



OFFICE OF THE CITY MANAGER

April 14, 2004

TO: Mayor and City Council
FROM: City Manager
RE: Governance of Gold Line Phase II

Attached per City Council's request, is the Memorandum of Understanding (MOU) as proposed by the Gold Line Foothill Extension Joint Powers Authority (JPA) and the Agreement as proposed by the Blue Line Construction Authority.

CYNTHIA J. KURTZ
City Manager

CJK:ss
Attachments

**MEMORANDUM OF UNDERSTANDING
AS PROPOSED BY
JOINT POWERS AUTHORITY**

MEMORANDUM OF UNDERSTANDING

(GOLD LINE PHASE II)

THIS MEMORANDUM OF UNDERSTANDING (Gold Line Phase II) ("MOU") is made and entered into as of _____ 2003, by and between the Pasadena Metro Blue Line Construction Authority, a public entity of the State of California (the "Blue Line Construction Authority"), and the Gold Line Phase II Construction Authority, a joint powers authority (the "Authority"), with reference to the following facts:

A. The Blue Line Construction Authority was formed in accordance with Public Utilities Code Section 132400 *et seq.* for the purpose of planning, designing and constructing the Los Angeles-Pasadena Metro Blue Line light rail project extending from Union Station in the City of Los Angeles to Sierra Madre Villa Boulevard in the City of Pasadena ("Gold Line Phase I") and any mass transit guideway that may be planned east of Sierra Madre Villa Boulevard along the rail right-of-way extending to the City of Claremont.

B. The Los Angeles-Pasadena Metro Blue Line has been renamed the Gold Line by the Los Angeles County Metropolitan Transportation Authority (the "LACMTA") to avoid confusion with other commuter lines in the Los Angeles metropolitan area, and the extension of this light rail line from Pasadena to Claremont has been identified as the Gold Line Phase II light rail project ("Gold Line Phase II").

C. Certain governmental entities and cities that are along the routes of Gold Line Phase I and Gold Line Phase II have entered into a joint powers agreement forming the Authority, to enable their joint participation in the planning, funding and development of the Gold Line Phase II.

D. The Blue Line Construction Authority expects to terminate all of its Gold Line Phase I contracts and activities no later than December 31, 2003, and thereafter, except for matters and activities that legally cannot be completed by this date (such as ongoing litigation or contract disputes) will only engage in Gold Line Phase II activities in accordance with the terms of this MOU.

E. The parties desire to work closely with each other to promote efficiency of management of the Gold Line Phase II, to achieve cost efficiencies and to avoid overlapping activities, especially during the period when Gold Line Phase I activities are winding down, all while ensuring the rapid completion of the Gold Line Phase II.

NOW, THEREFORE, in consideration of the covenants contained herein, the parties hereto agree and memorialize their understanding as follows:

1. Roles of Parties in Development of Gold Line Phase II.

(a) The parties have not yet determined the precise organizational structure for their cooperative efforts to plan, obtain funding for and develop the Gold Line Phase II, but are in agreement that both the Blue Line Construction Authority and the Authority will be

involved in the process. Once the parties have agreed on the details of the joint effort, a more detailed agreement will be entered into that will supersede this MOU.

(b) The Authority acknowledges and agrees that the Blue Line Construction Authority has been tasked with certain obligations by the California legislature and the LACMTA, and that it may not be possible for all such obligations to be delegated to the Authority. The parties may nevertheless determine that: (i) rights and responsibilities regarding the Gold Line Phase II not covered by existing statutes or agreements may be assumed by either the Authority or the Blue Line Construction Authority as the two parties may decide; (ii) certain of the Blue Line Construction Authority's statutory or agreement rights and responsibilities may be delegated to the Authority; and (iii) certain of the Blue Line Construction Authority's statutory and agreement rights and responsibilities may be jointly exercised by both parties to this MOU. The parties agree to work together with regard to any required modifications to the Blue Line Construction Authority's existing agreements with the LACMTA relating to the Gold Line Phase II. The parties intend that the Authority shall be given all appropriate authority and responsibility for the planning, design and construction of the Gold Line Phase II that can be delegated to or assumed by the Authority under existing law. Further, the parties agree that, to the extent allowed by law, the Authority shall have the right to recommend any and all actions to be taken in connection with any authority or responsibility that the Blue Line Construction Authority may retain regarding the Gold Line Phase II and that the Blue Line Construction Authority may accept or reject but not modify any such recommended actions.

2. Roles of Parties in Development of Gold Line Phase I.

(a) The parties agree that the Authority shall have no responsibility for and no rights, duties or authority regarding the Gold Line Phase I or any contracts relating thereto.

(b) Except for matters and activities that legally cannot be completed by December 31, 2003, (such as ongoing litigation or contract disputes), the Blue Line Construction Authority expects to terminate all of its Gold Line Phase I contracts and activities no later than December 31, 2003. Contracts, employment relationships, or activities associated with the Gold Line Phase I may be continued after December 31, 2003, for the benefit of the Gold Line Phase II but only with the approval of the Executive Director and/or the Governing Board of the Authority, as appropriate.

3. Employees and Facilities.

(a) The parties agree that the Authority shall have the authority and responsibility to select all staff needed for the work on the Gold Line Phase II and such staff may either be hired as employees or work under contract to the Authority. In order for an orderly transition of Gold Line Phase II activities to occur and subject to approval by the Governing Board of the Authority and the Board of the Blue Line Construction Authority, the Executive Director and the Chief Financial officer of the Authority may simultaneously be in the employ of or under contract to both the Authority and the Blue Line Construction Authority until December 31, 2003.

(b) For the remainder of the term of the Blue Line Construction Authority's current lease, the agencies' joint administrative offices shall be located in South Pasadena at 625 Fair Oaks Avenue, Suite 200.

