San Gabriel Valley Council of Governments
1000 S. Fremont Ave., Unit 42, Alhambra, CA 91803 Phone: (626) 457-1800 FAX: (626) 457-1285 E-Mail SGV@sgvcog.org

City Managers' Steering Committee Agenda

October 10th, 2012
12:00 noon

El Monte City Hall
City Managers' Conference Room
11333 Valley Boulevard
El Monte, CA

Preliminary Business

1.0 Public Comment

2.0 Changes to Agenda Order; Identify Subsequent Need or Emergency Items

3.0 Consent Items
Recommended Action:
Approve.

3.1 Minutes from September 10th, 2012 – *Page 1*

Regular Business Items *(It is anticipated that the Committee may take action on the following items)*

4.0 Operation and Organization Review Ad Hoc Committee Recommendations – *Page 3*
Recommended Action:
Review the annual budget matrix (Exhibit 1) and provide analysis, including PERS impacts in light of AB 340 and potential exemptions from the existing PERS contract and provide recommendations to Governing Board.

5.0 Executive Director Recruitment – *To be distributed separately*
Recommended Action:
Review draft job duties and responsibilities for Executive Director position and proposed schedule for recruitment and provide comments prior to submittal to the Governing Board.

6.0 ACE Independent Agency Feasibility Analysis and Draft Project Transfer Agreement – *Page 8*
Recommended Actions:
Review andACE's responses to questions regarding proposed ACE/SGVCOG separation and finalize City Managers' Steering Committee's responses for review by the Governing Board.

New Business items for Next Regular Meeting / Announcements

7.0 Upcoming SGVCOG Strategic Planning Session – November 30th, 2012

Next Meeting

Adjourn

Please RSVP at mcreter@sgvcog.org *or at (626) 457-1800*
For TAC Meeting Notice and Minutes, Please access www.sgvcog.org
NOTICE: City Clerks please post this notice (agenda)

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Joint City Managers' Steering Committee and City Managers' Technical Advisory Committee Meeting Minutes

Date: September 10th, 2012
Time: 12:00 noon
Location: El Monte City Hall

Preliminary Business

The meeting was called to order at 12:05 p.m.

Members Present:

Alhambra	J. Keating
Arcadia	D. Lazzaretto
Azusa	J. Makshanoff
Baldwin Park	V. Singhal
Claremont	C. Tudor
Covina	D. Parrish
Duarte	D. George, K. Herrera
El Monte	D. Keller, J. Gomez
Glendora	C. Jeffers
La Canada Flintridge	M. Alexander
La Puente	B. Plumlee
La Verne	B. Russi
Monrovia	L. Lile
Pasadena	J. Gutierrez
Pomona	L. Lowry
Rosemead	J. Allred
San Dimas	B. Michaelis
San Gabriel	M. Marlowe
South El Monte	A. Ybarra
South Pasadena	S. Gonzalez
West Covina	A. Pasmant

Members Absent:
Diamond Bar
Montebello
Monterey Park
San Marino
Sierra Madre
Temple City
Walnut

SGVCOG Staff:
F. Delach, Interim Executive Director
M. Creter, Staff

Public:
R. Richmond, ACE
M. Christoffels, ACE
G. Aguirre

1.0 Public Comment
There were no comments from the public.

2.0 Changes to Agenda Order; Identify Subsequent Need or Emergency Items
There was a request to reverse the order of the two agenda items.

3.0 Consent Items
3.1 Minutes from August 8th, 2012
Staff indicated that the August minutes incorrectly reflected the City of Walnut as present. There was a motion to approve the minutes with that revision (M/S/C: C. Jeffers / D. Parrish / Unanimous).

Regular Business Items

4.0 Operation and Organization Review Ad Hoc Committee Recommendations

The Interim Executive Director reported on this item. He reviewed the four staffing options that had been developed by the Governing Board's ad hoc committee: 1) In-house Executive Director/Contracted staff (Ad hoc committee's recommendation); 2) Part-time Contracted Executive Director / In-house staff; 3) All in-house staff; and 4) All contract staff. He reviewed the estimated costs for each of the four options. There was extended discussion on potential long-term implications of each option, including possible PERS obligations.

There was a motion to recommend to the Governing Board the "in-house" staffing option, for both the Executive Director and core staff, with further analysis of the proposed staffing structure as it relates to the SGVCOG's entire budget and future discussion regarding staffing needs related to any new or extended duties (i.e. grants and special projects) (M/S/C: C. Jeffers / M. Alexander / Unanimous).

5.0 ACE Independent Agency Feasibility Analysis and Draft Project Transfer Agreement

The Interim Executive Director reported on this item. He indicated that an ad hoc subcommittee of the City Managers Steering Committee, including representatives from the cities of Glendora, La Canada Flintridge, Alhambra and San Gabriel, developed a draft list of policy questions related to the possible ACE separation to be submitted to the Governing Board for review and consideration. If approved by the Governing Board, these questions would be transmitted to ACE for response. The CEO of ACE indicated that the language in the draft JPA that allowed for the addition of new transportation projects that been removed.

There was a motion to submit the questions to the SGVCOG Governing Board for review (M/S/C: C. Jeffers / J. Keating / Unanimous).

New Business items for Next Regular Meeting / Announcements

6.0 Upcoming SGVCOG Strategic Planning Session – November 30th, 2012

The Interim Executive Director encouraged the Committee to attend this event.

Next Meeting

The next City Managers' Steering Committee is scheduled for October 3rd.

Adjourn

The meeting was adjourned at 1:15 pm.

DATE: October 10th, 2012

TO: City Managers' Steering Committee

FROM: F.M. Delach, Interim Executive Director

RE: SGVCOG Organizational Options Data

Recommended Action:

Review the annual budget matrix (Exhibit 1) and provide analysis of the Governing Board's recommended staffing arrangement, including PERS impacts in light of AB 340 and potential exemptions from the existing PERS contract.

