

# Agenda Report

**TO:** CITY COUNCIL

**DATE:** March 15, 1999

**FROM:** City Manager

**SUBJECT:** Pasadena Courtyard by Marriott Public Parking Structure  
Joint Development Lease Agreement & Contract Approval

**RECOMMENDATION:**

It is recommended that the City Council:

1. Appoint Accord Interests, LLC as agent for the City for the purpose of developing and managing the construction of a subterranean public parking structure in conjunction with their development of the Pasadena Courtyard by Marriott Hotel project;
2. Approve agreements with Pasadena Hotel Associates, LLC, GMAC Commercial Mortgage Corporation (GMAC), and Arciero Bros. Inc. for the construction of two stories of subterranean public parking (143 spaces) at the Pasadena Courtyard by Marriott Hotel, for a guaranteed maximum construction cost of \$2,269,751, plus design costs and legal fees, and contingencies of \$130,249;
3. Find that, based on the impracticality thereof, this project is exempt from competitive bidding, and pursuant to P.M.C. 4.09.060[C][1] contracts for which the City's best interests are served, this contract is exempt from the vendor selection process and workforce compliance component of the Affirmative Action in Contracting Ordinance;
4. Approve the Lease Agreement between Pasadena Hotel Associates, LLC and the CITY OF PASADENA for operation and use of the underground portion of the parking structure for public parking purposes;
5. Authorize the advance of \$2,400,000 from the City's Charter Capital Fund to provide for payment to GMAC of \$2,269,751 on behalf of the CITY OF PASADENA and Pasadena Hotel Associates, LLC to provide takeout construction financing, with specified cash draw down payments, for construction of the public portions of the parking structure, and \$130,249 for payment for design costs and legal fees;
6. Adopt a Reimbursing Resolution to pay back the Charter Capital Fund when permanent commercial project financing has been secured; and
7. Adopt a schedule of parking charges for operation of the public parking structure at the Pasadena Courtyard by Marriott, including monthly and transient rates, contributions from the Old Pasadena Parking Structure Fund, and a payback schedule to the Charter Capital Fund, as recommended by the Old Pasadena Parking Meter Zone Advisory Commission.

## **BACKGROUND:**

On September 28, 1998, the City Council authorized the City Manager to enter into a \$2 Million joint development agreement with Pasadena Hotel Associates, LLC for development of two stories of public parking below the Courtyard by Marriott parking structure. This action was based upon the recommendation of Staff and the Old Pasadena Parking Meter Zone Advisory Commission, and the City Council Finance Committee.

Staff has been discussing concerns regarding the construction costs, legal relationships and design issues related to construction and operation of the facility, and an appropriate financial pro-forma for the garage. Accord Interests, LLC is the operating entity for the project development, Pasadena Hotel Associates, LLC is the ownership entity for the completed hotel and garage. Accord Interests, LLC has selected Koll Construction as their general contractor and Arciero Bros. Inc as sub-contractor for the hotel, and Arciero Bros. Inc. as general contractor for the parking garage. Construction of the hotel is underway. Excavation for the hotel foundation and footings is proceeding.

Given the progress of the project, it would not be possible nor in the public interest, for the City to undertake a competitive bidding process to select a contractor to construct the City 's portion of the garage. As in Graydon v. Pasadena Redevelopment Agency, 104 Cal. App. 3d631, 164 Cal. Rptr. 56 1980, which established the impracticality doctrine, there is already a contractor mobilized on the project for the construction of the parking garage, and the construction of the City's portion may be viewed as integral as well as a natural extension this work. In addition, because of the construction schedule, which was established by the developer in the context of the project financing mechanism, the underground portion of the parking garage would not be constructed if there were the delay occasioned by a public bidding process.

Staff has made cost estimates of this construction and the price that the City is to pay is reasonable and, in the opinion of staff, substantially similar to that which could be achieved through public bidding. This is especially the case in light of the additional costs that would be required to mobilize another construction firm to the site and to coordinate its work with the work of Arciero Bros. Inc. Adding the additional parking meets the policy and planning objectives set by City Council to maintain the economic vitality of the Old Pasadena area, and staff recommends that the Council find that the proposed contractual arrangement serves the public interest and obtains the best economic result for the taxpayers.

The proposed contract with Arciero Bros. Inc. fully complies with the Affirmative Action and Living Wage in Contracting Ordinances and the rules and regulations promulgated thereunder. The contractor selection process fully complied with these ordinances and their rules and regulations.

The parking structure plans have been prepared and detailed estimates developed. Draft agreements have been developed between the City, Pasadena Hotel Associates, their construction lender GMAC, and Arciero Bros. Inc., the general contractor. Arciero Bros. Inc. will deliver the parking structure to Accord Interests, LLC and the City for a guaranteed maximum price contract. There are severe penalty clauses if the project is not completed on schedule, and delay charges if the contractor is delayed. The schedule calls for the completion of the hotel and garage by February of 2000. The City portion of the parking structure will also be built for a guaranteed maximum price contract. Arciero Bros. Inc. will provide a Performance Bond for 100 percent of the contract price to guarantee faithful performance of all work. Excavation for the garage poses a risk to the City if there are unexpected conditions encountered in the sub-grade excavation. However, Converse Consultants provided a Geotechnical Investigation Report to the City and the contractor. This report was to determine the nature and engineering properties of the earth material at the site, and to provide geotechnical recommendations for the design and construction of the proposed subterranean parking structure.

