

CITY OF PASADENA

MEMORANDUM

TO: Mayor Bogaard and Members of the City Council

FROM: Michele Bagneris *M*
for City Attorney *(KODRICK)*

DATE: May 10, 2004

RE: CONSIDERATION OF CONTRACT RELATED TO CITY'S
PARTICIPATION GOLD LINE PHASE II JOINT POWERS
AUTHORITY

Enclosed are the following documents:

- (1) The last form of "Amendment Two -- Joint Exercise of Powers Agreement -- Gold Line II Construction Authority" reviewed by the Pasadena City Council, and
- (2) A subsequent "redlined" version of that Amendment Two submitted by Joe Silvey, Esq., intended to respond to the various comments of the Pasadena City Council.

AMENDMENT TWO

JOINT EXERCISE OF POWERS AGREEMENT

GOLD LINE PHASE II CONSTRUCTION AUTHORITY

This Amendment Two to the Joint Exercise of Powers Agreement for the Gold Line Phase II Construction Authority ("Amendment Two") is approved and executed by the current members of the Gold Line Phase II Construction Authority as set forth in Exhibit 1-A, attached hereto, and each of which must approve and execute this Amendment Two in order for Amendment Two to be effective. This Amendment Two is also approved and executed by the City of Pasadena, which approval and execution shall allow the City of Pasadena to become a member of the Gold Line Phase II Construction Authority should all of the current members listed in Exhibit 1-A approve this Amendment Two.

WITNESSETH:

The parties hereto do agree as follows.

Section 1. **Recitals.** This Amendment Two is made and entered into with respect to the following facts:

a. The Gold Line Phase II Construction Authority (the "Authority") was formed pursuant to Section 6500 *et seq.* of the Government Code to enable its member cities and agencies to participate as fully as is necessary and appropriate in the planning, funding, design and construction of the Gold Line Phase II light rail project ("the Gold Line Phase II");

b. The City of Pasadena has asked to join the Authority in order to work cooperatively with the Authority and its member cities and agencies to complete the Gold Line Phase II including a possible extension to the City of Montclair;

c. The City of Pasadena has agreed to pay dues and assume other required financial responsibilities as a condition of its membership in the Authority consistent with and as limited by this Amendment Two.

Section 2. **Terms Remain in Effect.** All terms of the Joint Exercise of Powers Agreement for the Gold Line Phase II Construction Authority (the "Agreement") that are not deleted or amended by this Amendment Two remain fully in effect and the execution of this Amendment Two by each of the parties hereto signifies approval and acceptance of the Agreement as modified by this Amendment Two.

Section 3. Change to Section 18a. The following sentence is added to the end of Section 18a of the Agreement.

"In addition, the Authority shall require that all parties with whom the Authority contracts both agree that the sole responsibility for payment under the contract is the Authority's and, to the maximum extent permitted by law, agree and covenant not to sue any Member of the Authority for any claim, dispute or action arising out of any contract with the Authority."

Section 4. New Section 26a. Section 26a of the Agreement is deleted in its entirety and replaced with the following new Section 26a.

"a. Withdrawal not Permitted, Limitation on Liability. A Member may not withdraw from the authority and shall each year be responsible for any Annual Dues, as defined in Section 29c of this Agreement. To the maximum extent permitted by law, a Member shall be responsible only for obligations, liabilities and costs of the Authority which arise from activities which are supported by Initial or Annual Dues. To the maximum extent permitted by law, a Member's financial responsibilities for any and all obligations, liabilities and costs of the Authority shall be limited to, and shall in no event exceed, the amount of Initial and Annual Dues paid by that Member over the life of this Agreement."

Section 5. New Section 29e. Section 29e of the Agreement is deleted in its entirety and replaced with the following new Section 29e.

"e. Use of Dues. Members' Annual Dues shall be used only for project advocacy and public education concerning the Gold Line Phase II and for insurance and other administrative costs of the Authority in support of project advocacy and public education."

Section 6. Effective Dates. The effective date of this Amendment Two shall be the first date on which each of the current members of the Authority, as listed in Exhibit 1-A, shall have approved and signed this Amendment Two. The effective date of the City of Pasadena's membership in the Authority shall be the first date on which each of the current members of the Authority and the City of Pasadena shall have approved and signed this Amendment Two.

Section 7. Counterparts. This Amendment Two may be executed in several counterparts, and all counterparts so executed shall constitute one Amendment Two, binding on all the parties hereto, notwithstanding that all of the parties are not signatory to the original or same counterpart.

The current members of the Authority and the City of Pasadena have caused this Amendment Two to be executed on their behalf, respectively, as follows:

Mayor/Chief Executive Officer/
Executive Director

ATTEST

City Clerk/Secretary

Date

AMENDMENT TWO
JOINT EXERCISE OF POWERS AGREEMENT
GOLD LINE PHASE II CONSTRUCTION AUTHORITY

This Amendment Two to the Joint Exercise of Powers Agreement for the Gold Line Phase II Construction Authority (“Amendment Two”) is approved and executed by the current members of the Gold Line Phase II Construction Authority as set forth in Exhibit ~~12~~-A, attached hereto, and each of which must approve and execute this Amendment Two in order for Amendment Two to be effective. This Amendment Two is also approved and executed by the City of Pasadena, which approval and execution shall allow the City of Pasadena to become a member of the Gold Line Phase II Construction Authority should all of the current members listed in Exhibit ~~12~~-A approve this Amendment Two.