Executive Summary:

On September 10, 2012, the City Managers Steering Committee and the Technical Advisory Committee met to review the recommendations of the Governing Board's Committee's "Organizational Review Sub-Committee" and develop cost estimates for each of the four options identified by that committee. I provided the group with both a copy of the Citygate Report and an initial set of cost estimates. With 21 cities represented, the City Managers TAC and Steering Committee unanimously recommended that the Governing Board implement an "In-House" staffing model with a full-time Executive Director and staff for the primary/core functions of COG

At its September meeting, the Governing Board took the following action:

1. Tentatively approve Staffing Option #2 (Hiring full-time Executive Director and staff as employees of the SGVCOG), as recommended by the City Managers' TAC, provided that the Executive Director would be hired first and would determine the number of in-house staff necessary to operate the SGVCOG.

2. Direct the City Managers' Steering Committee to review the annual budget matrix (Exhibit 1) and provide analysis, including PERS impacts in light of AB 340 and potential exemptions from the existing PERS contract.

This item is being brought back to the City Managers' Steering for review, as directed in the Governing Board's motion.

Background:

Citygate Report

The SGVCOG received the "Organizational Management Audit" report from Citygate Associates in February 2012. This report analyzed a variety of issues related to the organization of the SGVCOG, staffing, and daily operations. Specifically related to staffing, "Finding VI-2" recommended that the Governing Board investigate the cost and terms of bringing a "core" staff of employees "in-house" to provide management of the SGVCOG.

In their report, Citygate Associates generally prefers the organizational "set-up" similar to that of the Gateway COG in having its own paid staff, and a "part-time" Executive Director. Although this concept is not without challenges, there are no separate consulting arrangements done for that entity by Gateway COG staff or the executive.

The report also cautions that the SGVCOG needs to come to grip with how they see themselves 5-years from now – that the organizational structure is different mainly because their core mission elements are less than the current COG efforts. It is a viable option that a "Full-Time" Executive Director, either employee or contract consultant, could actively engage in outreach to disenfranchised member cities; help marketing the COG mission with media, member cities and other targeted groups, engage in policy advocacy, public forum, grant application and implementation under the recommended preferred restructure element.

Ad Hoc Committee

Following a presentation on the CityGate report, the Governing Board created an Ad Hoc Committee to make recommendations specifically related to the future staffing model that the SGVCOG should implement. The Ad Hoc Committee was compromised of the following members:

- Joseph Gonzales (South El Monte) – Chair
- Bruce Lathrop (Bradbury)
- Monica Garcia (Baldwin Park)
- Steven Ly (Rosemead)
- Gene Murabito (Glendora)
- Gino Sund (L.A County Supervisorial District 5)

The task began in April and the Committee met several times to discuss options, costs, and challenges related to different conceptual management structures. The Committee Members also solicited comments/review of various options by their respective City Managers and Human Resources Departments.

On July 30, 2012, the Ad-Hoc Committee met for a fourth and final time and formulated a recommendation as well as additional options that could be considered by the Governing Board. **The Committees recommended hiring a full-time permanent Executive Director ("in-house"), and contract with individuals or a consulting firm to provide the day-to-day analytical and technical/clerical staffing.** The Committee reported their recommended plan is fiscally prudent, eliminates conflict of interest issues, provides improved internal controls, improves public perceptions, provides improved contract oversight, provides flexibility in staffing, and improves transparency. The Ad-Hoc Committee presented 2-additional options and I proposed a fourth, which is a variation of the previously identified options. These options are summarized in Table 1.

	"In-house" Staff	**Contract Staff**
Option 1 (Ad Hoc Committee Recommendation): "In-House" Executive Director / Contract Staff	• Executive Director	• Analytical Staff
Option 2: All "In-House" Staff	• Executive Director • Analytical Staff	
Option 3: Part-time Contract Executive Director / "In-House" Staff	• Analytical Staff	• Executive Director
Option 4: Contract Executive Director/ Contract Staff		• Executive Director • Analytical Staff

Table 1.
Summary of Staffing Options.

Financial Analysis

The staffing options identified above and the Ad Hoc Committee's recommendations were initially reviewed at the August Governing Board meeting. I was directed to work with the City Managers' TAC to develop cost estimates for each of the options in order to in order provide the Governing Board with information on the projected fiscal impact. The costs of each option, delineated by "in-house" and contract costs, are shown in Table 2.

	Option 1 (Ad Hoc Committee Recommendation): "In-House" Executive Director / Contract Staff	**Option 2:** All "In-House" Staff	**Option 3:** Part-time Contract Executive Director / "In-House" Staff	**Option 4:** Contract Executive Director/ Contract Staff
In-House Costs	$291,336	$508,812	$294,396	$76,920
Contract Costs	$447,204	-	$217,476	$609,578
Total	**$738,540**	**$508,812**	**$456,771**	**$686,499**

Table 2.[1]
Estimated Costs of Each Proposed Staffing Option.