4. Actions to Secure Project Funding. During the period prior to execution of a detailed agreement as described in Section 1 above, the parties shall continue their efforts to seek state, federal and regional grants in support of the Gold Line Phase II. The parties shall consult with each other regarding actions to be taken, and may decide to act jointly. Neither party shall have the obligation to pay expenses incurred by the other for consultants or lobbyists undertaking such efforts, unless both parties agreed in advance that the consultant or lobbyist would represent both agencies. The Blue Line Construction Authority agrees to seek no further state, federal or regional funds for the Gold Line Phase I, but individual cities and governmental entities may seek such funds for betterments or improvements to Gold Line Phase I stations or related facilities.

5. Actions To Be Taken By Authority or Blue Line Construction Authority. If either of the parties believes that it should undertake any of the following actions during the period prior to execution of a detailed agreement as described in Section 1 above, the party planning to take such action(s) shall advise the other party before doing so and shall appropriately coordinate its actions with the other party.

(a) Contract with public and private entities for funding activities concerning the Gold Line Phase II or for the planning, design, and construction of the Gold Line Phase II;

(b) Incur indebtedness and/or issue bonds,

(c) Enter into cooperative or joint development agreements with local governments or private entities.

6. Joint Expenses. Until a detailed agreement is executed as described in Section 1, the parties shall each be responsible for their own expenses incurred in connection with the Gold Line Phase II. The foregoing shall not be deemed to require either party to pay for expenses incurred by, or fees payable to, members or directors of the other agency.

7. Resolution of Disputes. In the event of any dispute, controversy or claim arising between the Authority and the Phase II Authority out of or relating to this MOU ("Dispute"), the parties shall make good faith efforts to resolve the Dispute through negotiation and, if the parties so elect, non-binding mediation. Any Dispute that cannot be settled through direct negotiation shall be resolved by binding arbitration as set forth in this Section 7.

7.1 Binding Arbitration.

(a) Qualification and List of Potential Arbitrators.

The Dispute shall be resolved before a neutral arbitrator (the "Arbitrator") selected from a list of retired judges of the Los Angeles County Superior Court or any California appellate court that includes five (5) retired judges selected by the Blue Line Construction Authority and five (5) retired judges selected by the Authority (the "List of Potential

Arbitrators"). If, at any time or from time to time, any retired judge on the List of Potential Arbitrators dies, retires from acting as an arbitrator in disputes or is otherwise unwilling to serve as an Arbitrator to decide Disputes under this Agreement, the party who selected the retired judge may select another retired judge of the Los Angeles County Superior Court or any California appellate court for inclusion on the list, by written notice to the other party. The Arbitrator selected from the List of Potential Arbitrators to decide any Dispute shall have no material financial or personal interest in the results of the arbitration and shall make the disclosures required by Section 1281.9 of the California Code of Civil Procedure. The Arbitrator shall sign an oath of impartiality upon appointment to hear the Dispute. In addition to the grounds set forth in California Code of Civil Procedure section 1286.2, failure to disclose any such interest or relation shall be grounds for vacating the award of the Arbitrator in the Dispute.

(b) Selection of Arbitrator.

The Arbitrator for each Dispute shall be chosen from the List of Potential Arbitrators as follows: Upon the written request of either the Blue Line Construction Authority or the Authority for arbitration of any Dispute, the Blue Line Construction Authority and the Authority shall, within ten (10) calendar days thereafter, or within such extended period as they shall agree to in writing, attempt to agree upon a mutually satisfactory Arbitrator from the List of Potential Arbitrators. If they are unable to agree, the Blue Line Construction Authority and the Authority, prior to the expiration of the ten (10) days or agreed extended period, shall prepare and forward to the other a list of three (3) names from the List of Potential Arbitrators to act as Arbitrator of the Dispute. The Blue Line Construction Authority and the Authority shall promptly review the other's list and shall strike up to two names from the list provided by the other party. If the parties cannot agree to using one of the two names remaining on the respective lists, the two named individuals shall be the Arbitrator, other than themselves, from the List of Potential Arbitrators, who shall be the Arbitrator of the Dispute. If the Blue Line Construction Authority or the Authority fail to designate its Arbitrator of the Dispute from the List of Potential Arbitrators within ten (10) days after the date of delivery of the demand for arbitration or the agreed extended period, or if the two designated Arbitrators are unable, to select a neutral Arbitrator from the List of Potential Arbitrators within five (5) calendar days after their appointment, a neutral Arbitrator shall be designated by the Los Angeles County Superior Court from the List of Potential Arbitrators pursuant to Section 1281.6 of the California Code of Civil Procedure, as modified herein, and the court appointed Arbitrator shall hear the Dispute as the sole Arbitrator. A hearing date on the Dispute shall be set within thirty (30) days of the selection of the Arbitrator.

(c) Hearing.

No Arbitrator shall be selected who is unable to (a) hear the Dispute within thirty (30) calendar days after being selected, and (b) render or make and serve on the parties an award or decision (the "Award") within ten (10) calendar days of the conclusion of the hearing. Notwithstanding Sections 1282.2(b) and 1286.2(e) of the California Code of Civil Procedure (regarding postponement of the hearing), the Arbitrator may not postpone nor adjourn the hearing except for good cause or upon the stipulation of all parties to the arbitration. The Arbitrator may proceed in absence of a party who, after due notice, fails to appear.

The arbitration shall be held in Los Angeles, California. Section 1283.05 of the California Code of Civil Procedure is specifically made applicable; provided, however, that the time for responding to any discovery permitted by the California Code of Civil Procedure, including but not limited to, inspection demands and written discovery, shall be due within fifteen (15) days of any notice or demand, or as otherwise directed by the Arbitrator.

(d) Award.

