


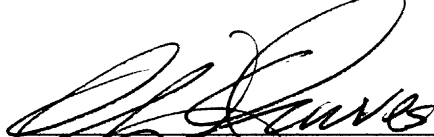


City of Carson Report to Mayor and City Council

June 7, 2011
New Business Consent

SUBJECT: CONSIDER APPROVAL OF SETTLEMENT AGREEMENT FOR FACILITY CLOSURE BETWEEN THE CITY OF CARSON AND TST, INC. CONCERNING PROPERTY LOCATED AT 2020 AND 2023 E. 220TH STREET IN THE CITY OF CARSON


Submitted by Clifford W. Graves
Economic Development General Manager


Approved by Clifford W. Graves
Interim City Manager

I. SUMMARY

TST, Inc. (TST) has conducted industrial ferrous-and non-ferrous metals trading, processing and recycling operations at the property located at 2020 and 2023 E. 220th Street (Exhibit No. 1) since approximately 1966. Such uses are no longer authorized following the amendment to the land-use designation in the city's General Plan in 1990 and Zoning Ordinance on January 11, 1991. As such, the city and TST have negotiated the attached Settlement Agreement (Exhibit No. 2) outlining the schedule for the completion of the non-conforming uses and demolition of non-conforming structures on the property and resolving any claim that the uses and structures should be subject to a longer amortization period.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the Settlement Agreement for Facility Closure Concerning Property Located at 2020 and 2023 E. 220th Street.
2. AUTHORIZE the Mayor to execute the Settlement Agreement for Facility Closure Concerning Property Located at 2020 and 2023 E. 220th Street, following approval as to form by the City Attorney.

III. ALTERNATIVES

1. REJECT the proposed Settlement for Facility Closure Concerning Property Located at 2020 and 2023 E. 220th Street and proceed with the administrative process under the Planning Commission to enforce the termination of the non-conforming use and structures.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

TST owns the property located at 2020 and 2023 E. 220th Street, in the city of Carson, where it conducts its industrial ferrous-and non-ferrous metals trading,

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processing and recycling operations. Since its inception in 1966, the operations were initially authorized under the Los Angeles County's M-4 zone, which the City adopted upon annexation of the subject property and ultimately changed to be within the City's MH (Manufacturing Heavy) zone. Thereafter, following the amendment to the land use designation in the City's General Plan in 1990 and Zoning Ordinance on January 11, 1991, the City changed the zoning designation of the subject property and surrounding properties to ML (Manufacturing Light).

As a result of the change in land use designation and zone for the subject property in 1991, the operations and structures, including the scale pit, baler pit, shredder building, administrative offices and all sheds, facilities and equipment used in the operations became legal non-conforming uses, subject to the amortization provisions under Carson Municipal Code Section 9182.22. In applying the provisions of Section 9182.22, the longest timeline applicable to the use or structure applies to ascertain the date by which the non-conforming operations on the property must cease and structures removed or demolished.

TST, however, has disagreed with the City concerning the appropriate application of the timeline under Section 9182.22 to the structures and operations on the subject property. The proposed Settlement Agreement provided with this report resolves and fully settles such disagreements through a detailed schedule for the termination of the uses and demolition of the structures.

Analysis

The Settlement Agreement resolves the need to for the Planning Division and Planning Commission to proceed with further enforcement proceedings to compel TST to terminate its non-conforming uses and demolish the non-conforming structures on the subject property. This action would save staff resources and the potential risk and costs of litigation between the city and TST regarding the appropriate amortization period to be applied to the uses and structures on the property.

The proposed Settlement Agreement provides the following key terms:

1. Cease Operations Early, Modify Some Structures and Apply for Change of Use. TST may opt to cease all metal recycling and related operations by July 1, 2015, in which case, it may continue to use some of the buildings and structures on the site following termination of the use, subject to the following modifications per the then current version of the City's General Plan and Zoning Code:

- A. Renovate the office building façade commensurate with surrounding properties.

B. Install landscape along 220th Street commensurate with surrounding properties.

C. Modify the warehouse structure fronting 220th Street to remove loading doors facing the street; and install façade improvements at the front elevation of the building commensurate with surrounding properties.

D. Modify the shredder building to remove the section where the roof was raised and screen the entry portal so as not to be visible from the 405 Freeway.

2. Operate Longer, Demolish All Structures and Apply for Approvals for New Development and Use. As an alternative to the option described in paragraph 1 above, TST may opt to continue to operate the current business for 2 more years, or until July 1, 2017, in which case, TST must demolish all structures on the site by July 1, 2018, and apply for approval to develop the property in a manner and for a use consistent with the then current version of the city’s General Plan and Zoning Code.