In reviewing these cost estimates, please note the following assumptions:

- **Executive Director:**
  - **Full-Time/In-House:** Two of the staffing models propose a full-time Executive Director that would be an employee of the SGVCOG. For the purposes of this analysis, I assumed an annual base salary of $180,000, with a range up to $192,000. This should be considered in comparison to the Foothill Metro Gold Line Extension's Executive Director, and the ACE Construction Authority Executive Director's compensation of $230,000 to $250,000 annually, and City Manager salaries in the region.
  - **Part-Time/Contract:** Two of the staffing models propose a part-time contracted Executive Director. This assumes an average of 20-30 hours per week, similar to the current agreement for the Interim Executive Director position. For the purposes of this analysis, I utilized an hourly rate of $125/hour, and an average of 25 hours/week.
- **Analytical Staff:** All staffing options, both "in-house" and contract, assume a core of three analytical staff. This assumption is based on our current obligations including the grant programs associated with the Edison energy programs. Depending on how the COG resolves its discussion of its future mission outlook as Citygate suggests, then that core staffing may change by with at least one or more analytical positions being eventually dropped or added. Additionally, depending on your direction, it may be necessary to consider a full-time clerical/technical administrative/executive assistant or office manager. A key element to the review is that the SGVCOG costs of operation are directly correlated with the work plan developed through strategic planning; thus the more work requested and expected the greater the staffing costs, unless directly related to new grant work. It is possible for the SGVCOG to recapture overhead charges via grant work reducing the operating costs for the SGVCOG budget lessening the ongoing general fund expense.
  - **In-House:** I utilized current staff's salaries in modeling in the in-house options.
  - **Contract:** I contacted several consulting firms to develop an estimated rate that would be charged for analyst-level positions with comparable experience to current staff. Based on that information, I assumed 2080 hours (full-time) per consultant staff, with 1 senior staff charged at $105/hour, and 2 additional staff charged at $55/hour.

- **Benefits:** The in-house scenarios include $700/month costs per employee for medical/dental insurance; pension options (discussed below); 100 hours of vacation; and 50 hours administrative leave. These benefits were based on the typical benefits of member cities.

[1] Current dues revenue for the COG at full membership of the 31 cities, 3 County Supervisorial Districts, and the San Gabriel Valley Water Agencies are $702,096.

- **Pension:** Given the SGVCOG's existing PERS contract (due the ACE Project) it is still unresolved whether the agency would be required to offer PERS to any in-house employees of SGVCOG. I am advised that there is a process where a contracting entity may, under Government Code Section 20505, seek waivers for classifications not being included under their contract. With PERS taking considerable time in responding to inquiries, my in-house scenarios assume we cannot opt out classifications. However, I am presuming that we would establish a second tier of 2%@60 or 2%@62 as opposed to the current 2.5%@55. The benefit assumptions are not an endorsement of any of them, but designed to present viable cost alternatives for your consideration of a possible restructuring alternative. Also note, my scenarios have not assumed any impacts of the recently approved pension reforms approved by the Governor as there is not enough detail available.
- **All Contract Staff Option:** Note, to avoid any perceived or actual conflict of interest, I assumed 2 different firms would be contracted with for staffing, one for Executive Director services and one for analytical staff services.
- **Operational Costs:** In addition to staff costs, I researched current rates for office space, utilities, and supplies. These are estimated at $76,920 annually, or $6,410 per month. This does not include one-time capital outlay costs of $17,100 (i.e. computers, IT/phone systems, and office furniture).

As discussed above, the Governing Board approved Option 2 (All "in-house" staff), provided that the Executive Director would be hired first and would determine the number of in-house staff necessary to operate the SGVCOG.

In order to better understand the impact that any new staffing model would have on the SGVCOG's overall budget, the City Managers and Governing Board requested that I prepare a draft fiscal year budget comparing all of the different staffing models. As shown in Exhibit 1, using current revenues and other existing expenses, Options 2 (All "In-House") and 3 (Part-time Contract Executive Director/"In-house" Staff) result in a net surplus of $145,284 and $197,325 respectively. Using the same budget assumptions, Options 1 ("In-house" Executive Director/Contract Staff) and 4 (All contract staff) result in a deficit of $84,444 and $32,403 respectively.

Exhibit 1.

