNEL standard, which minimizes the real impacts on the community because it does not catch noise impacts from trucks idling and the constant banging from the connecting and disconnecting of trailers on the site. This is especially magnified during evening and nighttime hours in a residential neighborhood. The use Leq fails to look at these impacts of the project.

# Response

Actual construction techniques (i.e., project construction phases such as site preparation, grading, building construction, etc.) were assessed, using the anticipated type and number of construction equipment – please see Section 3.13 (Noise), Tables 9 and 10. With regard to the specific comment concerning pile driving, the Geotechnical Study prepared for the Project site and appended to the IS/MND stated, "drilled pile *can* [emphasis added] be used for the foundation system." However, it did not state or infer that pile driving was the only means of construction, and the Project applicant has never indicated that pile driving is the selected construction method. Thus, pile driving was not assumed in the noise analysis.

In addition, despite what the comment infers, land uses found both east and south of the project site were taken into consideration in the noise analysis. This is clearly evident in Mitigation Measure (MM) NOI-5, which requires the Project applicant to install temporary construction sound barriers along the southerly Project boundary in addition to the easterly boundary.

The  $L_{eq}$  noise metric was used to model and evaluate Project-related noise impacts because the City's Noise Ordinance and associated noise standards use  $L_{eq}$  and not CNEL (Community Noise Equivalent Level, a 24-hour average weighted noise metric). CNEL is used in the City's General Plan and is used in that particular document to illustrate land use compatibility pertaining to estimated noise levels. However, when determining whether on-site noises from a Project would or would not be consistent with the City's Noise Ordinance,  $L_{eq}$  is the more appropriate metric in order to disclose an apples-to-apples comparison.

#### Comment

#### C. Air Quality Analysis is Inadequate

The project's analysis of air quality impacts also fails due to lack of an adequate project description. Although the MND identifies a total 546 average daily trips from passenger vehicles and 641 average daily trips from heavy duty trucks are identified in the AQ report only 24 trucks idling at the warehouse for loading per day were assumed in the CEQA analysis, vastly underestimating the impacts of trucks idling on site was not taken into account in the health risk assessment despite the presence of existing sensitive uses,



Subject: KL Fenix Cargo Container Parking Specific Plan – Response to Comment Letter Authored By Armbruster Goldsmith & Delvac LLP

including school children, immediately south of the project site. There is no operational Toxic Air Contaminant analysis provided despite the presence and idling of up to 641 trucks daily on the site.

#### Response

As previously discussed above, the project description provided in the IS/MND is based on the project information provided to the City of Carson by the Project applicant. The project description is clear in identifying the proposed project characteristics and clearly defines the project. This is the same project description that was referenced by technical specialists while conducting the technical studies – including the air quality analysis -- for the Project.

Given that the City is conditioning the Project applicant to reduce the number of on-site truck stalls that can be used at any given time, the air quality analysis likely overestimates operational air emissions, as reduction in the number of on-site truck spaces would result in a proportional reduction in on-site operational intensity and Project-related trips, all of which would result in a similar reduction in tailpipe air emissions (e.g., NO<sub>x</sub>).

Only 6 loading dock doors will be provided on-site, and the warehouse building will not operate 24 hours, 7 days a week. Thus, based on experience with other industrial/warehouse projects that are not fulfillment or other similar types of high-intensity logistics operations, assuming 4 truck turns per dock per day is reasonable.

Truck idling, although limited, was accounted for in the air quality analysis. As we understand it, the trucks would enter the Project site, find their assigned space or go to a free loading dock, and then turnoff their engines. In addition, idling is governed by California Air Resources Board (CARB) rules that limit the amount of time that a truck can be left to continuously idle.

The commenter is incorrect to state that "no operational Toxic Air Contaminant analysis provided," as the Health Risk Assessment (HRA) was prepared and provided in Appendix C and summarized in Section 2.4.2.3 of the Draft IS/MND. For the operational HRA (as well as the mass emission estimates), all trucks were assumed to idle a maximum of 5 minutes each at the entrance gate and the exit gate; for a total of 10 minutes at the gates. For a small portion of trucks accessing the on-site warehouse, an additional 5 minutes of idling time was assumed to occur at the loading docks. To estimate the potential additional idling at the loading docks, it was assumed that one turn would occur every three hours at each of the six loading docks, resulting in a total of 24 trucks idling at the warehouse per day. Project truck idling would be limited to 5 minutes in accordance with CARB's adopted Airborne Toxic Control Measure.

