



Board Report

File #: 2016-0141, File Type: Policy

Agenda Number: 12

**PLANNING AND PROGRAMMING COMMITTEE
MARCH 16, 2016**

SUBJECT: REAL ESTATE AGREEMENT WITH EQR-4TH & HILL, LP FOR JOINT USE OF TRANSIT PLAZA AT 4TH & HILL METRO RED LINE STATION AND CHANGES TO METRO-CLARK CONTRACT C1073

RECOMMENDATION

CONSIDER:

- A. AUTHORIZING the Chief Executive Officer (CEO) to execute an **agreement (Master Agreement) with EQR-4th & Hill LP (EQR)** in which the Los Angeles County Metropolitan Transportation Authority (METRO) agrees to grant to EQR, and take all necessary steps to record, certain “Real Estate Interests” in the METRO owned property located at the northeast corner of 4th and Hill, subject to all conditions as set forth in the Master Agreement. On the terms set forth in the Master Agreement and ancillary agreements, EQR will (1) pay an agreed upon fair market value of the easements, (2) regrade and install, **operate and maintain “Enhanced Plaza Improvements” on the Metro Plaza (at the northeast 4th/Hill portal)** pursuant to a design approved by METRO, and (3) pay for changes required to mitigate impacts to Metro-Clark Contract C1073 due to EQR Project; and
- B. DELEGATING to the CEO the authority to approve the fair market value of the various temporary and permanent easements and lease agreement up to the amount of \$1,000,000.

BACKGROUND AND DESCRIPTION OF PROJECT

The former Southern California Rapid Transit District (“SCR TD”) acquired certain property interests at the northeast corner of 4th and Hill (“Portal Property”) in April 1987 from System Parking Investment, Inc. et.al. (“System”), as necessary to construct and operate the Metro Red Line 4th and Hill Street northeast station and portal. The Portal Property is comprised of a fee simple interest to approximately 8,645 square feet of subsurface, surface and airspace up to an upper limit of 298.0 feet above mean sea level (i.e. approximately 20 feet above current grade). METRO has previously constructed, and continues to operate the following improvements at the Portal Property: (a) an underground passenger loading and unloading station including a tunnel and pedestrian portal beneath and adjacent to the Portal Property, (b) a blast relief shaft and vent shaft on the Portal Property, (c) emergency exit, and (d) various above and below grade improvements on the Portal Property to provide access to the Station, including: (i) a pedestrian plaza at the current grade (“Metro Plaza”) and (ii) an escalator and staircase from the Metro Plaza to the Station. A picture of

the Portal Property as currently improved is attached as Attachment “A”.

At the time of SCRTD’s acquisition of the Portal Property from System, System was also the owner of approximately 32,467 square feet of land located adjacent to the Portal Property, north along Hill Street (which, along with the airspace above the Portal Property retained by System, may be referred to in this report as the “EQR Property”). During negotiations between SCRTD and System for acquisition of the surface and air rights, SCRTD agreed to the future grant of column easements on the Portal Property as needed to support a future development that may be constructed on the EQR Property. However, at the time of the SCRTD acquisition, the easements were not transferred, and the exact location of the column easements and their value were not determined. The site of the Portal Property and EQR Property are depicted on Attachment “B”.

The EQR Property was recently purchased by EQR’s parent company, Equity Residential. Equity Residential is a member of the S&P 500, a publicly traded real estate investment trust based in Chicago, Illinois. EQR is currently seeking entitlements from the City of Los Angeles (“City”) to construct and operate a new development on the EQR Property (“EQR Project”), including construction in the airspace lying above the uppermost limit of the Portal Property (the “Airspace Area”). The EQR Project includes mixed use residential/retail uses in a building containing 33 floors consisting of approximately 428 residential units, 10,900 square feet of residential amenities, 2,900 leasable square feet of retail space and 410 parking spaces along with an outdoor plaza (“Building Improvements”). The EQR Project as proposed will create a permanent overhang (“Building Overhang”) above portions of the Metro Plaza and requires a number of permanent and temporary easements in order to construct and operate. A depiction of the proposed EQR Project, including the Building Overhang over the Portal Property, is attached as Attachment “C”.