Existing Budget Items	Adopted FY 2012-13[1]	Alternative Staffing Models				Revised Budget Items
		Option 1: "In-House" Executive Director/ Contract Staff	Option 2: All "In-House" Staffing	Option 3: Part-Time Contract Executive Director/ "In-House" Staff	Option 4: All Contract Staff (Multiple MSAs)	
General Operating Income						**General Operating Income**
Member Dues	$ 702,096	$ 702,096	$ 702,096	$ 702,096	$ 702,096	Member Dues
Interest	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	Interest
Total General Operating Income	**$ 703,096**	**$ 703,096**	**$ 703,096**	**$ 703,096**	**$ 703,096**	**Total General Operating Income**
Grants & Special Project Income						**Grants & Special Project Income**
SCE Local Government Partnership	$ 75,000	$ 75,000	$ 75,000	$ 75,000	$ 75,000	SCE Local Government Partnership
SCE CEESP Grant	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	SCE CEESP Grant
Energy Upgrade California	$ 55,000	$ 55,000	$ 55,000	$ 55,000	$ 55,000	Energy Upgrade California
Total Grants & Special Project Income	**$ 1,130,000**	**$ 1,130,000**	**$ 1,130,000**	**$ 1,130,000**	**$ 1,130,000**	**Total Grants & Special Project Income**
Total Income	**$ 1,833,096**	**$ 1,833,096**	**$ 1,833,096**	**$ 1,833,096**	**$ 1,833,096**	**Total Income**
General Operating Expenses						**General Operating Expenses**
Ongoing Management and Operational Contracts						Ongoing Management and Operational Contracts
Management Services Contract (MSC)	$ 428,033	$ 214,416	$ 214,416	$ 162,375	$ 162,375	Executive Director (Salary & Benefits)
		$ 447,204	$ 217,476	$ 217,476	$ 447,204	Other SGVCOG Staffing (3 employees, Salary & Benefits)
		$ 52,500	$ 52,500	$ 52,500	$ 52,500	Estimated Rent
		$ 20,100	$ 20,100	$ 20,100	$ 20,100	Estimated Utilities
		$ 3,600	$ 3,600	$ 3,600	$ 3,600	Office Supplies
		$ 720	$ 720	$ 720	$ 720	Postage
		$ 738,540	**$ 508,812**	**$ 456,771**	**$ 686,499**	Subtotal of Staffing and Operational Costs[2]
MTA Board Support	$ 50,000	$ 50,000	$ 50,000	$ 50,000	$ 50,000	MTA Board Support
Legal Services	$ 40,000	$ 40,000	$ 40,000	$ 40,000	$ 40,000	Legal Services
Financial Audit Services	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	Financial Audit Services
Bookkeeping / Accounting	$ 13,000	$ 13,000	$ 13,000	$ 13,000	$ 13,000	Bookkeeping / Accounting
Consultant Services						Consultant Services
Federal Advisory Services	$ -	$ -	$ -	$ -	$ -	Federal Advisory Services
Strategic Planning	$ 16,000	$ 16,000	$ 16,000	$ 16,000	$ 16,000	Strategic Planning
Media/Public Relations	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	Media/Public Relations
Annual Evaluation	$ 4,500	$ 4,500	$ 4,500	$ 4,500	$ 4,500	Annual Evaluation
Special Events and Advocacy Travel						Special Events and Advocacy Travel
Annual Federal & State Advocacy Delegation	$ 22,000	$ 22,000	$ 22,000	$ 22,000	$ 22,000	Annual Federal & State Advocacy Delegation
Local Receptions	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	Local Receptions
Governing Board and Committee Meetings	$ 7,500	$ 7,500	$ 7,500	$ 7,500	$ 7,500	Governing Board and Committee Meetings
Direct Expenses						Direct Expenses
Board Stipends	$ 11,000	$ 11,000	$ 11,000	$ 11,000	$ 11,000	Board Stipends
Insurance	$ 6,000	$ 6,000	$ 6,000	$ 6,000	$ 6,000	Insurance
Printing / Publication	$ 14,000	$ 14,000	$ 14,000	$ 14,000	$ 14,000	Printing / Publication
Miscellaneous	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	Miscellaneous
Total Operating Expenditures	**$ 667,033**	**$ 977,540**	**$ 747,812**	**$ 695,771**	**$ 925,499**	**Total Operating Expenditures**
Grants & Special Projects Expenses						**Grants & Special Projects Expenses**
Grants & Special Projects Staff						Grants & Special Projects Staff
MSC - Amendment #1 (Energy Wise)	$ 52,500	$ -	$ -	$ -	$ -	
MSC - Amendment #2 (SCE CEESP)	$ 100,000	$ -	$ -	$ -	$ -	
MSC - Amendment #3 (Energy Upgrade)	$ 55,000	$ -	$ -	$ -	$ -	
Grants & Policy Committee Internship Program	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	Grants & Policy Committee Internship Program
Consultant Services and Other Direct Grant Expenses						Consultant Services and Other Direct Grant Expenses
Miscellaneous Grant Expenses	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	Miscellaneous Grant Expenses
Local Government Sustainable Energy Coalition	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	Local Government Sustainable Energy Coalition
Information Technology	$ 5,000	$ 5,000	$ 5,000	$ 5,000	$ 5,000	Information Technology
SCE Local Government Partnership Expenses	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000	SCE Local Government Partnership Expenses
SCE CEESP Expenses	$ 900,000	$ 900,000	$ 900,000	$ 900,000	$ 900,000	SCE CEESP Expenses
Total Grant & Special Project Expenses	**$ 1,147,500**	**$ 940,000**	**$ 940,000**	**$ 940,000**	**$ 940,000**	**Total Grant & Special Project Expenses**
Total Expenditures	**$ 1,814,533**	**$ 1,917,540**	**$ 1,687,812**	**$ 1,635,771**	**$ 1,865,499**	**Total Expenditures**
Surplus/Deficit	**$ 18,563**	**$ (84,444)**	**$ 145,284**	**$ 197,325**	**$ (32,403)**	**Surplus/Deficit[3]**

1. The original approved FY 12-13 budget was used for the purposes of comparison, as opposed to the adopted FY 12-13 budget, which includes reductions to various budget items to offset the costs of an Interim Executive Director.
2. Does not include one-time capital outlay costs of $17,100. This would include computers, IT/phone systems, and office furniture.
3. The existing budget proposes 5.5 FTE (3 FTE from the MSA and 2.5 FTE for "Grants and Special Projects). The proposed budget funds 4 FTE (Executive Director and 3 analysts).

Alameda Corridor-East Construction Authority

4900 Rivergrade Rd. Ste. A120 Irwindale, CA 91706 (626) 962-9292 fax (626) 962-3552 www.theaceproject.org

MEMO TO: SGVCOG City Manager's Steering Committee

FROM: Rick Richmond
Chief Executive Officer

DATE: October 3, 2012

SUBJECT: Responses to Questions

Please find attached my response to the questions you have posed regarding the possible separation of the ACE Project from the SGVCOG.

I look forward to discussing this at your October 10 meeting.

Attachment

Benefits to COG from ACE Separation

It should be noted that ACE was not established to create any direct benefits to the COG other than addressing certain transportation issues in the SGV. The benefits that result from ACE and the ACE Project are for the citizens and businesses of the SGV. Thus, a legal separation of ACE from the COG will not eliminate any benefits due to the COG by ACE.

Nevertheless, there are benefits which the COG would realize if the separation occurs. They cannot be quantified in terms of time or dollar savings, but they are important and can be significant.

1. ACE separation from the COG would provide the COG with complete insulation from possible past or future liabilities for the ACE Project. Although ACE has no knowledge of actual circumstances or liabilities that have or could create actual financial exposure for the COG and although ACE's administration and management of the ACE Project has been well monitored by both the ACE Board and ACE's funding agencies, unless a legal separation from ACE occurs the COG will always have potential liabilities for the ACE Project due to the following.