3. Right of Way Dedication. By July 1, 2015, TST will dedicate to the city the portion of the property encompassing approximately 20 feet of the entire frontage of the property along 220th Street so as to align the front of the subject property with the property immediately to the west. This completes a dedication that would normally be required as a condition of development to improve the safety, traffic circulation and aesthetics on 220th Street. Unless the parties agree to an earlier time, the city will not commence any improvements within the dedication area before the time required for the demolition (as described in paragraph 3 above).

4. Waiver of Claims. TST waives any claim against the City based on its allegation that a longer amortization period should apply to its use or structures or any action related to the understandings under the Settlement Agreement.

V. FISCAL IMPACT

None

VI. EXHIBITS

1. Location Map. (pg. 5)
2. Settlement Agreement for Facility Closure Concerning Property Located at 2020 and 2023 E. 220 Street. (pgs. 6-11)

Prepared by: Sheri Repp Loadsman, Planning Officer
Fred Galante, Assistant City Attorney

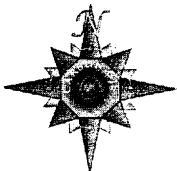
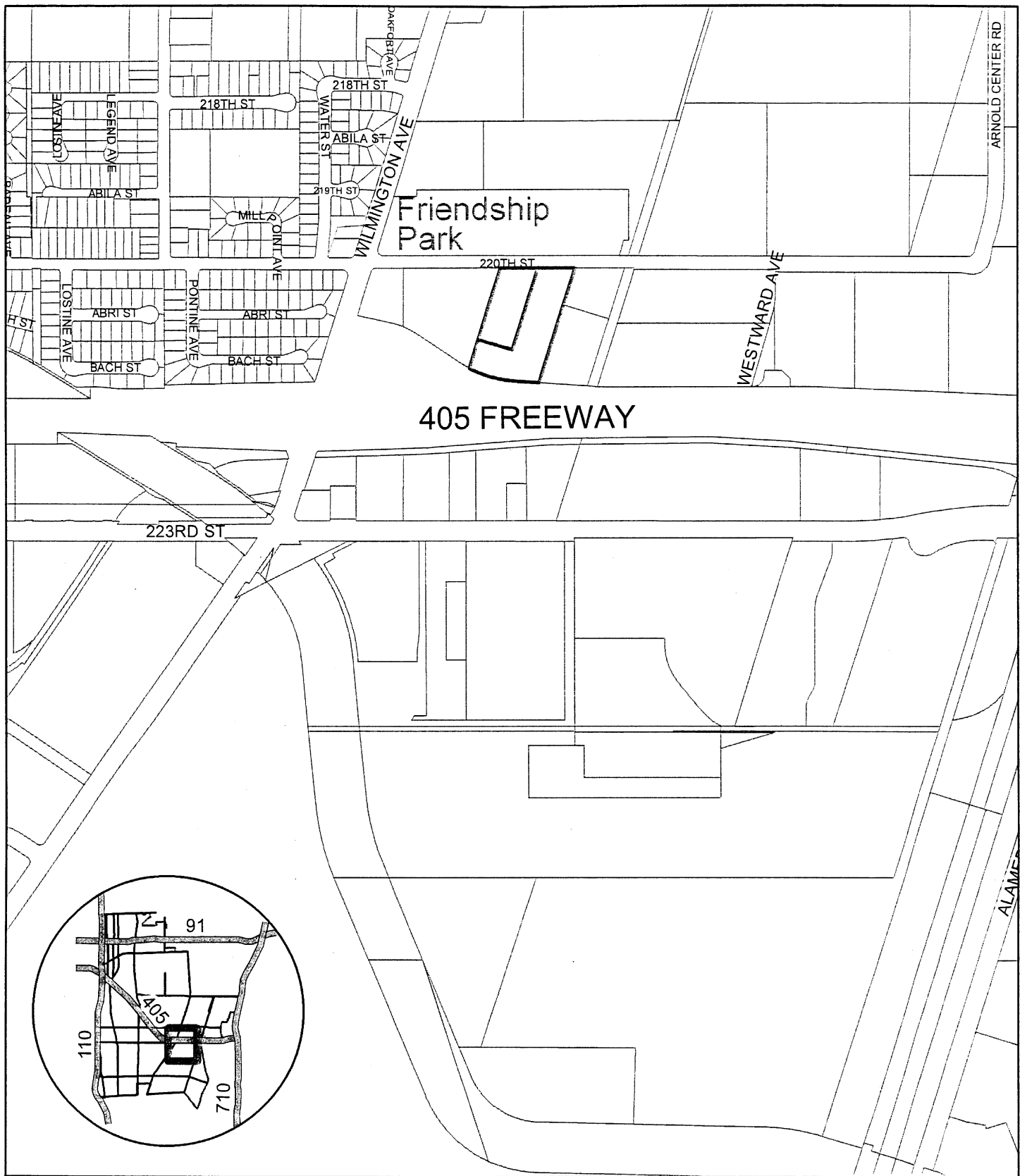
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Reviewed by:

City Clerk	<u>City Treasurer</u>
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

Action taken by Redevelopment Agency

Date _____ Action _____



Location Map
 TST Metals
 2020-2032 220th St

EXHIBIT NO. 1



SETTLEMENT AGREEMENT FOR FACILITY CLOSURE
City of Carson and TST, Inc.
2020 and 2023 E. 220th Street, Carson CA

THIS SETTLEMENT AGREEMENT FOR FACILITY CLOSURE (“Agreement”) is made as of this ___ day of May, 2010 (“Effective Date”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and TST, Inc., a California corporation, Ronald S. Stein Family LLC, a California limited liability company, and William D. Levine Family Partnership, L.P., a California limited partnership, and Robert A. Stein Living Trust dated 2/17/89, (collectively, “TST”).

RECITALS

A. TST owns that certain real property located at 2020 and 2023 E. 220 Street, in the City of Carson, California (APN 7316027015 and 7316027016) (“Property”), as identified in Exhibit “A” attached hereto, where it conducts its industrial ferrous and non-ferrous metals trading, processing and recycling operations (“Operations”).

B. Since its inception in 1966, the Operations at the Property were initially authorized under the Los Angeles County’s M-4 Zone, which the City adopted upon annexation of the Property and ultimately changed to be within the City’s MH (Manufacturing Heavy) Zone. Thereafter, following the amendment to the land use designation in the City’s General Plan in 1990 and Zoning Ordinance on January 11, 1991, the City changed the zoning designation of the Property and surrounding properties to ML (Manufacturing Light).

C. As a result of the change in land-use designation and zone for the Property in 1991, the Operations and structures, including but not limited to the scale pit, baler pit, shredder building, administrative offices and all sheds, facilities and equipment used in the Operations (collectively, “Structures”), as identified in Exhibit “B” attached hereto, which thereon became legal non-conforming uses, subject to the amortization provisions under Carson Municipal Code (“CMC”) Section 9182.22. In applying the provisions of Section 9182.22, the longest timeline applicable to the use or structure applies to ascertain the date by which the non-conforming operations on the Property must cease and structures removed or demolished.

D. The parties have had disagreements concerning the appropriate application of the timeline under Section 9182.22 to the Structures and Operations on the Property, given the age of some of such structures and wish to resolve and fully settle such disagreements through the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the performance by the parties of the promises, covenants and conditions herein, and based on the above Recitals, which the parties incorporate as set forth herein, the parties agree as follows:

I. Closure Obligations. The City grants the following closure schedule (collectively, “Closure Period”) to TST in accordance with the terms and conditions of this Agreement



and the provisions of the CMC. TST shall comply with the following schedule regarding the termination and closure of the Operations and demolition and/or removal of the Structures on the Property:

- A. Cease Operations and Demolish Structures. Unless TST ceases Operations and applies for modifications of the existing Structures within the time described in Section II.B below, TST must: (i) by no later than **July 1, 2017**, completely cease the Operations, *and*, (ii) by no later than **July 1, 2018**, cause the Structures on the Property to be completely demolished and/or removed from the Property, pursuant to appropriate demolition and transportation permits secured from the City and any other applicable agency, leaving the site in a clean, vacant and unpaved condition (collectively "Demolition"). TST shall further comply with the following additional conditions as part of any Demolition:
1. Security. The Property shall remain secured, with a fence approved by the City's Development Services' Building & Safety, following the Demolition of the Structures until such time as a new building or use is developed thereon. TST shall further maintain the Property secured and free of trash or debris during such time.
 2. Dust Control. TST shall implement a City-approved suppressant program on the unpaved portion of the Property on or before the Demolition of any of the Structures to assure that dust emissions are kept to a minimum.
- B. Cease Operations Early and Modify Existing Structures. Should TST choose to completely cease the Operations by no later than **July 1, 2015**, then TST must proceed with the following action prior to July 1, 2015: Submit an application, including a development plan which may include retention of Structures as identified in Section III below, to the City for approval of any use consistent with the then current version of the City's General Plan and Zoning Code, which shall be reviewed by the Planning Commission for compliance with the Carson Municipal Code (CMC), pursuant to Section 9172.23, or other then applicable discretionary review procedure, and which shall require TST to incorporate the modifications described in Section III below. Furthermore, all construction authorized pursuant to such development plan approval shall be completed no later than December 1, 2016, unless additional time is approved by the City in writing. If Developer fails to meet any of the timelines described in this Section I.B to completely cease operations, submit an application and development plan or complete construction, Developer shall be required to Demolish the Structures within the time and manner required in Section I.A above.