The operational HRA included all air quality sensitive receptors that would have the potential for long-term exposure. No short term, acute relative exposure values are established and regulated for diesel particulate matter, which is the toxic air contaminant of concern; thus, the focus of the operational HRA is on long-term exposure. The toxic air contaminant exposure period was assumed to be from third trimester to 30 years for all receptor locations, which is the appropriate conservative approach to this analysis. The Project is not anticipated to operate on Sundays; however, the operational HRA assumed 365-days per year operation, so the results of the analysis overestimate impacts and are conservative.

As shown in Table 2.5-6 of the Draft IS/MND, Project operational activities would result in a Residential Maximum Individual Cancer Risk of 4.29 in 1 million, which would be less than the significance threshold of 10 in 1 million. Project operation would also result in a Residential Chronic Hazard Index of 0.001, which is below the 1.0 significance threshold.



Subject: KL Fenix Cargo Container Parking Specific Plan – Response to Comment Letter Authored By Armbruster Goldsmith & Delvac LLP

Multiplying the maximum estimated 70-year cancer risk by the Project population gives a cancer burden of 0.057, which is less than the SCAQMD cancer burden threshold of 0.5. Therefore, the impacts with respect to both potential cancer burden and TAC health risk due to Project operations would be less than significant.

#### Comment

D. Land Use Analysis is Inadequate

Based on the discussion above, the conclusion of consistency with the General Plan Land Use Element made in the land use analysis is incorrect. The Heavy Industrial Land Use designation is not separated from other uses as is required by the General Plan and is inconsistent with overall General Plan requirements.

#### Response

The majority of Project-related truck traffic would both exit and enter the adjacent I-110 without having to traverse past residential or other land uses. The City has designated truck routes where vehicles in excess of 3 tons may travel. The purpose of regulating truck routes is to provide access for large trucks on streets designed to accommodate them and to protect residential streets from unwanted truck traffic. Del Amo Street, Main Street, Figueroa Boulevard, and Torrance Boulevard, which surround the project site, are designated truck routes (City of Carson 2019). The project would traverse the adjacent streets, which is the intention of the City in an effort to minimize truck traffic effects on the surrounding non-industrial uses.

Approval of the project would require Site Plan and Design Review to ensure the project does not conflict with applicable zoning and other regulations in place to ensure compatibility between surrounding land uses. Compliance with applicable development standards in the City's Zoning Ordinance would help ensure consistency with the existing character of the surrounding area.

# Comment

E. Mitigations Proposed Are Woefully Insufficient

The mitigations proposed are wholly inadequate. For example, the noise mitigation proposed, to stop back up signaling after a certain hour, likely violates OSHA requirements and does not address the enormity of the problem presented by the project.

#### Response

Although a blanket statement is made stating that IS/MND's mitigation measures are inadequate, the only example provide is for a requirement that is not even a mitigation measure identified in the IS/MND, but instead a condition of approvals included in the Staff Report.



Subject: KL Fenix Cargo Container Parking Specific Plan – Response to Comment Letter Authored By Armbruster Goldsmith & Delvac LLP

#### Comment

F. No Cumulative Impacts Analysis.

The MND fails to analyze the cumulative impacts of the project, identifying the housing project on my client's property as speculative even though there is an application on file for the proposed residential uses and omitting any cumulative impacts analysis.

#### Response

This comment misrepresents what is stated in the IS/MND. The IS/MND never states that any cumulative/related project is not analyzed or taken into consideration. Instead, when evaluating cumulative localized impacts, the IS/MND states that, "Schedules for potential future projects near the project area are currently unknown; thus, potential impacts associated with two or more simultaneous projects would be considered speculative." The CEQA Guidelines find that if a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact (14 CCR 15145). As of this date, the development application for the nearby residential project referred to in this comment has been placed on hold until that applicant coordinates further with the Department of Toxic Substances Control. As such, the construction schedule for this neighboring project is currently unknown and presently highly speculative.

# Comment

For all of these reasons, we urge you not to adopt the requested actions this evening. Neither a truck and container storage yard or any other industrial land use should be considered for this property which is surrounded by residential and church and school uses.

# Response

Refer to response to comments above regarding land use compatibility.