Any Award rendered by the Arbitrator shall be final and binding on each of the parties hereto and their respective successors. Such Award shall be in writing stating a factually detailed, reasoned opinion of the Arbitrator's findings of fact and conclusions of law, and shall be signed by the Arbitrator. The Arbitrator, in deciding any Dispute, shall base his or her Award on the record, shall have no power or authority to award special, consequential, punitive, or exemplary damages, and shall look to the substantive laws, and not the laws of conflicts, or the State of California for the resolution of the Dispute. In deciding a Dispute, the Arbitrator shall follow the express intent of the parties as set forth in this Agreement. The making of an Award failing to comply with the requirements of this paragraph shall be deemed to be in excess of the Arbitrators' Powers and a court shall vacate the Award if after review it determines that the Award cannot be corrected without affecting the merits of the decision upon the controversy submitted. In addition, the Award of the Arbitrator shall be subject to vacation for any of the other reasons described in California Code of Civil Procedure Section 1286.2. A petition to confirm, correct or vacate the Award shall be filed with the Los Angeles County Superior Court pursuant to California Code of Civil Procedure Section 1285 (or successor thereto). In the event the arbitration procedure provided by in this Section is deemed for any reason to infringe upon the jurisdiction of the Los Angeles County Superior Court, the arbitration procedure will be deemed to be a reference agreement and any arbitration Award deemed to be a decision of a referee pursuant to Chapter 6 of the California Code of Civil Procedure subject to the procedures specified in this Section.

In the final award, in addition to any other damages assessed, the prevailing party shall be entitled to its reasonable attorneys' fees, and all other costs and expenses incurred in connection with resolving such dispute, including the prevailing party's share of the administrative fee and the arbitrator's fees and expenses, if any. The attorneys' fees which the prevailing party is entitled to recover shall be awarded for any supplemental proceedings until the final Award is satisfied. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party shall be entitled to its reasonable attorneys' fees incurred in any post arbitration proceeding to collect or enforce the judgment.

Each of the parties also reserves the right to file with the Los Angeles County Superior Court an application for temporary or preliminary injunctive relief, attachment, writ of possession, temporary protective order and/or appointment of a receiver on the grounds that the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief.

7.2 Disputes Involving LACMTA.

The Blue Line Construction Authority and the Authority agree that any dispute to be resolved by arbitration under this MOU that also involves a dispute with the LACMTA under the Blue Line Construction Authority's agreements with the LACMTA shall be heard by a single arbitrator, selected jointly by the Blue Line Construction Authority, the Authority and LACMTA pursuant to Section 6.1 and the dispute resolution positions contained in the Blue Line Construction Authority's agreements with LACMTA.

7.3 Confidentiality.

Arbitration proceedings hereunder shall be confidential, except to the extent otherwise provided by applicable laws, rules and regulations. Neither party shall disclose any information about the evidence adduced by the other in the arbitration proceeding or about documents produced by the other in connection with the proceeding, except in the course of a judicial, regulatory or arbitration proceeding, as may be requested by any federal, state or local governmental agency or as required by applicable laws, rules and regulations. Before making any disclosure permitted by the preceding sentence, the party shall give the other party reasonable written notice of the intended disclosure so as to afford the other party an opportunity to protect its interests and challenge any intended disclosure. The Arbitrator, expert witnesses and stenographic reporters shall sign appropriate nondisclosure agreements.

8. Notices.

(a) Any notice, request, demand, report or other communication given hereunder shall be in writing and sent by United States registered or certified mail, by fax (with a confirmation by registered or certified mail placed in the mail no later than the following day), or personally delivered by hand, or a nationally or locally recognized overnight courier service, with postage prepaid, as follows:

If to Blue Line Construction Authority:

Pasadena Metro Blue Line Construction Authority

Attention: _____

Fax: () _____

If to Authority:

Gold Line Phase II Construction Authority

Attention: _____

Fax: () _____

(b) All notices, requests, demands, reports or other communications shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered, sent by overnight courier service or transmitted by fax and, as to communications made by United States mail, on the fifth (5th) day after mailing.

(c) Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed.

9. No Third Party Beneficiaries. Nothing contained in this MOU is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this MOU.

10. Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. This MOU may be altered, amended or revoked only by an instrument in writing signed by each party hereto.

12. Governing Law. This MOU shall be governed by and construed and enforced in accordance with the laws of the State of California.

13. Further Actions. The parties agree to execute such further documents, agreements, instruments and notices, and to take such further actions, as may be reasonably necessary or appropriate to effectuate the transactions contemplated by this MOU.

[signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first written above.

PASADENA METRO BLUE LINE CONSTRUCTION

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

**GOLD LINE PHASE II CONSTRUCTION
AUTHORITY, a joint powers authority**

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

**AGREEMENT
AS PROPOSED BY
BLUE LINE CONSTRUCTION AUTHORITY**

DRAFT FOR DISCUSSION PURPOSES

AGREEMENT TO DELEGATE CERTAIN POWERS

(GOLD LINE PHASE II)

THIS AGREEMENT TO DELEGATE CERTAIN POWERS ("Agreement") is made and entered into as of _____ 2003, by and between the Los Angeles to Pasadena Metro Blue Line Construction Authority, a public entity of the State of California (the "Construction Authority"), and the Gold Line Phase II Construction Authority, a joint powers authority (the "Phase II JPA"), with reference to the following facts:

A. The Construction Authority was formed in accordance with Chapter 6 of Division 12.7 of the Public Utilities Code, commencing with Section 132400 (the "Enabling Legislation") for the purpose of planning, designing and constructing the Los Angeles-Pasadena Metro Blue Line light rail project extending from Union Station in the City of Los Angeles to Sierra Madre Villa Boulevard in the City of Pasadena ("Gold Line Phase I") and any mass transit guideway that may be planned east of Sierra Madre Villa Boulevard along the rail right-of-way extending to the City of Claremont.

B. The Los Angeles-Pasadena Metro Blue Line has been renamed the Gold Line by the Los Angeles County Metropolitan Transportation Authority (the "MTA"), and has identified the extension of this light rail line from Pasadena to Claremont (and possibly east of Claremont) as the Gold Line Phase II light rail project ("Gold Line Phase II" or the "Project").