Impact on Metro Plaza

METRO previously entered into that certain METRO Red Line Pershing Square Canopy Addition and Escalator Replacement Contract No. C1073 (“Metro-Clark Contract”) with Clark Construction Group-California, LP, by its general partner, Clark Construction Group-California, Inc. (“Metro Contractor”) which includes the design and the replacement of all five escalators located between the mezzanine level and the plaza level of three portals at the Metro Red Line Pershing Square Station (“Station”). At the subject Portal Property, the Contract C1073 work includes design and replacement of the existing escalator with a new escalator (“New Escalator”) and construction over the New Escalator of a permanent canopy (“Permanent Canopy”). As discussed in this section, certain aspects of the EQR Project impact the Contract C1073 work. METRO and EQR (the “Parties”) have agreed to work together to coordinate the performance and timely completion of the Contract C1073 work on the Portal Property with EQR’s performance of work on and over the Portal Property as needed for the EQR Project.

The construction of the Building Overhang by EQR for the EQR Project would have required that EQR remove the Permanent Canopy should METRO proceed with the construction of the Permanent Canopy in accordance with the Metro-Clark Contract. As a result of negotiations between METRO and EQR (the “Parties”), METRO agreed to have EQR construct and use the Building Overhang to function as a permanent cover for the New Escalator in lieu of the Permanent Canopy. METRO agreed to modify the Metro-Clark Contract to delete the Permanent Canopy, thereby precluding the need to have the Metro Contractor build the Permanent Canopy, only to have EQR remove such

canopy in order to construct the Building Overhang. The Parties have agreed that EQR will complete construction of an overhead protection structure (“Overhead Protection Structure”) in accordance with METRO’s requirements and prior to public operation of the New Escalator, in order to protect transit patrons from falling construction debris during the construction of the Building Improvements, and allow for opening of the Station portal prior to EQR’s completion of the Building Overhang.

As part of the column touchdown and foundation work that EQR will be performing for its project, and in connection with the construction of the Building Improvements, EQR will be required to remove and replace portions of the Metro Plaza and therefore, to comply with the Americans with Disabilities Act (“ADA”) requirements in the restoration of the Metro Plaza. Compliance with ADA requirements will require lowering the grade of the Metro Plaza by approximately one foot and establishing new grade elevation and control points for the Metro Plaza and EQR Property. As a result of negotiations between the Parties, EQR will carry out the grading work and METRO agreed to modify the Metro-Clark Contract to revise the design and construction of the New Escalator to match the proposed new grades. Increase costs, if any, to the Metro-Clark Contract resulting from such EQR Project-related changes are borne by EQR.

METRO is planning for an estimated 9 month closure of the Portal Property (“Portal Property Closure Period”), during which time the Contract C1073 work would be completed, as well as certain components of the EQR Project occurring on the Portal Property. During such closure period, there are two other portals/station entrances that will remain open to serve the Station. Any EQR Project construction work necessitating use of the Portal Property that is not completed during the Portal Property Closure Period will be performed pursuant to a right-of-entry permit to be granted to EQR, subject to METRO’s terms and conditions.

The above agreements will be set forth in the Master Agreement.

Description of Permanent and Temporary Easements to be Granted to EQR

As a result of negotiations between the Parties, EQR is seeking, in exchange for value to be paid by EQR to METRO, the following Real Estate Interests (as will be set forth in the Master Agreement):

1. **Right of Entry and Construction Permit (“ROE Permit”)**. A Right of Entry and Construction Permit (“ROE”) to be issued to EQR to cover the time periods that are required to perform the Metro Plaza grading work, remove and replace the Metro Plaza with the Enhanced Plaza Improvements, construct the columns and foundation that will support the Building Improvements and Building Overhang in the Airspace Area over the Portal Property, construct the Overhead Protection Structure, the Building Overhang, and such Building Improvements work for which access to the Portal Property is necessary. The ROE(s) will be granted in coordination with EQR’s proposed work schedule, and will be subject to METRO’s terms and conditions.
2. **Foundation Touchdown and Maintenance Easement**. An easement in, or, across and through the Portal Property for construction and maintenance of foundations, columns soldier piles and underground foundation structures (“Foundation Improvements”) for support of the Building Improvements on the Metro Plaza and in the Airspace Area and for maintenance of the Building Overhang and other Building Improvements in the Airspace Area.

