

**Metro Gold Line Foothill Extension Construction Authority SPECIAL Board Meeting**  
**Arcadia City Council Chambers**  
**240 West Huntington Drive**  
**Arcadia, California 91007**  
**February 19, 2010**  
**4:00 P.M.**

**1. Call to Order:**

Chair Hanks called the meeting to order at approximately 4:12 PM.

**2. Roll Call:**

Member	Appointing Entity	Present	Absent
<b><i>Voting Members</i></b>			
Keith Hanks, <i>Chair</i>	City of South Pasadena	X	
Doug Tessitor, <i>1<sup>st</sup> Vice Chair</i>	City of Pasadena		X
Ed Reyes, <i>2<sup>nd</sup> Vice Chair</i>	City of Los Angeles		X
John Fasana	LACMTA	X	
Sam Pedroza	SGVCOG	X	
<b><i>Non-Voting Members</i></b>			
Lara Larramendi	Governor of California	X	
Bill Bogaard	City of Pasadena	X	
Daniel Evans	City of South Pasadena		X
<b><i>Alternate Members</i></b>			
Michael Cacciotti	City of South Pasadena	—	—
Gerry Miller	City of Los Angeles	—	—
Mary Ann Lutz	SGVCOG	X	

**3. Pledge of Allegiance**

Lisa Levy Buch led the Pledge of Allegiance.

**4. Public Comments on Items On/Off Agenda:**

Chair Hanks requested any public comments on or off the Agenda.

None.

**5. CEO's Monthly Report**

Mr. Balian provided a summary of recent activities of the Construction Authority. Mr. Balian presented a video showing recent events such as the Arcadia Station Sign unveiling and the Phase 2A design-build-finance pre-qualification conference as well as continued work along the alignment in anticipation of construction.

**6. Consent Calendar:**

- a. Approval of Minutes of Special Board Meeting held January 27, 2010**
- b. Consideration of Iconic Freeway Structure (IFS) Project Study Report/Project Report (PSR/PR)**

Mr. Burner address item 6.b. Consideration of Iconic Freeway Structure (IFS) Project Study Report/Project Report (PSR/PR). Mr. Burner indicated that comments had been provided to Caltrans and were awaiting a reply.

Chair Hanks inquired of the Board if there was a request to consider anyone of the items in the Consent Calendar individually. Hearing none, Chair Hanks requested a motion to approve the Consent Calendar. Board Member Pedroza made a motion to approve the Consent Calendar. Board Member Fasana seconded the motion which was then approved unanimously.

**7. General Board Items:**

- a. Receive and File Report on Project Update: Shared Use Corridor**

Mr. Burner provided the report. Mr. Burner indicated that in the early 1990's the Los Angeles County Transportation Commission (LACTC), Metro predecessor had purchased various portions of railroad right-of-way throughout Los Angeles County. Mr. Burner relayed that the Foothill Extension right-of-way was on the Pasadena subdivision, which was owned by the Atchison Topeka, and Santa Fe (ATSF) railroad. Mr. Burner indicated that in 1992, LACTC entered into a shared-use agreement with ATSF from the east side of the Santa Anita crossing eastward. Mr. Burner indicated that Metro has been in discussions with BNSF to discontinue freight service on the eastern most 3.5 miles of Phase 2A and all of Phase 2B of the Foothill Extension. Mr. Burner indicated once agreement completed, the Foothill Extension and the BNSF will operate on separate tracks within the same right-of-way. Mr. Burner indicated that BNSF and SCRA have expressed concern with the separation distance between the Foothill Extension tracks and the BNSF tracks and that staff is planning to conduct a safety analysis of the shared corridor and analyze the track separation and will inform the Board of the recommended actions.

Director Fasana indicated that Metro has not been successful in dealing with BNSF and suggested that other avenues may be needed to come to an agreement.

Mr. Balian indicated that an agreement with BNSF regarding the 5 miles on the right-of-way is critical to the Foothill Extension project. Mr. Burner indicated that if an agreement is not reached to BNSF would need to be relocated to the south at significant costs.

Item received and filed.

**b. Consideration of Fund Transfer Agreement and Master Cooperative Agreement between the Construction Authority and Metro**

Chair Hanks requested that this item be moved to end of the General Board Items.

**c. Authorize CEO to approve a conflict waiver for Richards, Watson & Gershon**

Mr. Estrada presented the report. Mr. Estrada indicated that Richards, Watson and Gershon (RWG) represents the City of Monrovia and the Construction Authority which presents a conflict. Mr. Estrada indicated that in order to remedy the situation a conflict of waiver is needed. Mr. Estrada further indicated that RWG is not able to represent the Construction Authority in regards to properties owned by the City of Monrovia, but would be able to represent the Construction Authority with properties owned by third-parties with respect to the Maintenance and Operation facility. Mr. Estrada indicated that possible CEQA issues may arise as well that could create a conflict. Mr. Estrada relayed that a conflict waiver was currently being drafted.

Chairman Hanks inquired if the City of Monrovia was also looking to approve a conflict waiver. Mr. Estrada indicated that they were.

Director Fasana requested a detailed analysis of the potential conflict be provided in the conflict waiver letter.

Mr. Estrada indicated that RWG would be creating a technical "ethical wall" at the firm, so as to insulate files and attorneys at the firm who were working on these matters.

Mr. Fasana inquired if one of the municipal attorneys could also review the conflict waiver to provide a fresh-look at the matter. Mr. Balian indicated that the waiver could be reviewed by an Foothill Extension city attorney and would report back to the Board.

Chair Hanks requested a motion to Authorize CEO to approve a conflict waiver for Richards, Watson & Gershon. Board Member Fasana made a motion to approve the item and Board Member Pedroza seconded the motion which was then approved unanimously.