The final design plans call for construction of a common wall footing between the subterranean parking structure and the hotel. This will prevent any surcharge loadings from the hotel footings to the garage excavation. By constructing a common wall footing, there will be savings to the garage costs, but the footing needs to be under construction immediately. Using this approach, the guaranteed maximum cost for Koll to construct the public portions of the garage, barring any unforeseen earthwork problems is \$2,269,751. The guaranteed maximum cost is approximately 15% above the earlier estimates, which were provided from another contractor. The total space count has increased from earlier estimates of 125 spaces to 143 spaces.

Staff, with the assistance of the City Attorney's office, attempted to negotiate a simple parking lease or easement from Pasadena Hotel Associates, LLC, that would authorize the City to operate the subterranean structure for public parking, but would not require any City involvement in the construction of the subterranean structure. For the reasons discussed above, Accord insisted that the City remain involved in the construction. In effect, this transaction requires the City to enter into a design build contract with Arciero Bros. Inc. for the design and construction of the substructure. The City therefore bears all the risk involved in the construction, just as if the City was constructing a parking structure through a public contract. The potential risk factors include liability for cost overruns, defective construction, delays in construction, and contract disputes. Note, however, that the City's exposure to liability is reduced but cannot be entirely eliminated by several factors: 1) the soils testing has been completed, 2) the reputation of Arciero Bros. Inc., and 3) the performance and completion bond provided to the City by Arciero Bros. Inc. for our portion of the project. Even though the risks have been minimized, the documents which the Council is being asked to approve include provisions requiring payment by the City on demand for any overruns or amounts required to timely complete the project should unforeseen circumstances occur, and the City is, explicitly, the guarantor for the completion of the project, irrespective of final cost.

The Old Pasadena Parking Meter Zone advisory Commission considered the joint development agreement, the costs for the garage and the financial pro-forma at a special meeting on March 3, 1999. They unanimously endorsed staff recommendations to move forward with the project, adding the following recommendations:

1. The Marriott Garage Public parking rates will be the same as the Old Pasadena rates.
2. The financial pro-forma shall reflect a budget for common area costs.
3. Staff shall optimize the customer mix of available monthly and transient parking spaces as demand demonstrates, to maximize revenue.
4. All Old Pasadena Structure Fund parking expansion dollars currently available shall be programmed to the Marriott Garage project (\$240,000).
5. The Old Pasadena Structure Fund's annual parking expansion contribution shall be increased to cover the annual costs (\$209,000) to payback the City Charter Capital fund.
6. The Old Pasadena Structure Fund's contribution shall be reduced when revenues at the Marriott Garage permit, so as to be used for other needed Old Pasadena parking expansions.

These recommendations have been included in the revised pro-forma attached to this report for consideration by City Council.

### **ENVIRONMENTAL IMPACT**

The environmental impacts of the garage were analyzed in the initial study and Negative Declaration prepared for a 6-story 314 room hotel proposed at 170 N. Fair Oaks Ave. The Negative Declaration for Conditional Use Permit #3437 was adopted on September 28, 1998 by the Zoning Hearing Officer.


### **FISCAL IMPACT:**

The Public Parking portion of the garage would be funded using a take out construction loan from the City's Charter Capital Fund, that would be replaced with permanent financing from commercial lenders upon completion of the project. Using a loan amount of \$2.4 Million from the Charter Capital Fund, a payback of \$2.5 Million from permanent financing, and a 20-year financial package, costs of capital are estimated at \$209,000 per year.

Staff had prepared a revised financial pro-forma in light of the new space count and cost estimate for the project, and the recommendations of the Old Pasadena Parking Meter Zone Advisory Commission. The pro-forma uses rates in affect in Old Pasadena, and is designed to cover the costs of the garage, without impacting on the General Fund.

The Council has budgeted \$120,000 per year, for the last two years, for expanded parking facilities in Old Pasadena. These funds would be required to support the first few years of operation in the garage. This amount should be increased to cover the annual payback to the City Charter Capital Fund to an amount of approximately \$209,000 per year. Using the available parking expansion funds, and increasing the annual allocation to this line item allows the garage to operate without impacting the General Fund, and to maintain a positive annual fund balance.

Respectfully Submitted,



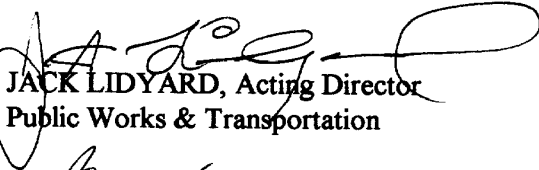
CYNTHIA J. KURTZ  
City Manager

Prepared By:



DAVID GROSSE  
Transportation Administrator

Approved By:



JACK LIDYARD, Acting Director  
Public Works & Transportation



JAY M. GOLDSTONE  
Director of Finance

Attachments: Exhibit A: Joint Development Lease Agreement  
Exhibit B: Reimbursing Resolution to City Charter Capital Fund  
Exhibit C: Financial Pro-Forma for Public Parking in Marriott Garage