    - The ACE Project requires operating capital which must be obtained from a Grant Anticipation Note (GAN) or similar type of debt/loan program for which the COG will be responsible since ACE is not a separate legal entity.

    - The COG is a member of CalPERS for the benefit of the employees of ACE. Exposure of the COG to potential liabilities associated with the CalPERS retirement programs could be eliminated if ACE separates from the COG and if the COG itself decides to implement a retirement program for its own employees that does not involve CalPERS.

    - ACE anticipates that most or all of its entire grant funding programs and its major contracts will be subject to a final audit prior to closeout. ACE's record with regard to all audits to date has been exemplary. However, without ACE separation, the COG will remain at risk regarding all such audits if errors are discovered that required a return of funds or if contractor claim issues cannot be resolved.

    - As a major construction organization, ACE is always subject to claims and litigation associated with accident or design/construction failures that may arise during the course of a project. ACE has in place substantial insurance policies to deal with such matters, but such policies include self insurance provisions, contract exclusions and liability limits which will always cause some potential exposure to remain with the COG as long as it is the legal entity responsible for ACE.

- In the name of the COG, ACE has entered into a number of standard business contracts (e.g. multiyear office space lease, general automobile liability policies, etc.) that include warranties and financial assurances that create modest liability for the COG in the event of accidents, early termination of ACE's activities, ACE funding problems, etc.

2. Separation relieves COG from the responsibility for the ACE Project, which has been advocated by several COG cities. Of the 35 COG member agencies only eight are directly affected by the remaining ACE projects. The other 27 remaining member agencies not directly affected would be relieved of the responsibility for these projects.

3. The COG Governing Board will be able to focus its limited time and COG's limited resources on its core mission rather than the narrowly focused activities of the ACE Project; Governing Board time spent on oversight currently totals approximately 15 minutes every quarter.

4. The COG City Manager's Steering Committee, the primary management/technical resource the COG Governing Board relies on for oversight, would be relieved of the considerable amount of time and attention this role requires, especially in light of the competing demands each city manager faces in his/her city.

5. Separation relieves COG of the substantial amount of cost, staff time and necessary outside technical resources which would be required to fully perform oversight of a $1.6 billion project ($341 million in construction about to begin, $481 million in projects in design). As duplicative oversight, these costs could not be charged to the project.

Benefits to ACE from Separation

- More efficient organizational structure – one Board.
- Less ACE administrative time spent on COG reporting – which is of limited interest to minimally affected COG members.
- Budget and program approvals and amendments would be done with one Board action rather than two; more than one year was spent in COG's review of the recent revisions to the ACE Project scope.

Mission and Scope

Does remaining with COG inhibit ACE's operation and mission?

- The nature of ACE, as an operational construction organization, is inconsistent with the mission and structure of the COG, which was created to engage in regional planning activities. ACE has evolved to such an extent that it is no longer easily overseen by the COG. Moreover, the COG must address a number of its own organizational and legal concerns in the months ahead and thus will be limited in any guidance, oversight or support that it might provide to ACE.

Are there alternatives to separation that would address issues raised above?

- Modifying the existing relationship could move in either of two directions:

  - Reducing approvals/oversight: While streamlining ACE operations, this would increase COG's exposure to ACE liability and raises the question of what's the point keeping ACE as a subsidiary.

  - Increased approvals/oversight: This would require increased and different COG staff resources and/or put a greater burden on the City Managers and/or Public Works Committees, most of whom have only tangential interest in the project. This would increase administrative time and costs for both ACE and COG.

If the separation does not occur, how does that impact ACE's future?

- As indicated earlier, the COG is not structured to provide meaningful oversight of the organization that ACE has become. Moreover the COG must currently devote much time to resolving a number of very important legal and organizational issues that are financially significant and that will require substantial time from COG members and staff. Thus, on a going forward basis, the COG will not be able to realistically provide meaningful guidance to and oversight of ACE. Limited or ineffective guidance from the COG to ACE can only serve to distract ACE from its activities which are counterproductive to ACE's mission to construct cost-effective public works projects for the benefit of the SGV. Moreover, limited or ineffective guidance from the COG to ACE will not provide an effective shield to the COG from the various liabilities cited earlier.

What would the mission or statement of purpose be for the new ACE JPA?

- The mission of the ACE JPA is clearly stated in the attached draft agreement – completion of the ACE Project as adopted by the SGVCOG (Section 4). All references to other projects, with the exception of grade separations, which appeared in an earlier draft, have been deleted. This draft is under consideration by the ACE corridor cities for approval.

Would the ACE JPA member cities be willing to limit their scope to just finishing these 8-9 projects?

- The number of unbuilt projects is 11. Section 4 states the purpose of ACE would be to implement the project as adopted by SGVCOG.

Governance and Membership

What does ACE currently see as the new JPA governance structure as being like?

- A copy of the draft Joint Exercise of Powers Agreement is attached. The COG Joint Powers Agreement was used as a template; however, the authorities granted focus solely on powers needed for construction program management and would not encroach on COG authorities and responsibilities.

- Eight Eligible Public Entities are identified based on the location of the unbuilt approved projects. It would be up to a supermajority vote of the Board to add any city in the future and, presumably, this would only be occasioned by a city being substantially affected by one of the approved projects.

- A city not represented on the JPA would seek redress by appealing to the JPA Board, the same way a similar situation with COG would be treated.

Timeline

What does ACE see as a possible timeline, based on today's information, for studying and possibly completing the dissolution of the relationship?

- Two significant events have to take place for the ACE JPA to be functional. First, a minimum of five of the Eligible Public Entities would have to have their Councils approve the Agreement. We expect to have the Agreement, which has been in discussion with the corridor cities since May, up for consideration in October. Second, the Project Transfer Agreement between the ACE JPA and COG would have to be executed, and a period of time after that would be necessary to carry out all the pre-transfer obligations of the ACE JPA. The timing of this step will be largely up to COG.