- II. Right of Way Dedication. By no later than July 1, 2015 and at no cost to City, TST shall make an irrevocable dedication to the City, on a form prepared by the City and regularly



used for such purposes, of the portion of the Property encompassing approximately twenty (20) feet of the entire frontage of the Property along 220th Street so as to align the front of the Property with the property immediately to the west (“Dedication Area”). TST understands that such dedication is a standard requirement imposed by the City as a condition of development, including at the Property, to benefit the health, safety and welfare of the public, by improving safety, traffic circulation and aesthetics on 220th Street. Unless such earlier time is mutually agreed to by the parties in writing, no road widening or related improvements within the Dedication Area shall be required before Developer ceases operations pursuant to Section I.A or I.B above.

III. Modifications of Structures. Should TST submit an application for change of the use on the Property per Section I.B above, TST shall implement the following minimum development standards:

- A. The office building façade shall be renovated to be commensurate with surrounding properties.
- B. Landscaping along 220th Street shall be installed and operated commensurate with surrounding properties.
- C. The warehouse structure fronting 220th Street shall be modified to remove loading doors facing the street; and façade improvements shall be made to the front elevation of the building to be commensurate with surrounding properties.
- D. The shredder building, as identified in Exhibit “B”, shall be modified to remove the section where the roof was raised and the entry portal shall be screened so as not to be visible from the 405 Freeway.

IV. Cooperation and City/Agency Assistance. The City shall cooperate with TST in any efforts to secure permits or market the Property for sale in accordance with this Agreement. To this end, the City will provide information of the availability of the Property for sale to the Carson Redevelopment Agency (“Agency”) and will work with the Agency in assisting TST in marketing or ascertaining appropriate allowable uses and purchasers for the Property. Notwithstanding the foregoing, nothing in this Agreement shall obligate the Agency to provide any funding or other resources in complying with this provision.

V. Waiver and Release of Claims. TST further acknowledges that the termination of the Operations and requirements under this Agreement are not actions undertaken by either the City or Agency, but instead, clarify the application of the City’s non-conforming use ordinance. As such, TST understands and hereby acknowledges and agrees that it is not entitled to any severance damages, relocation expenses or damages, loss of business goodwill and/or lost profits, loss or impairment of any “bonus value” attributable to any lease; valuation, damage or loss of any kind or nature related to furniture, fixtures and equipment; damage to or loss of improvements pertaining to realty, costs, interest, attorneys’ fees, and any claim whatsoever of TST which might arise out of or relate to



any respect to the termination of the Operations or any provision of this Agreement. TST further acknowledges and hereby agrees that, in entering into this Agreement, TST forever waives, releases and relinquishes all right whatsoever to continue the Operations beyond the times set forth in the Closure Period and agrees to waive any claims against the City for a taking of property, inverse condemnation, impairment of contract or any other claim as a consequence thereof. To this end, TST acknowledges and agrees that it shall give up any rights under the provisions of Section 1542 of the California Civil Code which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

TST understands, and its attorneys have explained, the importance, meaning and legal effect of this code section and this entire Agreement.

- VI. Enforcement. The parties hereby acknowledge and agree that the subject matter of this Agreement directly affects the health, safety and welfare of the residents of the City, and the City may enforce this Agreement through City administrative proceedings, code enforcement proceedings, or any legal or equitable proceeding available to in under law.
- VII. Notices. Any notices, bills, invoices or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

City: City of Carson
701 East Carson Street
Carson, CA 90745
Attention: Planning Division

TST: TST, Inc.

Attention: _____

- VIII. Litigation. In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or



against the drafting party. This Agreement shall be governed by and interpreted under the laws of the state of California.

- IX. Hold Harmless. TST shall defend, indemnify and hold harmless the City, its elected and appointed officers, agents and employees (collectively, "Indemnitees"), from and against any claims, suits, actions or proceedings, judicial or administrative, for writs, orders, injunction or other relief, damages, liability, cost and expense (including, without limitation, reasonable attorneys' fees) (collectively, "Claims") arising out of any activities on the Property or the Operations, including, but not limited to, for any demolition and/or removal of the Structures as required under this Agreement; however, that the foregoing covenant to defend, indemnify and hold harmless the Indemnitees shall not apply to any Claims arising from the sole negligence, or intentional misconduct, of the Indemnitees.
- X. Attorney's Fees. In the event of litigation relating to or arising out of this Agreement, the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to actual attorneys' fees and costs for services rendered to such prevailing party.
- XI. Entire Agreement. This Agreement represents the entire and integrated agreement between City and TST. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties, which writing expressly refers to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

City: CITY OF CARSON

By _____
Mayor

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney



TST: TST, INC., a California corporation

By: _____

By: _____

Ronald S. Stein Family LLC, a California limited liability company

By: _____

William D. Levine Family Partnership, L.P., a California limited partnership

By: _____

Robert A. Stein Living Trust dated 2/17/89

By: _____

[end of signatures]