WITNESSETH:

The parties hereto do agree as follows.

Section 1. Recitals. This Amendment Two is made and entered into with respect to the following facts:

a. The Gold Line Phase II Construction Authority (the “Authority”) was formed pursuant to Section 6500 *et seq.* of the Government Code to enable its member cities and agencies to participate as fully as is necessary and appropriate in the planning, funding, design and construction of the Gold Line Phase II light rail project (“the Gold Line Phase II”);

b. The City of Pasadena has asked to join the Authority in order to work cooperatively with the Authority and its member cities and agencies to complete the Gold Line Phase II including a possible extension to the City of Montclair;

c. The City of Pasadena has agreed to pay dues ~~and assume other required financial responsibilities~~ as a condition of its membership in the Authority consistent with and as limited by this Amendment Two but will not be required to share any costs incurred by the Authority.

Section 2. Terms Remain in Effect. All terms of the Joint Exercise of Powers Agreement for the Gold Line Phase II Construction Authority (the “Agreement”), including Amendment One. that are not deleted or amended by this Amendment Two remain fully in effect and the execution of this Amendment Two by each of the parties hereto signifies approval and acceptance of the Agreement as modified by this Amendment Two.

~~Gold Line Phase II Proposed Amendment Two for Pasadena.doc4823-7860-1984.1~~
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Section 3. Change to Section 18a. The following sentence is added to the end of Section 18a of the Agreement.

"In addition, the Authority shall require that all parties with whom the Authority contracts both agree that the sole responsibility for payment under the contract is the Authority's and, to the maximum extent permitted by law, agree and covenant not to sue any Member of the Authority for any claim, dispute or action arising out of any contract with the Authority."

Section 4. Change to Interest Calculation Date. In Section 26c of the Agreement, change the date from which interest is to be calculated from "December 31, 2003" to "July 1, 2004."

Section ~~4~~5. New Section 26a. Section 26a of the Agreement is deleted in its entirety and replaced with the following new Section 26a.

"a. Withdrawal not Permitted, Limitation on Liability. A Member may not withdraw from the Aauthority and shall each year be responsible for any Annual Dues, as defined in Section 29c of this Agreement. and for its share of any costs incurred by the Authority. A Member's share in the costs that are incurred by the Authority shall be calculated in proportion to the Member's participation in the funding of the Authority through Annual Dues except that Pasadena shall not share in any costs incurred by the Authority and shall not be deemed to participate in the funding of the Authority notwithstanding the fact that Pasadena shall pay Initial Dues and Annual Dues in accordance with Section 29. To the maximum extent permitted by law, a Member shall be responsible only for obligations, liabilities and costs of the Authority which arise from activities which are supported by Initial or Annual Dues. To the maximum extent permitted by law, a Member's financial responsibilities for any and all obligations, liabilities and costs of the Authority shall be limited to, and shall in no event exceed, the amount of Initial and Annual Dues paid by that Member over the life of this Agreement."

Section ~~5~~6. New Section 29eb. Section 29~~eb~~ of the Agreement is deleted in its entirety and replaced with the following new Section 29~~eb~~.

"b. Initial Duese. Use of Dues. The initial dues shall be Thirty-One Thousand Four Hundred Forty-Five Dollars (\$31,445.00) for the SANBAG and for every Phase II City (the "Initial Dues") and the Initial Dues shall be due and payable to the Authority on October 1, 2003, except for SANBAG and Pasadena whose initial Dues shall be due and payable thirty (30) days after the effective

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~~date of their respective memberships in the Authority."Members' Annual Dues shall be used only for project advocacy and public education concerning the Gold Line Phase II and for insurance and other administrative costs of the Authority in support of project advocacy and public education."~~

Section 76. Effective Dates. The effective date of this Amendment Two shall be the first date on which each of the current members of the Authority, as listed in Exhibit ~~12~~-A, shall have approved and signed this Amendment Two. The effective date of the City of Pasadena's membership in the Authority shall be the first date on which each of the current members of the Authority and the City of Pasadena shall have approved and signed this Amendment Two.

Section 87. Counterparts. This Amendment Two may be executed in several counterparts, and all counterparts so executed shall constitute one Amendment Two, binding on all the parties hereto, notwithstanding that all of the parties are not signatory to the original or same counterpart.

The current members of the Authority and the City of Pasadena have caused this Amendment Two to be executed on their behalf, respectively, as follows:

Mayor/Chief Executive Officer/
Executive Director

ATTEST

City Clerk/Secretary

Date

EXHIBIT 2-A

Current Members of the Gold Line Phase II Construction Authority

Arcadia

Azusa

Claremont

Duarte

Glendora

Irwindale

LaVerne

Monrovia

Pomona

San Bernardino Associated Governments

San Dimas

South Pasadena