Cost/Benefit Analysis

Has ACE set a cost/benefit number that would need to be achieved in order to move forward?

- Similar to our response to quantifying benefits, this issue does not lend itself to a cost benefit analysis. The cost should be very modest, though here again COG will have a role in determining that. The benefits are not readily quantifiable in dollar terms and instead involve broader policy issues of whether the COG, as a planning entity, is financially, structurally or technically equipped (or intended) to fully perform oversight of a $1.6 billion public works project.

Attachment

THE ALAMEDA CORRIDOR EAST

JOINT POWERS AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

EFFECTIVE ________, 2012

JOINT EXERCISE OF POWERS AGREEMENT OF THE ALAMEDA CORRIDOR EAST JOINT POWERS AUTHORITY

This Joint Exercise of Powers Agreement ("Agreement") is made pursuant to the Joint Exercise of Powers Act , commencing with Section 6500 of the Government Code and other applicable law and is entered into by and among the public agencies whose names are set forth on Exhibit A, attached hereto and incorporated herein by this reference, and who have executed this Agreement in accordance with a majority vote of their legislative bodies (each a "Member" and collectively, "Members"):

WITNESSETH:

The parties hereto do agree as follows:

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

a. Under the direction and oversight of the Alameda Corridor – East Construction Authority of the San Gabriel Valley Council of Governments, also known and identified as the Alameda Corridor – East, Gateway to America Construction Authority and as the ACE Construction Authority (identified herein as the "ACE Construction Authority"), a series of railroad crossing safety improvements and grade separation projects, collectively identified as the Alameda Corridor - East Gateway to America Project or the ACE Project (the "ACE Project"), have been designed, built and implemented throughout the San Gabriel Valley.

b. The ACE Construction Authority is an administrative entity of the San Gabriel Valley Council of Governments ("SGVCOG") formed in accordance with the Third Amended and Restated Joint Exercise of Powers Agreement, dated April 10, 2007 and operating in accordance with Section 6508 of the Government Code.

c. For purposes of this Agreement, the ACE Project shall be as approved by the Governing Board of the SGVCOG at its regular meeting on March 15, 2012,_subject to amendments, changes or adjustments by ACE in accordance with the terms of this Agreement.

d. Work on the ACE Project is ongoing. Several grade separation projects are in the design and construction stage and additional projects are planned subject to the availability of funding.

e. The organization and the mission of the SGVCOG are being reviewed by its member agencies. Some member agencies of the SGVCOG have indicated that it would be in the best interests of the ACE Project and of the SGVCOG to transfer the responsibilities and obligations of the ACE Project, or a part thereof, to a separate public entity to enable the ACE Project to be continued with focused guidance, leadership and oversight.

f. Certain cities and public agencies have determined that a new joint powers agency, separate from the SGVCOG, should be formed so as to accept the transfer of responsibility for the ACE Project from the SGVCOG and the ACE Construction Authority.

g. The public interest requires a joint powers agency to continue the implementation of the ACE Project in a coordinated, well-managed and cost-effective manner that uses federal, state and local funding sources and fully complies with all applicable laws and regulations.

h. The public interest requires that an agency with the aforementioned goals not possess the authority to compel any of its members to conduct any activities or implement any plans or strategies that they do not wish to undertake.

i. Each Member is a governmental entity established by law with full powers of government in legislative, administrative, financial, and other related fields.

j. Each Member, by and through its legislative body, has determined that a joint powers agency is required in furtherance of the public interest, necessity and convenience.

k. Each Member, by and through its legislative body, has independently determined that the public interest, convenience and necessity requires the execution of this Agreement by and on behalf of each such Member.

Section 2. Creation of Separate Legal Entity. It is the intention of the Members to create, by means of this Agreement, a separate legal entity within the meaning of Section 6503.5 of the Government Code. Accordingly, there is hereby created a separate legal entity which shall exercise its powers in accordance with the provisions of this Agreement and applicable law.

Section 3. Name. The name of the said separate legal entity shall be the Alameda Corridor East Joint Powers Authority ("ACE").

Section 4. Purpose and Powers of ACE.

a. Purpose of ACE. ACE is being created to provide a vehicle for the Members to plan, oversee, obtain funding for, design, engineer, build and undertake all related and necessary activities in connection with the completion of those parts of the ACE Project for which ACE assumes responsibility upon their transfer from the SGVCOG. Completed projects will be transferred to individual members or the Union Pacific Railroad or other entities, as appropriate. It is the clear intent of the Members that ACE shall not possess the authority to compel any of the Members to conduct any activities or implement any plans or strategies that they do not wish to undertake except for Member contributions, as identified in Section 26, which may be required to enable ACE to pay for expenditures not covered by other ACE funding. The goal and intent of ACE is one of voluntary cooperation among Members for the collective benefit of all of the Members and other public agencies that will result from the successful completion of the ACE Project.

b. Common Powers. ACE may:

(1) Exercise and shall have the common powers of its Members;

(2) Apply for, receive, administer and serve as a mechanism for obtaining state, federal, regional and local grants to assist in financing the ACE Project;

(3) Assemble and evaluate information helpful in the consideration of ACE Project-related planning problems peculiar to individual Members;

(4) If appropriate, utilize voluntary assistance from Members and other public or private entities to assist in carrying out projects and activities;

(5) Make and enter into contracts, including contracts for the services of engineers, consultants, planners, attorneys, an independent auditor, and single purpose public/private groups;

(6) Acquire, construct, reconstruct, rehabilitate, maintain, in whole or in part, dispose of, in whole or in part, land, facilities, excess property and appurtenances as necessary or convenient for the completion of the ACE Project;