3. **Non-Exclusive Access and Maintenance Easement.** A non-exclusive easement for (i) pedestrian ingress/egress to and from the EQR Project and (ii) EQR's continued maintenance, repair and replacement of the landscaping and hardscaping upon the surface of the Metro Plaza, including the Enhanced Plaza Improvements with a reservation of rights for uninterrupted access to the Metro Plaza by (x) transit patrons for use of the Station and (y) METRO for Station operations or other METRO activities at the Portal Property. The "Enhanced Plaza Improvements" are comprised of: enhanced paving materials, new lighting, signage, landscaping, and other improvements in and on the Metro Plaza, in locations and in accordance with plans and specifications to be agreed between the Parties.
4. **A No-Build Covenant.** A no-build covenant recorded against the Portal Property with respect to an area that varies within 9 to 13.5 feet of the face of the Building Improvements. City fire, life and safety standards require that such area remain open and unobstructed. By recording such a covenant, METRO is agreeing not to build in the designated area.
5. **Lease for Outdoor Seating Area.** The Parties will enter into a long term lease covering a specified area for outdoor restaurant seating in the Metro Plaza. The fair market rental of the space will be determined by appraisal of the Portal Property. Other terms of the lease will be negotiated and included in the lease document.

FINANCIAL IMPACT

METRO is in the process of obtaining an appraisal of the Portal Property to establish the value of the various easements and lease area described above. Upon completion and review of the appraisal, the amount recommended as the value of the easements will be submitted to the Chief Executive Officer or the METRO Board of Directors for approval pursuant to the level of approval authority required.

METRO and EQR have previously entered into a Funds Disbursement Agreement ("FDA") dated September 15, 2015, which sets forth a process for the issuance of one or more change orders to the Metro-Clark Contract due to the EQR Project. After METRO and EQR review and approve such change work and costs, EQR will be responsible for the funding of the approved change order. The Parties are currently negotiating an amendment and restatement of the FDA in order to account for contingencies that may occur in the forthcoming months with respect to the continued coordination of the Parties' respective projects. There are no negative financial impacts to Metro-Clark Contract as EQR has agreed to fund the changes caused by the EQR Project. In order to provide METRO with additional security, the Parties are also negotiating an agreement by which EQR will deliver to METRO an irrevocable standby letter of credit to secure costs and expenses that METRO may incur in the event EQR defaults on its obligations under the FDA or EQR abandons the EQR Project.

ALTERNATIVES CONSIDERED

The Board could direct that in lieu of the comprehensive solution proposed and the granting of easements required to implement this solution that the staff negotiate a more limited agreement that

would provide the minimum rights contemplated in the original acquisition of the station property by METRO. Staff does not recommend this limited solution. At the time of the acquisition of the Portal Property in 1986, the former SCRTD committed to permit the owners of the EQR Property to exercise the right to install column touchdown points. EQR, as the current owner of the EQR Property, has demonstrated a willingness and commitment to work with METRO in preserving the public nature of the Metro Plaza with Enhanced Plaza Improvements and to assume financial responsibility for maintaining the plaza in a first class condition. Transfer of this responsibility to EQR will ultimately result in an overall savings to METRO's maintenance costs and should result in an overall improvement in the transit experience of our passengers. The location of the transit plaza adjacent to a transit oriented development meets METRO's development goals without the necessity of the capital investment by METRO. EQR has committed to provide a permanent cover to the Station escalator, meet ADA requirements, maintain the Metro Plaza, and provide fair compensation for the real estate interest they are required to obtain to fulfill their entitlements from the City of Los Angeles.

NEXT STEPS

Once EQR has obtained its entitlement and permits to construct the EQR Project, the appraisal of the various easements to be granted by METRO to EQR is completed, and subject to the authority delegated to the CEO as recommended in No. 2 above, the instruments conveying Items 2, 3, 4 and 5 of the Real Estate Interests will be finalized, executed, and (where applicable) recorded. As discussed above, the ROE(s) described in Item 1 of the Real Estate Interests will be granted in coordination with EQR's construction schedule.