C. Pursuant to Public Utilities Code Section 132415, the members of the Construction Authority Board consist of one each appointed by the City Councils of Los Angeles, South Pasadena, and Pasadena, one appointed by the MTA, one appointed by the San Gabriel Valley Council of Governments, and one non-voting member appointed by the Governor.

D. As constituted pursuant to the Enabling Legislation, not all of the ten cities located along the route of Gold Line Phase II are represented on the Construction Authority Board.

E. Pursuant to Government Code Section 6500 *et seq.*, certain governmental entities and cities that are along the routes of Gold Line Phase I and Gold Line Phase II have entered into a joint powers agreement forming the Phase II JPA, to enable their joint participation in the planning, funding and development of Gold Line Phase II.

F. The Construction Authority, in support of the cities located along the Phase II route, desires to give those cities a stronger role in the planning, funding and development of Gold Line Phase II, and is therefore willing to delegate certain powers, rights, and responsibilities to the Phase II JPA, to the extent legally permissible and fiscally prudent.

G. The Phase II JPA acknowledges and agrees that the Construction Authority has been tasked with certain obligations by the California legislature, and has entered into certain agreements with the MTA, such that it may not be possible for all such obligations to be delegated to the Phase II JPA.

H. The parties desire to work closely with each other to promote efficiency of management of Gold Line Phase II, to achieve cost efficiencies and to avoid overlapping activities, all while ensuring the rapid completion of Gold Line Phase II.

NOW, THEREFORE, in consideration of the covenants contained herein, the parties hereto agree and memorialize their understanding as follows:

1. Delegation.

a. Subject to the limitations and reservations set forth in this Agreement, the Construction Authority hereby delegates to the Phase II JPA the powers granted to the Construction Authority by Sections 132410 and 132420 of the Enabling Legislation, to the extent necessary to engage in the planning, funding, and development of Gold Line Phase II.

b. This delegation shall become effective upon the delivery by the Phase II JPA to the Construction Authority of the following:

- (i) the evidence of insurance required by Section 11;
- (ii) a fully executed copy of the joint powers agreement creating the "Gold Line Phase II Construction Authority" ("JPA Agreement"); and
- (iii) [ANYTHING ELSE?]

2. Reservations. The Construction Authority reserves to itself the following powers:

- a. All legislative powers;
- b. All powers granted it by the Enabling Legislation, including but not limited to the powers delegated to the Phase II JPA by this Agreement, except to the extent this Agreement provides that any power delegated to the Phase II JPA is exclusive to the Phase II JPA;
- c. The power to approve the final design of the Project;
- d. The power to adopt, certify, and approve all environmental documents for the Project, and to make all findings required by the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA);
- e. All powers, rights, and responsibilities relating to Gold Line Phase I, except as expressly set forth in this Agreement;

f. The power to hire employees and engage consultants as it deems necessary; and

g. All other powers not expressly and exclusively delegated to the Phase II JPA by this Agreement.

3. Project Funding.

a. The parties shall continue their efforts to seek state, federal and regional grants in support of Gold Line Phase II. The parties shall consult with each other regarding actions to be taken, and may decide to act jointly. Neither party shall have the obligation to pay expenses incurred by the other for consultants or lobbyists undertaking such efforts, unless both parties agreed in advance that the consultant or lobbyist would represent both agencies.

b. The annual budget of the Phase II JPA, and all amendments thereto, must be approved by the Construction Authority before any expenditure is made by the Phase II JPA. All funds for Phase II shall be deposited into accounts under the control of the Construction Authority's Chief Financial Officer, and shall be disbursed to the Phase II JPA as needed, consistent with the approved annual budget.

c. The Phase II JPA shall not issue bonds or incur other indebtedness without the prior approval of the Construction Authority.

d. Both parties agree to seek additional state, federal and/or regional funds for betterments or improvements to Gold Line Phase I.

e. The Phase II JPA shall be responsible for obtaining any authorizations and/or approvals required of any funding source for all or any portion of Gold Line Phase II.

4. Obligations of Phase II JPA.

a. The Phase II JPA shall diligently pursue, and make reasonable progress on, the planning, design, and development of the Project.

b. The Phase II JPA shall comply with all applicable laws, and shall comply with all obligations imposed on the Construction Authority by the Enabling Legislation and any other applicable law.

c. The Phase II JPA shall adopt an administrative code consistent with the requirements of Public Utilities Code Section 132410(b)(2) within sixty (60) days from the date of this Agreement. The administrative code, and all policies and procedures of the Phase II JPA, and any modifications thereof require the approval of the Construction Authority prior to their effectiveness. The Construction Authority's Administrative Code (adopted on February 24, 1999 and most recently amended on January 26, 2000) and Policies and Procedures (contained in the "Policies and Procedures Manual" dated July 16, 2001) in effect as of the date of this Agreement are hereby approved by the Construction Authority for adoption by the Phase II JPA, should the Phase II JPA choose to adopt them.

5. Prohibited Acts.

a. The Phase II JPA shall take no action which would violate or otherwise conflict with:

(i) the obligations imposed on the Construction Authority by the Enabling Legislation;

(ii) the orders or requirements of any regulatory agency with jurisdiction over all or any portion of the Project (including but not limited to the California Public Utilities Commission, California Department of Transportation, Department of Toxic Substances Control, and Regional Water Quality Board);

(iii) the orders or requirements of any funding source for all or any portion of the Project;

(iv) the obligations imposed on the Construction Authority by the MTA, including but not limited to the obligations set forth in the "MTA Agreements" (defined in Section 6).

b. The Phase II JPA shall not bestow any financial or professional benefit upon any entity or individual involved in creating the Phase II JPA, or any contractors, employees or consultants of those entities or individuals, including but not limited to the San Gabriel Valley Council of Governments (SGVCOG) and any member, employee, contractor, or consultant to the SGVCOG.

