

**Metro Gold Line Foothill Extension Construction Authority Board Meeting
Arcadia City Council Chambers
240 West Huntington Drive
Arcadia, California 91007
November 2, 2011
6:30 P.M.**

1. Call to Order:

Chairman Tessitor called the meeting to order at approximately 6:34 PM.

2. Roll Call:

Member	Appointing Entity	Present	Absent
<i>Voting Members</i>			
Doug Tessitor, <i>Chair</i>	City of Pasadena	X	
Sam Pedroza, <i>1st Vice Chair</i>	SGVCOG	X	
Jon Blickenstaff	City of Los Angeles	X	
Keith Hanks	City of South Pasadena	X	
John Fasana	LACMTA	X	
<i>Non-Voting Members</i>			
Lara Larramendi	Governor of California	X	
Bill Bogaard	City of Pasadena	X	
Daniel Evans	City of South Pasadena	X	
<i>Alternate Members</i>			
Gerry Miller	City of Los Angeles	—	—

3. Pledge of Allegiance

Keith Hanks led the Pledge of Allegiance.

4. Public Comments on Items On/Off Agenda

Chairman Tessitor requested any public comments on or off the Agenda; seeing and hearing none, Chairman Tessitor closed public comment.

5. CEO's Monthly Report

Mr. Balian reviewed various critical path items for the project including a completed Amended Funding Agreement with Metro, issuance of an interim Notice to Proceed (NTP) to the DB2 contactor, status of M&O property acquisition, SEIR challenge denial; various permits and grade crossing approvals.

Mr. Balian presented a video to the Board which highlighted recent activities of the Construction Authority, including construction activities at the IFS, kick-off meeting with DB2 contractors and community outreach.

Mr. Balian updated the Board on the status of the environmental study for Phase 2B.

6. Consent Calendar

a. Approval of Minutes of Board Meeting held October 12, 2011

Chairman Tessitor requested a motion to approve the Consent Calendar. Board Member Fasana made a motion to approve the Consent Calendar which was seconded by Board Member Pedroza and then approved unanimously.

7. General Board Items

a. Review and Provide Recommendations for Personnel Policy and Procedures and the Administrative Code to Improve Transparency and Accountability

Mr. Balian provided the report. Mr. Balian indicated that the Chairman had requested a review be conducted of the Personnel Policy and Administrative Code. Mr. Balian indicated that after response to a public records request, staff had discovered that certain procedures were not being adhered to. Mr. Balian indicated that staff will be conducting a review of both documents and provide recommended changes at an upcoming Board meeting. Mr. Balian indicated that in the interim, staff has been provided a memo regarding adherence to the current policies.

Chair Tessitor indicated that the Construction Authority had received a request for public records for various travel and expense items. Chair Tessitor indicated that as staff reviewed the documents being requested, it became clear that necessary details required for the expenses and reimbursements were not being provided as required in the policy. Chair Tessitor indicated a detailed examination of all the policies would be conducted to make sure that there was transparency in the process and that the taxpayers' dollars are used in a responsible manner. Chair Tessitor reminded the Board, that the Construction Authority has an exemplary record of taking care of the taxpayers' funds by completing Phase I of the project on-time and under-budget. Chair Tessitor indicated that even with the past-success, it is important to pay attention to the details.

Board Member Fasana inquired what the policy was for domestic travel and type of airfare class. Chair Tessitor indicated that there are detailed policies for in-state travel, but the policy for out-of-state travel needs to be addressed. Chair Tessitor indicated that he felt it was appropriate that coach airfare be preferred and that there was any upgrade to a higher class, it would be the responsibility of the traveler. Chair Tessitor indicated that with respect to hotels, it presents a challenge due to the location. Board Member Fasana indicated that he was supportive of the steps outlined but thought it may be useful to have an annual audit. Chair Tessitor indicated that the Construction Authority currently has an annual audit but had requested staff to increase the scope of the audit so that these items would be reviewed by the auditor. Chair Tessitor indicated that it must be cost-effective and provide the necessary benefits.

Board Member Larramendi indicated that a “one-size-fits-all” policy should not be the goal, but that an effective and reasonable policy should be sought. Chair Tessitor agreed, but indicated that certain baselines should be instituted with allowances for exceptions on a case-by case basis with the appropriate approval.

Board Member Bogaard indicated that he was supportive of the direction as outline and as being discussed. Board Member Bogaard inquired if the travel budget had been exceeded. Chair Tessitor indicated that he did not believe so and that travel had been minimal. Mr. Jue, Chief Financial Officer, indicated that over the past three years, the travel budget had not been exceeded.

Board Member Blickenstaff indicated his support of the review of the policies and the direction of the Board on this topic. Board Member Blickenstaff indicated that it was important that the Construction and Authority maintain a presence in Washington DC to seek additional funding for the project. Board Member Blickenstaff inquired if any of the expenses that were reviewed were improperly approved. Mr. Jue indicated that all expenses were properly approved and that there had been a few instances where expenses were made in error and an immediate reimbursement for the expenses was provided. Mr. Balian indicated that none of the expenses were outside of the policies, but there had been issues with lack of documentation for the expenses.