(7) Employ agents, officers and employees;

(8) Acquire property rights and exercise the power of eminent domain, if necessary;

(9) Receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and any governmental entity;

(10) Lease, manage, maintain, and operate any buildings, works, or improvements;

(11) Obtain insurance and contract for risk management services;

(12) Invest money in the same manner and under the same conditions as its Members and in accordance with Government Code Section 53601;

(13) Support or oppose legislation related to the purpose of this Agreement and the goals and purpose of ACE;

(14) As identified in the Bylaws, delegate some of its powers to the Chief Executive Officer; and

(15) Borrow money, incur indebtedness and/or issue bonds pursuant to the Constitution of the State of California and any of the laws of the State of California and to exercise any implied power necessary to exercise the express powers provided for in this Section 4. b. (15), provided, however, that any borrowing hereunder shall be for the purpose of financing the ACE Project, and shall be repaid solely from funds pledged or otherwise designated for the ACE Project. Borrowings authorized hereunder shall be subject to Section 19 of this Agreement and shall be subject to Governing Board approval as described in Section 7 e.

c. Exercise of Powers. ACE shall, in addition, have all implied powers necessary to perform its functions. It shall exercise its powers only in a manner consistent with the provisions of applicable law, this Agreement and the Bylaws. For the purposes of determining the restrictions to be imposed on ACE in its manner of exercising its powers pursuant to Government Code Section 6509, reference shall be made to, and ACE shall observe, the restrictions imposed upon the City of Pomona.

Section 5. Creation of Governing Board. There is hereby created a Governing Board for ACE ("Governing Board") to conduct the affairs of ACE. The Governing Board shall be constituted as follows:

a. Designation of Governing Board Representatives. One person shall be designated as a representative of the Governing Board by the legislative body of each of the Members ("Governing Board Representative"). No Member shall be entitled to "ex officio" non-voting representation on the Governing Board; however, the Governing Board, at its sole discretion, may allow "ex officio" non-voting representation from public entities that are not Members.

b. Designation of Alternate Governing Board Representatives. One person shall be designated as an alternate representative of the Governing Board by the legislative body of each of the Members ("Alternate Governing Board Representative").

c. Eligibility. No person shall be eligible to serve as a Governing Board Representative or an Alternate Governing Board Representative unless that person is, at all times during the tenure of that person as a Governing Board Representative or Alternate Governing Board Representative, a member of the legislative body of one of the appointing Members.

Section 6. Use of Public Funds and Property. ACE shall be empowered to utilize for its purposes, public and/or private funds, property and other resources received from the Members and/or from other sources. Except as otherwise prohibited, any Member may make contributions of money or assets to ACE; make or advance payments of public funds or provide loans to defray the cost of ACE operations or provide operating capital; and contribute personnel, equipment or property instead of or in addition to other contributions or advances. Any such contributions, advances, or loans shall be subject to a separate agreement between ACE and the Member and shall be approved by the Governing Board and the legislative body of the Member.

Section 7. Functioning of Governing Board.

a. Voting and Participation. Each Member may cast only one vote through its representative for each issue before the Governing Board. An Alternate Governing Board Representative may participate or vote in the proceedings of the Governing Board only in the absence of the respective Governing Board Representative. A Governing Board Representative or Alternate Governing Board Representative seated on the Governing Board shall be entitled to participate in and vote on matters pending before the Governing Board only if such person is physically present at the meeting of the Governing Board and if the Member which that Governing Board Representative or Alternate Governing Board Representative represents has timely and fully paid any Member contributions as required by Section 26 of this Agreement and the Bylaws.

b. Proxy Voting. No absentee or proxy voting shall be permitted.

c. Quorum. A quorum of the Governing Board shall consist of not less than four representatives of the Members.

d. Committees. As needed, the Governing Board may create permanent or ad hoc advisory committees to give advice to the Governing Board on such matters as may be referred to such committees by the Governing Board. All committees shall have a stated purpose before they are formed. Any such committee shall remain in existence until it is dissolved by the Governing Board or until it reaches the end of its term as established by the Governing Board, whichever first occurs. Qualified persons shall be appointed to such committees by the pleasure of the Governing Board. Committees, unless otherwise provided by law, this Agreement, the Bylaws or by direction of the Governing Board, may be composed of representatives to the Governing Board and non-representatives to the Governing Board.

e. Actions. Unless required otherwise by a provision of applicable law or as designated elsewhere in this Agreement, actions taken by the Governing Board shall be by a majority of the voting Governing Board Representatives (or Alternate Governing Board Representatives) who are present with a quorum in attendance, except that five affirmative votes when the total membership of the Governing Board is five, six or seven, or two-thirds of the membership of the Governing Board when the total membership of the Governing Board is eight or more, or the affirmative vote of all of the then total voting membership of the Governing Board if the total voting membership is less than five, will be required: to approve the annual budget or any modifications to same; to add one or more additional grade separation projects to the ACE Project; to assess a contribution from individual Members or all Members to pay for unallowable costs in accordance with Section 26; to add as a new Member a public entity that is not an Eligible Public Entity as defined in Section 24; for any matter involving the incurrence of debt or the issuance of bonds by ACE; to accept the transfer of all or part of the ACE Project from the SGVCOG; to amend any priority list of the grade separation projects included within the ACE Project should an individual grade separation project be delayed or become unfeasible because of funding, cost or design issues; and to terminate this Agreement.

Section 8. Duties of the Governing Board. The Governing Board shall be deemed, for all purposes, the policy making body of ACE. All of the powers of ACE, except as may be expressly delegated to others pursuant to the provisions of applicable law, this Agreement, the Bylaws or by direction of the Governing Board, shall be exercised by and through the Governing Board.