6. Agreements with MTA.

a. The Phase II JPA acknowledges and agrees that the Construction Authority has entered into certain agreements with the MTA, including but not limited to the following (collectively, the "MTA Agreements"):

(i) That certain Los Angeles-Pasadena Metro Blue Line Governmental Purpose Property Trust Agreement dated as of August 19, 1999 ("Trust Agreement");

(ii) That certain Funding Agreement dated August 19, 1999;

(iii) That certain Master Cooperative Agreement dated July 18, 2000;

and

(iv) That certain Operations Agreement dated August 28, 2002.

b. The Phase II JPA shall be responsible for obtaining any modifications to the MTA Agreements, or approvals from the MTA pursuant to those agreements, necessary for the exercise of the powers delegated to it pursuant to this Agreement.

c. The Phase II JPA acknowledges that, pursuant to the Trust Agreement, certain limitations are imposed on the Construction Authority. The parties expressly acknowledge Section 4.2.8 of the Trust Agreement, which prohibits the Construction Authority, as Trustee of the Trust created by the Trust Agreement, from delegating "to any other Person the Trustee's duties, obligations, powers or performance of acts required to be undertaken by the Trustee under this Property Trust Agreement or transfer or delegate the administration of the Trust to another Person." The Phase II JPA shall take no actions involving the Trust Estate (as defined in the Trust Agreement) or otherwise in violation of the Construction Authority's obligations pursuant to the Trust Agreement without the express written authorization of the MTA, whether in the form of an amendment to the Trust Agreement or otherwise.

7. Roles of Parties in Development of Gold Line Phase I. The parties agree that, except as set forth in Section 8(b), the Phase II JPA shall have no responsibility for and no rights, duties or authority regarding Gold Line Phase I or any contracts relating thereto.

8. Employees. The parties agree that the Phase II JPA shall have the authority and responsibility to select all staff needed for the Phase II JPA's work on Gold Line Phase II and such staff may either be hired as employees or work under contract to the Phase II JPA. The Phase II JPA agrees to give preference to current employees of the Construction Authority in its hiring decisions.

9. Joint Expenses. The parties shall each be responsible for their own expenses incurred in connection with Gold Line Phase II. The parties may agree, in writing, to share expenses for one or more components of the Project.

10. Indemnification. The Phase II JPA shall indemnify, defend (with counsel selected by the Construction Authority) and hold harmless the Construction Authority, its officers, agents, employees and volunteers from any and all claims, lawsuits, actions and losses whatsoever occurring or resulting in connection with the performance of this Agreement, or arising from the execution of this Agreement (including but not limited to any and all claims, lawsuits, and actions brought by any person alleging a violation of one or more of the MTA Agreements, or alleging a violation of the Enabling Legislation). The Phase II JPA shall indemnify, defend (with counsel selected by the Construction Authority) and hold harmless the Construction Authority, its officers, agents, employees and volunteers from any and all claims, lawsuits, actions and losses occurring or resulting to any person, firm, corporation or property for damage, injury or death arising out of or connected with the performance of this Agreement by the Phase II JPA or any of its officers, agents, employees or subcontractors. The Phase II JPA's obligation to indemnify, defend and hold harmless the Construction Authority as stated herein above shall include, but not be limited to, paying all actual legal fees and cost incurred by legal counsel of the Construction Authority's choice in representing the Construction Authority in connection with any such claims, losses, lawsuits or actions. The obligations of the Phase II JPA pursuant to this section are not limited by the coverage of any insurance maintained by the Phase II JPA.

11. Insurance.

a. On or before the date that is thirty (30) days after the date of this Agreement, the Phase II JPA shall obtain, and shall maintain throughout the term of this

Agreement, insurance in accordance with the Construction Authority's insurance requirements set forth in Exhibit A, and shall obtain, furnish or shall cause to be furnished to the Construction Authority, appropriate evidence of such insurance.

b. Notwithstanding paragraph a, the Phase II JPA is not required to maintain the Worker's Compensation and Employee Theft insurance described in Exhibit A until the date that the first employee is hired by the Phase II JPA.

c. Upon the commencement of construction of Phase II, Exhibit A shall be revised to include requirements for insurance appropriate for the construction of the Phase II Project, as determined by the Construction Authority.

12. JPA Agreement: Membership. The Phase II JPA shall make no changes to the JPA Agreement, or the membership of the JPA, as they both are in effect on the date of this Agreement, without the prior written approval of the Construction Authority.

13. Resolution of Disputes. In the event of any dispute, controversy or claim arising between the Construction Authority and the Phase II JPA out of or relating to this Agreement ("Dispute"), the parties shall make good faith efforts to resolve the Dispute through negotiation and, if the parties so elect, non-binding mediation. Any Dispute that cannot be settled through direct negotiation shall be resolved by the Dispute Review Board ("Disputes Board") in accordance with this Section 13.

a. Dispute Notice. In the event of any Dispute, the complaining Party shall provide a notice of the Dispute ("Dispute Notice") to the other party. The Dispute Notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the complaint. The complaining Party may, but will not be required to, aggregate the Dispute with other Disputes into one Dispute Notice. The Dispute Notice must be delivered to the other Party no later than sixty (60) Days after first becoming aware of the facts that form the basis of the Dispute.

b. Dispute Review Board.

(i) Membership. The Disputes Board will consist of one member selected by Construction Authority from a list of three potential members prepared by Phase II JPA, one member selected by the Phase II JPA from a list of three potential members prepared by Construction Authority, and a third member selected by the first two members and approved by both the Construction Authority and the Phase II JPA and who meets the qualifications for a Disputes Board set forth in this paragraph "b." It is further agreed that the third member will act as chairman for all Disputes Board activities.