**d. Legislative Update**

Mr. Balian presented the report and reviewed recent activities and discussions with local, state and federal officials.

Item received and filed.

**e. Monthly Project Status Update**

Mr. Burner presented a PowerPoint presentation which summarized recent efforts underway at the Construction Authority. Mr. Burner review indicated that the following Phase 2A items were underway including the release of the RFP for Design-Build Package 1 - Iconic Freeway Structure (IFS); near completion of the IFS fault study; issuance of the RFQ for Design-Build Package 2 – Alignment as well as continued work on the comprehensive detailed baseline schedule for Phase 2A, coordination of CPUC applications, work on detailed cost estimate of design-build contracts; identification of utility conflicts, examining property requirements updating plans/drawings/design to reflect the current project status. Mr. Burner further indicated that contract negotiations for Phase 2B National Environmental Policy Act (NEPA) and CEQA work were underway. With regard to Phase 2C, Mr. Burner indicated that staff hosted a pre-proposal conference for the Alternative Analysis Study To LA/Ontario International Airport. Mr. Burner that staff continued advancing the 15% conceptual design of the slated Maintenance and Operations Facility and once complete Authority staff will advance to the 30% PE design. Mr. Burner review upcoming items such as a 3<sup>rd</sup> party review of design build documents and various agreements.

Item received and filed.

### **Out of Order**

**b. Consideration of Fund Transfer Agreement and Master Cooperative Agreement between the Construction Authority and Metro**

Board Member Fasana request that Mike Cano, Supervisory Antonovich's deputy be allowed to participate in the discussion. Chairman Hanks invited Mr. Cano to the podium to participate.

Mr. Balian presented the report. Mr. Balian indicated that the design build finance contracts were supported and framed by the Measure R Funding and Master Cooperative Agreements. Mr. Balian indicated that the agreements would provide evidence to potential contractors that a commitment of funds exists; guarantee project meets Metro Design Criteria; and delivers the project on a schedule to coincide with delivery of light-rail vehicles (LRV) 12 months before Revenue Operations Date (ROD). Mr. Balian indicated that the Measure R Funding Agreement as currently being discussed would grant \$810.5 million on a reimbursement basis; provide \$480 million through 2018 to Authority with \$143 million through 2020 to Metro holdbacks as well as agreement for M&O cost-sharing and acknowledges the 3% local commitment. Mr. Balian indicated that the Measure R Funding Agreement would allocate funds for the Railroad Relocation Agreement with BNSF and the M&O Real Estate acquisition. Mr. Balian indicated that \$38 million would be allocated to the Authority to allow for management of the design-build contract for the IFS. Mr. Balian indicated that the Master Cooperative Agreement outlines the relationship between Metro & Authority and outlines the roles and

responsibilities, dictates the design criteria and provides a mechanism for resolving disputes. Mr. Balian also reviewed the rights and responsibilities of Metro which includes inspection rights, review of construction work plans, field-testing, provides an on-site office, voting member of Design-Build Evaluation Committee, ability to review & approve RFQs, IFP's, and RFPs; review and approve procurement documents (except ITP), financing documents, and all technical documents, review and approve conformed contract documents, design submittals up to 100%, Advanced Conceptual Engineering, performance specifications, significant changes and Metro Design Review of compliance with baseline documents. Mr. Balian indicated that Metro would pay for Metro requested changes and Metro can reject/approve any and all significant changes. Mr. Balian indicated that Metro is requiring that the M&O facility be open and able to store vehicles one year prior to the start of revenue service of the Foothill Extension which would delay the opening of the Foothill Extension. Mr. Balian indicated that the construction of the M&O facility is approximately \$200 million dollars (including the real estate acquisition). Mr. Balian also indicated that a cost-sharing agreement would be entered into with Metro.

Mr. Balian invited Mr. Cano to update the Board on recent meetings with Metro staff. Mr. Cano indicated that one of the major concerns at Metro is how the Foothill Extension funding agreement will affect other Measure R projects and their potential funding.

Board Members expressed their thanks to the Metro staff and the Construction Authority staff for their efforts in making progress on the term sheets for the agreements. After a lengthy discussion, the Board indicated concerns in the following areas (1) the review, comment, and approval process; (2) dispute resolution process; and (3) timely release of requests for proposals.

The Board indicated that with respect to approvals by Metro, that the Board and staff acknowledge Metro's role in managing construction of the Foothill Extension project for the ultimate operation and to solidify Metro's approval rights, the Board would be agreeable to Metro having (a) approval over all technical documents; (b) review and comment rights over design-build contracts, instructions to proposers, and general requirements and (c) absolute approval over significant changes to the technical documents.

The Board also indicated that to address any assertion by either party acting unreasonably, that a neutral dispute resolution process be put into place.

The Board also indicated that with regard to meeting its current project schedule, upcoming requests for proposals cannot be held pending Metro's approval but that revisions to accommodate Metro concerns could be made thereafter in the form of an addenda to the RFPs.

Chair Hanks directed staff to prepare correspondence to the Metro Chairman Ara Najarian regarding the proposed Funding Transfer Agreement and Master

Cooperative Agreement.

**8. General Counsel Report**

None.

**9. Closed Session**

CONFERENCE WITH LEGAL COUNSEL

Anticipated Litigation:

(G.C. 54956.9(b))

A point has been reached where, in the opinion of the Authority on the advice of its legal counsel, based on facts and circumstances that might result in litigation but which the Authority believes are not yet known to a potential plaintiff or plaintiffs, there is a significant exposure to litigation against the Authority.

Facts and circumstances that might result in litigation but which the Authority believes are not yet known to potential plaintiff or plaintiffs

No reportable action.

**10. Board Member Comments**

None.

**11. Adjournment**

The Board meeting was adjourned at approximately 8:35 PM.