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TO: BOARD OF DIRECTORS

THROUGH: PHILLIP A. WASHINGTON *PAW*
CHIEF EXECUTIVE OFFICER

FROM: RICHARD CLARKE *RFC*
CHIEF PROGRAM MANAGEMENT OFFICER

THERESE W. MCMILLAN *TWC*
CHIEF PLANNING OFFICER

SUBJECT: WESTSIDE PURPLE LINE EXTENSION SECTION 2 PROJECT
TEMPORARY RIGHT OF ACCESS AGREEMENT

ISSUE

Notification to the Board of the planned execution of a Temporary Right of Access Agreement ("ROA") between LACMTA and CC Site One, LLC ("Owner" also known as JMB Realty) for early access to the property located at 2040 Century Park East in the City of Los Angeles ("Property"), for the construction phase of the Westside Purple Line Extension Section 2 Project ("Project").

BACKGROUND

On May 24, 2012, the LACMTA Board ("Board") certified the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Westside Purple Line extension from Wilshire Western to Westwood/VA. The Board's action approved the Project Definition, and adopted Findings of Fact and a Statement of Overriding Considerations under the California Environmental Quality Act ("CEQA"). On December 3, 2015, the Board approved and adopted a CEQA Addendum and Findings and authorized staff to file a Notice of Determination on such CEQA Addendum. The CEQA Addendum presented project definition changes, including a clarification on the use of staging areas in the Century City area of the City of Los Angeles.

On January 26, 2017, the Board authorized the Chief Executive Officer ("CEO"), for a one-year pilot period, (1) to negotiate and execute project related agreements, including contract modification(s), up to the authorized Life-of-Project Budget for Sections 1 and 2 of the Westside Purple Line Extension and (2) to streamline project management of

the Project including any pending project-related agreements, change orders/contract modifications and any significant changes to contract contingency. The CEO's authority is subject to monthly reporting requirements to the Board of Directors. This action would allow the Board to see in advance all project-related agreements and change orders.

On December 1, 2017, the Federal Transit Administration (FTA) published the Final Supplemental Environmental Impact Statement ("Final SEIS") and Supplemental Record of Decision ("ROD") for the Westside Purple Line Extension Section 2 Project. The Final SEIS was ordered by a federal Judge in August 2016, and was focused on a portion of the Project pertaining to the location of the Century City Constellation Station and the alignment of the tunnels through the western portion of Beverly Hills to Century City. The Final SEIS also included the project definition changes presented in the 2015 CEQA Addendum.

The Property located at 2040 Century Park East was identified in the 2012 FEIS/EIR as one of the possible construction staging areas to support tunneling operations and construction of the Century City Constellation Station. As part of the recently completed Final SEIS, this Property was identified and cleared for the proposed use for the duration of the Project's construction phase. At the direction of the FTA, the real estate acquisition process to secure a temporary construction easement ("TCE") for construction staging was delayed until after completion of the Final SEIS. Because the staging area is needed immediately, project staff have been actively working with the Owner's representatives to develop a temporary access agreement, which establishes terms for Metro's use of the site until possession of a TCE is obtained through the normal real estate acquisition process, including a potential eminent domain process.

DISCUSSION

Notification to the Board of pending project related agreements is typically communicated monthly by the Chief Program Management Officer at Construction Committee meetings. Negotiations for the ROA with JMB Realty were initiated in November, but staff were unable to update the Construction Committee presentation for the November Board meeting. Prior to the start of negotiations, staff did not know if JMB Realty would be willing to execute an ROA, so notification was not provided earlier than November. This Board Box Report was prepared to notify the Board of this time sensitive project related agreement in the absence of Construction Committee and Board meetings in December.

Approval of the ROA will allow LACMTA to turn the Property over to the Project's contractor by February 2018. Without the ROA, access would be delayed until after acquisition of the TCE is completed, which is anticipated to take several months. The terms of the ROA have been structured to provide LACMTA, and its contractor, appropriate use of the Property while protecting and securing the Owner's interests. The basic terms of the ROA are summarized in the attached Exhibit A.

FINANCIAL IMPACT

Funding for the ROA is included in the FY18 budget under Project 865522 (Westside Purple Line Extension Section 2 Project), Cost Center 8510 (Construction Project Management), and Account 53103 (Acquisition of Land). Since this is a multi-fiscal year ROA, the Chief Program Management Officer and the Project Manager will be accountable to budget the cost for the future fiscal year.

Impact to Budget

The sources of funds for the ROA are Federal 5309 New Starts, Transportation Infrastructure Finance and Innovation Act (TIFIA) Loan proceeds and Measure R 35%. The approved FY18 budget is designated for the Westside Purple Line Extension Section 2 Project and does not have an impact to operations funding sources. These funds were assumed in the LRTP for the Westside Purple Line Extension Section 2 Project. This Project is not eligible for Propositions A and C funding due to the proposed tunneling element of the Project. No other funds were considered.

NEXT STEPS

Upon CEO approval and execution of the ROA, in accordance with the above-described authority granted by the Board on January 26, 2017, the Project will obtain possession of the Property and provide access to the Project contractor for construction staging purposes. Additionally, staff will continue to pursue acquisition of the TCE through the formal real estate acquisition process.

Attachment

Exhibit A – Summary of Terms and Conditions – Temporary Right of Access Agreement

EXHIBIT A**SUMMARY OF TERMS AND CONDITIONS
TEMPORARY RIGHT OF ACCESS AGREEMENT**

OWNER	CC Site One, LLC, a Delaware limited liability Company
PROPERTY LOCATION	2040 Century Park East Los Angeles, CA
PROJECT	Westside Purple Line Extension Section 2 Project – Century City Constellation Station
PURPOSE OF ACCESS	Construction staging/laydown and the installation of certain needed improvements for the Project.
TERM	<p>The term shall commence upon the termination of all the existing use agreements on the Property and shall continue until such time as the Owner and LACMTA (the “Parties”) have negotiated and executed a mutually agreed upon agreement regarding LACMTA’s acquisition of a Temporary Construction Easement (“TCE”) for the remainder of the ninety-nine (99) month construction period.</p> <p>If agreement is not reached between the Parties, the Owner has the right to terminate the agreement no earlier than December 31, 2018. LACMTA may seek an Order of Possession pursuant to an eminent domain action at any time to seek continued possession of the Property.</p>
COMPENSATION	<p>LACMTA shall pay the owner \$125,000 per month until either the Parties enter into the TCE or the ROA is terminated.</p> <p>The payment of \$125,000/month is an accommodation by the Owner during this interim period until the value of the TCE is determined by negotiations or the eminent domain process. If the final value determination is greater than \$125,000 per month, LACMTA shall compensate the Owner for the difference in value for each monthly payment made prior to the execution of the TCE agreement or final determination in the eminent domain action. If the final value determination is lower than \$125,000 per month, the difference in value would be applied against the amount LACMTA is required to pay the Owner pursuant to the TCE Agreement or the final determination in the eminent domain action (whichever is applicable).</p>
OTHER TERMS	Other terms of the agreement include indemnity provisions, insurance requirements, existence of oil wells and utilities provisions, notice and general provisions.