Board Member Pedroza inquired when staff expected to have recommendations for revisions to the policies. Mr. Balian indicated that staff planned on bringing recommendations to the December Board meeting.

Board Member Hanks indicated that when attending a conference, that the preference should be for staying at the conference hotel which generally has negotiated a lower rate. Board Member Hanks inquired what the process was for approval of expenses. Mr. Jue indicated that an employee would seek approval for an expense from a supervisor and the receipt would be submitted to the accounting department and then routed for approval by the various departments. Board Member Hanks inquired if the Chief Financial Officer reviews them. Mr. Jue indicated that he does look at each one individually.

Chairman Tessitor requested a motion to provide direction to staff to review the personnel policy and administrative code and return to the Board with recommendations. Board Member Hanks made a motion to approve the recommendation and that staff include language with regard to conference hotels. Board Member Fasana seconded the motion and indicated that language for audit compliance be included as well. The motion which was then approved unanimously.

b. Authorize CEO to Execute Amendment No. 1 to Amended and Restated Funding Agreement with Metro

Mr. Balian provided the report. Mr. Balian indicated that the Amendment would increase the expenditure Cap by \$103.55 million from \$104.57 million to \$208.12 million and will require the Construction Authority to comply with Metro's Unified Cost Management Process and Policy. Mr. Balian indicated that the increase in the Cap would allow the project to stay on schedule by allowing the DB2 contractor to conduct pre-construction activities. Mr. Balian indicated that Metro had delayed acquiring 50% of the M&O facility property by the Construction Authority for an additional year. Mr. Balian expressed his appreciation for Metro cooperation and support.

Board Member Pedroza congratulated staff and thank Metro for being a willing partner. Board Member Pedroza inquired if the Amendment keeps the project on schedule. Mr. Balian indicated that the project remains on schedule with an expected opening in late 2015.

Board Member Fasana thank Metro for the partnership in moving the project forward.

Board Member Hanks and Chair Tessitor also expressed his thanks to Metro.

Chairman Tessitor requested a motion to Authorize CEO to Execute Amendment No. 1 to Amended and Restated Funding Agreement with Metro. Board Member Fasana made a motion to approve the item. Board Member Hanks seconded the motion which was then approved unanimously.

c. Authorize CEO to Execute Amendment No.3 to Richards, Watson & Gershon Contract No. C1115 for Legal Services

Chair Tessitor thank General Counsel Estrada and his firm for their victorious efforts against the recent CEQA challenge. General Counsel thanked the Chair and also thanked his colleagues, Ginetta Giovinco and David Snow.

Mr. Balian provided the report. Mr. Balian indicated that Amendment was for a \$500,000 increase for a total contract value of \$1,950,000. Mr. Balian indicated that the Amendment provides for assuming additional litigation efforts and legal advisory services remain at a heightened level for several more months.

Board Member Larramendi inquired if there is an Amendment No. 4 on the horizon. Mr. Balian indicated that he would not expect one this year but possibly in the year to follow.

Chairman Tessitor requested a motion to Authorize CEO to Execute Amendment No.3 to Richards, Watson & Gershon Contract No. C1115 for Legal Services. Board Member Fasana made a motion to approve the item. Board Member Hanks seconded the motion which was then approved unanimously.

**d. Receive and File Report on Project Update: IFS Final Design Documents
– Approved for Construction**

Mr. Balian introduced Mr. Chris Burner to provide the report. Mr. Burner indicated that the approval for construction by Caltrans for the IFS was a major milestone. Mr. Burner indicated that the approval allows the Construction Authority to build the majority of the structure which consists of the superstructure, abutment and columns. Mr. Burner indicated that the additional elements of the basket design and landscape / lighting were still to be approved. Mr. Burner indicated that meetings are ongoing with Caltrans regarding the remaining elements, but was not necessary until later in the project. Mr. Burner presented a rendering of the IFS.

Board Member Hanks inquired if the rendering was to scale. Mr. Burner indicated that it was pretty close to scale.

Mr. Burner reviewed the clearance levels of the structure as provided by Caltrans.

Board Member Hanks inquired what magnitude of earthquake the bridge could withstand. Mr. Burner indicated that the bridge is built to withstand a very significant earthquake. Mr. Baker, Construction Manager, further indicated that Caltrans does not use the seismic scale but “return years” and that the bridge was built to last approximately 1,000 years.

Board Member Bogaard inquired how the review process with Caltrans has proceeded and if any of the key design features or elements been revised due to the process. Mr. Burner indicated that Caltrans has made some minor detail changes which do not affect the key elements of the structure.

Board Member Blickenstaff inquired if the three remaining elements had been provided to Caltrans for review. Mr. Burner indicated that they had been provided to Caltrans but since they were not critical and do not need to be constructed or installed until the superstructure, abutments and columns were underway. Mr. Burner indicated that at this time there were no concerns about any possible delays.

Board Member Evans inquired when the three remaining elements would be approved. Mr. Burner indicated that the basket design would be the first element to be approved and is expected by the end of the year and then the remaining ones would follow.