ATTACHMENTS

- Attachment A - Site Map of Portal Property and EQR Property
- Attachment B - Portal Property with Current Improvements
- Attachment C - Depiction of Proposed EQR Project (with Building Overhang over Metro's Portal Property)

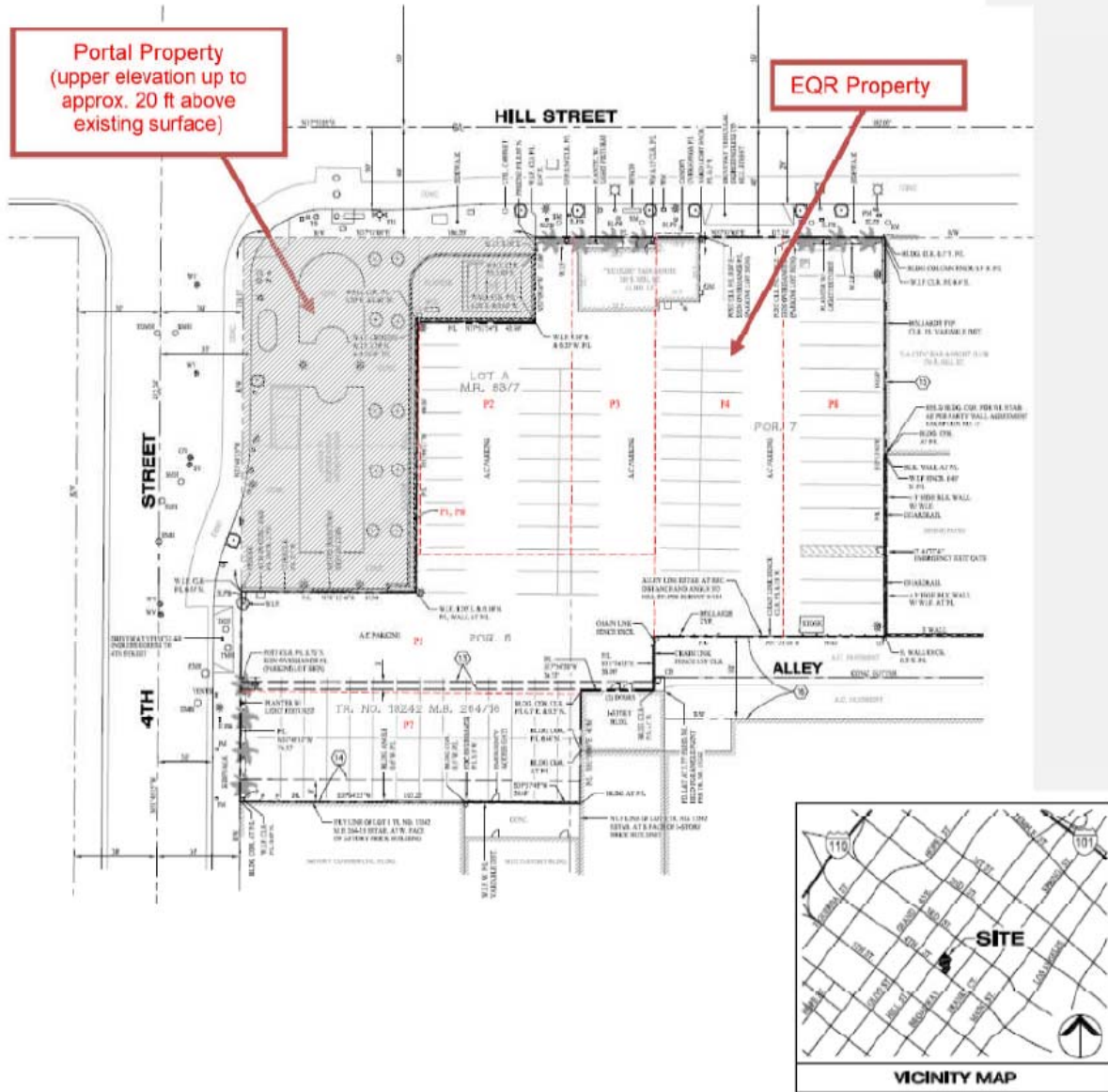
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Phillip A. Washington
Chief Executive Officer

Site Map of Portal Property and EQR Property



Portal Property with Current Improvements



Depiction of Proposed EQR Project
(with Building Overhang over Metro's Portal Property)