(ii) Experience of Members. The Disputes Board members shall be experienced with light rail systems planning, design, and construction, as well as in resolution of disputes involving such projects. The goal in selecting the third member is to complement the dispute resolution experience of the first two and to provide leadership for the Disputes Board's activities.

(iii) Avoidance of Appearance of Conflict. It is imperative that Disputes Board members show no partiality to either the Phase II JPA or the Construction Authority, or have any conflict of interest. No member shall be an affiliate of either party, or otherwise have a financial interest in the Project or in the outcome of any dispute decided hereunder. For purposes of this Section 13, "affiliate", as to the Phase II JPA, includes (but is not limited to) the SGVCOG, and any member entity of the SGVCOG or of the Phase II JPA. No member shall have ever been previously employed by or contracted with (or their employer employed by or contracted with) the Construction Authority, Phase II JPA or any affiliate thereof, within two years prior to the date of this Agreement. No member shall have had substantial prior involvement in the Project or relationship with any party or affiliate of a party of a nature that could compromise their ability to impartially resolve disputes. No member shall accept employment with the Construction Authority, Phase II JPA or any affiliate during the term hereof and for so long thereafter as any obligations remain outstanding under this Agreement, except as a member of other disputes boards. No member shall discuss employment with the Phase II JPA, Construction Authority, or affiliate thereof or any contractors or consultants working on the Project during the term hereof and for so long thereafter as any obligations remain outstanding under this Agreement. Each Disputes Board member shall sign an oath of impartiality upon appointment to hear the Dispute.

(iv) Submission of Disclosure Statements. Before their appointments are final, the first two prospective members shall submit complete disclosure statements for the approval of both the Construction Authority and the Phase II JPA. Each statement shall include a resume of experience, together with a declaration describing all past, present and anticipated or planned future relationships to the Project and with all parties involved in the Project, including disclosure of past or current professional or close personal relationships with Phase II JPA, Construction Authority, any affiliate, or its contractors or consultants working on the Project, or with any key member of any such person. The third Disputes Board member shall supply such a statement to the first two Disputes Board members and to the Construction Authority and Phase II JPA prior to approval of his or her appointment.

(v) Selection Process. The Construction Authority and Phase II JPA shall each select and negotiate a working agreement with their respective member within three (3) weeks after receipt of a Dispute Notice. Immediately after approval of their respective members, the Construction Authority and Phase II JPA will notify their respective members to begin selection of the third member. The first two members shall ensure that the third member meets all of the criteria listed above. The third member shall be selected within three weeks after the first two members are notified to proceed with the selection. In the event of an impasse in selection of the third member, that member shall be selected by mutual agreement of the Construction Authority and Phase II JPA. In so doing, they may, but are not required to, consider the nominees offered by the first two members. If the Construction Authority and Phase II JPA cannot agree in the selection of the third member, then each party may submit a list of up to five candidates to a court of competent jurisdiction for judicial resolution of the selection of the third member.

c. No Ex Parte Communications. The parties are expressly prohibited from seeking any Disputes Board member's advice or consultation or discussing any aspect of an existing or potential Dispute with a member, unless duly authorized representatives of both parties agree otherwise, in writing.

d. Time Periods. Disputes shall be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties, and the time periods stated below may be shortened in order to hasten resolution. When a dispute is appealed to the Disputes Board, the Disputes Board, with input from the Phase II JPA and Construction Authority, shall first decide when to conduct the hearing. A hearing date on the Dispute shall be set within thirty (30) days of the selection of the third member of the Disputes Board, for a date within sixty (60) days of the selection of the third member of the Disputes Board. The hearing may be continued, as determined necessary by the members of the Disputes Board. The Disputes Board may proceed in absence of a party who, after due notice, fails to appear.

e. Hearings.

(i) Normally the hearing will be conducted at _____
However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory. Private sessions of the Disputes Board may be held at any convenient location.

(ii) The Disputes Board shall formulate its own rules of operation in accordance with this Agreement.

(iii) The third member of the Disputes Board will act as chairman of the hearing, or he or she may appoint one of the other members to be chairman. Normally each member keeps his or her own notes, and a formal transcript is not prepared. In special cases, when requested by either party, the Disputes Board may allow preparation of a transcript by a court reporter. Audio or video recordings should not be permitted.

(iv) Once a notice of appeal is filed with the Disputes Board, discovery shall be permitted to the full extent provided by Code of Civil Procedure sections 1283.05(a) through (d); provided that the parties may agree to shorten the discovery period for individual disputes.

(v) During the hearing, Phase II JPA and Construction Authority shall each have ample opportunity to be heard and to offer evidence. Construction Authority and Phase II JPA shall have representatives at all hearings. Phase II JPA will first discuss the dispute, followed by Construction Authority. Each party will then be allowed successive rebuttals until all aspects are fully covered. The Disputes Board members may ask questions, request clarification, or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all the evidence presented by both parties. Both Construction Authority and Phase II JPA shall be provided full and adequate opportunity to present all of their evidence, documentation and testimony regarding all issues before the Disputes Board. The Disputes Board shall not be bound by the rules of evidence,

except for those pertaining to privilege. During the hearings, no Disputes Board member shall express any opinion concerning the merit of any facet of the case.

f. Recommendations of Disputes Board.

After the hearings are concluded, the Disputes Board shall meet to formulate its recommendations. All Disputes Board deliberations shall be conducted in private, with all individual views kept strictly confidential. The Disputes Board's recommendations, shall be based on the record, and on pertinent provisions of this Agreement and the Enabling Legislation, applicable law, and the facts and circumstances involved in the dispute. The Disputes Board shall make every effort to reach a unanimous recommendation. If this proves impossible, the dissenting member may prepare a minority report. The Disputes Board's recommendations for resolution of the dispute, together with an explanation of its reasoning, shall be given in writing to both Construction Authority and Phase II JPA, within two weeks of completion of the hearings. In exceptionally difficult cases, this time may be extended by mutual agreement of all parties. Such recommendation shall be in writing stating a factually detailed, reasoned opinion of the Disputes Board's findings of fact and conclusions of law, and shall be signed by the Disputes Board. The Disputes Board, in deciding any Dispute, shall have no power or authority to award special, consequential, punitive, or exemplary damages, and shall look to the substantive laws, and not the laws of conflicts, of the State of California for the resolution of the Dispute. In deciding a Dispute, the Disputes Board shall follow the express intent of the parties as set forth in this Agreement.