Chairman Tessitor requested a motion to Receive and File Report on Project Update: IFS Final Design Documents – Approved for Construction. Board Member Pedroza made a motion to receive and file the item. Board Member Fasana seconded the motion which was then approved unanimously.

e. Receive and File Monthly Update

Mr. Balian introduced Mr. Burner who provided the report. Mr. Burner review various items that are ongoing for Phase 2A including efforts to obtain the final 2 grade crossing approvals for the CUPC, advanced conceptual engineering on parking facilities, San Gabriel River Bridge permits with the Army Corp and various work on the IFS. Mr. Burner reviewed a detailed construction schedule for the IFS.

Chairman Tessitor requested a motion to Receive and File the Monthly Update. Board Member Fasana made a motion to receive and file the item. Board Member Blickenstaff seconded the motion which was then approved unanimously.

8. General Counsel's Report

a. Request from Exposition Construction Authority for Amicus Support in *Neighbors for Smart Rail v. Expo Authority*

General Counsel Estrada provided the report. General Counsel Estrada indicated that Expo has requested that the Construction Authority join in an amicus brief. General Counsel Estrada indicated that the Superior Court rejected challenges to the EIR for Expo's Phase II light rail project but has been appealed. General Counsel Estrada indicated that this case presents an opportunity for transportation agencies to clarify the requirements of CEQA concerning the identification of traffic and air quality impacts of transportation projects. General Counsel Estrada indicated that Expo utilized well established analytical methodologies approved by the regional air quality and transportation agencies to evaluate traffic and air quality impacts of a light rail project in Los Angeles County. General Counsel Estrada indicated that under the approved methodologies, the lead agency compares air quality and traffic conditions with and without the transportation project to determine whether the project will have a significant impact on traffic and air quality.

Board Member Hanks indicated his support.

Chairman Tessitor requested a motion for Amicus Support in *Neighbors for Smart Rail v. Expo Authority*. Board Member Blickenstaff made a motion to approve the item. Board Member Hanks seconded the motion which was then approved unanimously.

9. Board Member Comments

Board Member Hanks thanked staff for recent efforts and for great outcomes for the project in recent months.

General Counsel Estrada reviewed the various items that would be considered in Closed Session and indicated that there may be reportable actions. Chairman Tessitor recessed the meeting for 20 minutes at 7:21 pm, after which the Board Meeting would enter into Closed Session.

10. Closed Session

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR..... G.C. 54956.8

- (i) Property: (1) 8513-012-804; (2) 8513-012-805; (3) 8513-012-806;
(4) 8513-012-908; (5) 8513-012-909; (6) 8513-012-910
(7) 8513-012-911; (8) 8513-012-912; (9) 8513-012-913

Agency Negotiator: Habib F. Balian and Wes Beverlin, Esq.
Negotiating Parties: Monrovia Redevelopment Agency
Under Negotiation: Price and terms

- (ii) Property: (1) 8513-012-032; (2) 8513-012-033;
(3) 8513-012-034; (4) 8513-012-035;
(5) 8513-012-036

Agency Negotiator: Habib F. Balian and Regina Danner, Esq.
Negotiating Parties: Excalibur Holdings
Under Negotiation: Price and terms

- (iii) Property: 8531-017-022

Agency Negotiator: Habib F. Balian and Regina Danner, Esq.
Negotiating Parties: Peter & Yolanda Gutierrez
Under Negotiation: Price and terms

- (iv) Property: 8528-015-051

Agency Negotiator: Habib F. Balian and Regina Danner, Esq.
Negotiating Parties: Cal-Am Water
Under Negotiation: Price and terms

B. CONFERENCE WITH LEGAL COUNSEL:G.C. 54956.9(a)
Pending Litigation

- (i) Excalibur Property Holdings, LLC and George Brokate v.
Pasadena Metro Blue Line Construction Authority
Case No. BS130732
- (ii) Excalibur Property Holdings, LLC and George Brokate v.
City of Monrovia et. al.
Case No. BS129985
- (iii) Excalibur Property Holdings, LLC and George Brokate v.
Pasadena Metro Blue Line Construction Authority et. al.
Case No. BS133977

C. CONFERENCE WITH LEGAL COUNSEL(G.C. 54956.9(b))

(i) Anticipated Litigation:

A point has been reached where, in the opinion of the Authority Board on the advice of its legal counsel, based on the receipt of a document entitled *Joint Objections to Gold Line's July 17, 2011 Agenda Items No. 5, 6, and 10.c and All Related Approvals* and related documents submitted by The Silverstein Law Firm, together with oral testimony from Robert Silverstein and Christopher Sutton on July 27, 2011 regarding those agenda items, there is a significant exposure to litigation against the Authority.

11. Adjournment

The Board entered Closed Session at approximately 8:02 PM. General Counsel Estrada indicated that with regard to Closed Session Agenda Item 10.b.(iii) the Board accepted Metro's offer to act as defense counsel under the Master Cooperative Agreement for the Construction Authority in the matter. Chairman Tessitor adjourned the meeting at 8:39 pm.