(i) If requested by either party, the Disputes Board shall meet with Construction Authority and Phase II JPA to provide additional clarification of its recommendation.

(ii) Within two weeks after receiving the Disputes Board's recommendations, or such other time specified by the Disputes Board, both Construction Authority and Phase II JPA shall respond to the other and to the Disputes Board in writing, signifying either acceptance or rejection of the Disputes Board's recommendations. The failure of either party to respond within the specified period shall be deemed an acceptance of the Disputes Board's recommendations.

g. Appeal. Should a party reject the Disputes Board's recommendations and give notice of such rejection pursuant to Section _____, it shall have the following options:

(i) Within two weeks after receiving the recommendations, the party may appeal the recommendations back to the Disputes Board by submitting an appeal. The Disputes Board's recommendations regarding a particular dispute may be appealed back to the Disputes Board only once.

(ii) Whether or not it has filed an appeal back to the Disputes Board, within ninety (90) days following issuance of the Disputes Board recommendations, the party may submit the dispute to judicial resolution by filing a complaint in a court of competent jurisdiction. If the dispute has not been submitted to judicial resolution by the filing of a

complaint in a court of competent jurisdiction within the required six-month period, then the recommendations made by the Disputes Board shall be final and binding on the parties.

(iii) The parties may resort to other methods of settlement, should they agree to do so.

h. Statutes of Limitation. The parties hereby agree that all statutes of limitation shall be tolled from the date of submission of a dispute to the Disputes Board to the date of the final recommendation.

i. Compensation. Fees and expenses of all three members of the Disputes Board shall be shared equally by the Construction Authority and the Phase II JPA. The Construction Authority will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services; the Phase II JPA shall reimburse the Construction Authority for half of the cost of these services. If the Disputes Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed. Phase II JPA shall pay the invoices of all Disputes Board members after approval by both parties. Phase II JPA will then bill Construction Authority for 50% of such invoices.

j. Cooperation. The parties shall diligently cooperate with one another and the Disputes Board, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute.

k. Provisional Remedies. No party shall be precluded from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining any emergency or provisional remedy which may be necessary, and which is not otherwise available under this Section 13, to protect its rights, including temporary and preliminary injunctive relief, attachment, claim and delivery, receivership and any extraordinary writ.

l. Participation in Other Proceedings. Phase II JPA agrees that, at Construction Authority's request, third parties which are involved in the design or construction of any part of the Project may be joined as parties in dispute resolution proceedings under Section 16. Also, if requested by Construction Authority, Phase II JPA will allow itself to be joined as a participant in, and be bound by, any arbitration or other proceeding that involves Construction Authority and any other participant in the design or construction of any part of the Project, including any proceeding before the Disputes Board established under the Chinatown Contract. This provision is for the benefit of Construction Authority and not for the benefit of any other party.

m. Attorneys' Fees. The prevailing party in any proceeding (including appeals) shall be entitled to recover from the losing party reasonable costs and court costs, including reasonable attorneys' fees, expert witness fees, and all other costs and expenses incurred in connection with resolving such dispute, including the prevailing party's share of the Disputes Board's fees and expenses, if any.

14. Notices.

a. Any notice, request, demand, report or other communication given hereunder shall be in writing and sent by United States registered or certified mail, by fax (with a confirmation by registered or certified mail placed in the mail no later than the following day), or personally delivered by hand, or a nationally or locally recognized overnight courier service, with postage prepaid, as follows:

If to Construction Authority:

Los Angeles to Pasadena Metro Blue Line
Construction Authority
625 Fair Oaks Ave., Suite 200
South Pasadena, CA 91030
Attention: Chief Executive Officer
Tel: (626) 403-5500
Fax: (626) 799-3599

With a copy to:

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Attn: Michael Estrada
Tel: (213) 626-8484
Fax: (213) 626-0078

If to Construction Authority:

Gold Line Phase II Construction Authority

Attention: _____
Tel: () ____-____
Fax: () ____-____

With a copy to:

Attention: _____
Tel: () ____-____
Fax: () ____-____

b. All notices, requests, demands, reports or other communications shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered, sent by overnight courier service or transmitted by fax and, as to communications made by United States mail, on the fifth (5th) day after mailing.

Any party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address or an additional and/or a different person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed.

15. Termination: Expiration.

a. Unless earlier terminated, this Agreement shall expire upon the first to occur of:

- (i) Dissolution of the Construction Authority or the Phase II JPA or both; or
- (ii) completion of the Project.

b. This Agreement may be terminated by either party at any time, with or without cause, upon thirty (30) days written notice to the other party.

c. Upon the expiration or earlier termination of this Agreement, all real and personal property of the JPA in any way related to the Project shall be conveyed to the Construction Authority.

16. Severability. If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein. Notwithstanding the foregoing, however, all material provisions of this Agreement shall not be deemed to be severable from the other provisions hereof. In the event such provisions are held in any legal proceeding which is binding upon the Construction Authority to be null, void, in excess of the construction Authority's powers or otherwise invalid or unenforceable, this entire Agreement may at the Construction Authority's sole discretion terminate without any liability of the Construction Authority to the Phase II JPA.

17. No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement.

18. Counterparts. This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Amendments. This Agreement may be altered, amended or revoked only by an instrument in writing signed by each party hereto.

20. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

21. Further Actions. The parties agree to execute such further documents, agreements, instruments and notices, and to take such further actions, as may be reasonably necessary or appropriate to effectuate the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first written above.

LOS ANGELES TO PASADENA METRO
BLUE LINE CONSTRUCTION AUTHORITY

By: _____
EDWARD REYES
Chairman

APPROVED AS TO FORM:

By: _____
MICHAEL ESTRADA
Co-General Counsel

GOLD LINE PHASE II CONSTRUCTION
AUTHORITY, a joint powers Construction
Authority

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

EXHIBIT A

INSURANCE REQUIREMENTS

The Phase II JPA, at its expense, shall throughout the term of this Agreement maintain or cause to be maintained the following insurance.

Commercial General Liability Insurance

Commercial General Liability Insurance (primary) shall be provided on ISO-CGL form No. CG 00 01 or equivalent coverage, including provisions for defense of additional insureds and defense costs in addition to limits. Policy limits shall be no less than one million dollars (\$1,000,000) per occurrence for all coverages and two million dollars (\$2,000,000) general aggregate. The Construction Authority and its employees and agents shall be added as additional insureds using ISO form CG 20 10 or equivalent. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the Construction Authority or any employee or agent of the Construction Authority.

Umbrella Liability Insurance

Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum. Coverage shall be at least as broad as any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion. Policy limits shall be not less than twenty million dollars (\$20,000,000) per occurrence and in the aggregate, including any limits required in the underlying policies. The policy shall have starting and ending dates concurrent with the underlying coverages. The Phase II JPA may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits.

Workers Compensation Insurance

Workers' Compensation/Employer's Liability shall provide workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the Construction Authority, its employees or agents.

Business Auto Coverage

Business Auto Coverage for vehicles owned, operated or maintained in any way connected with the Phase II Project, shall be written on ISO Business Auto Coverage form CA 00 01 or the equivalent, including symbol (1) (any Auto). If the Phase II JPA does not own any vehicles, this requirement may be satisfied by a nonowned vehicle endorsement to the general and umbrella liability policies. Limits shall be no less than one million dollars (\$1,000,000) per accident. This policy shall be scheduled as underlying insurance to the umbrella policy required above for a total limit of no less than twenty million dollars (\$20,000,000) each accident.

Crime Insurance

Crime Insurance providing a minimum of \$5,000,000 Employee Theft coverage with a per occurrence deductible of not greater than \$25,000.

PROVISIONS PERTAINING TO INSURANCE PROVIDED BY PHASE II JPA

1. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the Construction Authority or its operations limits the application of such insurance coverage.
2. Requirements of specific coverage features or limits contained in this Attachment are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
3. All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit the Phase II JPA, and the Phase II JPA's employees, or agents, from waiving the right of subrogation prior to a loss. The Phase II JPA waives its right of subrogation against the Construction Authority.
4. None of the policies required herein shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to the Construction Authority and approved in writing by the Construction Authority's Chief Executive Officer.
5. Unless otherwise approved by the Construction Authority, the Phase II JPA's insurance and insurance provided by contractor or subcontractor shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A-VI." Self-insurance will not be considered to comply with these insurance specifications.
6. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, the Construction Authority has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the Construction Authority will be promptly reimbursed by the Phase II JPA.
7. The Phase II JPA agrees to provide evidence of the insurance required herein, satisfactory to the Construction Authority, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to the Phase II JPA's general liability and umbrella liability policies as specified in the description of insurance requirement above. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice of any cancellation of coverage. The Phase II JPA agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

The Phase II JPA agrees to provide copies of any endorsements modifying coverage in any way upon request from the Construction Authority.

8. The Phase II JPA shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished within seventy-two (72) hours of the expiration of the coverages.

9. Any actual or alleged failure on the part of the Construction Authority or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of the Construction Authority or any additional insured, in this or any other regard.

10. The Phase II JPA agrees to require all subcontractors or other parties hired for this project to purchase and maintain insurance for general liability (minimum limit one million dollars (\$1,000,000) per occurrence), automobile liability (one million dollars (\$1,000,000) per accident) and workers' compensation (statutory benefits).

11. The Phase II JPA agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required here. The Phase II JPA agrees to obtain certificates evidencing such coverage. The Phase II JPA agrees that upon request, all agreements with contractors or others with whom the Phase II JPA contracts with on behalf of the Construction Authority, and all certificates of insurance obtained in compliance with this paragraph will be submitted to the Construction Authority for review. Failure of the Construction Authority to request copies of such documents will not impose any liability on the Construction Authority, or its employees.

12. The Phase II JPA agrees to require that no contract used by any general Phase II JPA or subcontractor, or contracts the Phase II JPA enters into, will reserve the right to charge back to the Construction Authority the cost of insurance required by this Agreement.

13. Coverage will not be limited to any specific location.

14. The Phase II JPA agrees to provide immediate notice to the Construction Authority of any claim or loss against the Phase II JPA that includes the Construction Authority as a defendant. The Construction Authority assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the Construction Authority.

15. The Phase II JPA agrees not to attempt to avoid its defense and indemnity obligations to the Construction Authority, and their employees, agents, officials and servants by using as a defense the Phase II JPA's statutory immunity under workers' compensation and similar statutes.

16. The Phase II JPA agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between the Phase II JPA and the Construction Authority or between the Construction Authority and any other insured or Named Insured under the policy, or between

the Construction Authority and any party associated with the Construction Authority or its employees.

17. If contractor or subcontractor is a Limited Liability Company, general liability coverage must apply so that the Limited Liability Company and its Managers, Members, Affiliates, and their employees are insureds.

18. The Phase II JPA agrees to obtain and provide to the Construction Authority evidence of professional liability coverage for Architects, Engineers or other design professionals working on the Phase II Project. The limit of liability required is subject to the Construction Authority approval, but in no event to be less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.