Section 9. Robert's Rules of Order. The substance of Robert's Rules of Order shall apply to proceedings of the Governing Board, except as may otherwise be provided by provisions of applicable law, this Agreement, the Bylaws or by direction of the Governing Board.

Section 10. Meetings of Governing Board. The Governing Board shall, by means of the adoption of Bylaws, establish the dates and times of regular meetings of the Governing Board. The location of each such meeting shall be as directed by the Governing Board.

Section 11. Election of Chairman and Vice Chairman. The Chairman shall be the chairperson of the Governing Board, shall conduct all meetings of the Governing Board and perform such other duties and functions as required of such person by provisions of applicable law, this Agreement, the Bylaws or by the direction of the Governing Board. The Vice Chairman shall serve as Chairman in the absence of the Chairman and shall perform such duties as may be required by provisions of applicable law, this Agreement, the Bylaws, or by the direction of the Governing Board or the Chairman.

At the first regular meeting of the Governing Board, a Governing Board Representative shall be elected to the position of Chairman by the Governing Board, and a different Governing Board Representative shall be elected Vice Chairman of the Governing Board. The terms of office of the Chairman and Vice Chairman elected at the first regular meeting of the Governing Board shall continue through the first January 1 of their terms and expire on the second January 1, and elections to determine their successors shall not be held until the first regular meeting of the December preceding the second January 1. Thereafter, a Governing Board Representative shall be elected to the position of Chairman of the Governing Board, and a different Governing Board Representative shall be elected to the position of Vice Chairman of the Governing Board at the first regular meeting of the Governing Board held in December of each calendar year. The terms of office of the Chairman and Vice Chairman shall commence and expire on January 1.

If there is a vacancy, for any reason, in the position of Chairman or Vice Chairman, the Governing Board shall forthwith conduct an election and fill such vacancy for the unexpired term of such prior incumbent.

Section 12. Chief Executive Officer. The Governing Board may appoint a qualified person to be Chief Executive Officer ("CEO") who will be an employee of ACE. Any action to appoint, terminate or discipline the Chief Executive Officer shall require an affirmative vote of no less than a majority of the then total membership of the Governing Board. The CEO shall be neither a Governing Board Representative, nor an Alternate Governing Board Representative, nor an elected official of any Member. The CEO shall be the chief executive, operations and administrative officer of ACE. The CEO shall perform such duties as may be imposed upon that person by provisions of applicable law, this Agreement, the Bylaws, or by the direction of the Governing Board.

Section 13. Designation of Treasurer and Auditor. The Governing Board shall, in accordance with applicable law, designate a qualified person to act as the Treasurer for ACE and a qualified person to act as the Auditor of ACE. If the Governing Board so designates, and in accordance with the provisions of Section 6505.6 of the Government Code, a qualified person may hold both the office of Treasurer and the office of Auditor of ACE. The compensation, if any, of a person or persons holding the offices of Treasurer and/or Auditor shall be set by the Governing Board.

Section 14. Functions of Treasurer and Auditor. The person holding the position of Treasurer shall have charge of the depositing and custody of all funds held by the ACE. The Treasurer shall perform such other duties as may be imposed by provisions of applicable law, including those duties described in Section 6505.5 of the Government Code, and such duties as may be required by the Governing Board. The Auditor shall perform such functions as may be required by provisions of applicable law, this Agreement, the Bylaws and by the direction of the Governing Board. If ACE designates its officers or employees to fill the positions of Treasurer or Auditor or both, ACE shall annually cause an independent audit to be made by a certified public accountant in accordance with Section 6505 of the Government Code.

Section 15. Other Officers and Employees. Subject to the approval of the Governing Board, all of the employees of the ACE Construction Authority will be transferred to the employment of ACE effective upon the date of the transfer of the ACE Project to ACE. The former ACE Construction Authority employees will be transferred at their existing salary rates and will be provided with a benefit program that is approved by the Governing Board. The Governing Board may approve the employment of such other officers or employees as it deems appropriate and necessary to conduct the affairs of ACE.

Section 16. Existing ACE Construction Authority Contracts. Subject to the approval of the Governing Board, ACE shall accept the assignment of all existing ACE Construction Authority contracts that are in place at the time of the transfer of the ACE Project to ACE. ACE shall accept all liabilities and responsibilities for all such existing contracts upon such assignment.

Section 17. Property of ACE. Pursuant to California Government Code Section 6505.1, the Governing Board may designate an employee or employees of ACE, in addition to the Treasurer, to have charge of, receive, deposit, invest and disburse the money and property of ACE, all in accordance with applicable sections of the Government Code. The Governing Board shall fix the amount of the official bonds to be filed for each individual designated to have charge of any of the assets of ACE (including the CEO and Treasurer) and the cost of such bonds shall be the responsibility of ACE

Section 18. ACE Project Transfer Agreement. The SGVCOG and ACE shall jointly prepare and, subject to the approval of the Governing Board, shall execute an ACE Project Transfer Agreement to become effective after the Effective Date of this Agreement, as defined in Section 29. The ACE Project Transfer Agreement shall address all of the responsibilities, liabilities, assets, contracts and staff that are to be transferred from the SGVCOG to ACE and shall also include appropriate releases of and indemnifications of the respective parties.

Section 19. Obligations of ACE. The debts, liabilities and obligations of ACE shall be the debts, liabilities and obligations of ACE alone. To the extent permitted by applicable law, no Member of ACE shall be responsible, directly or indirectly, for any obligation, debt or liability of ACE.

Section 20. Control and Investment of Funds. The Governing Board shall adopt a policy for the control and investment of its funds and shall require strict compliance with such policy. The policy shall comply, in all respects, with all provisions of applicable law.

Section 21. Betterment Agreements. During the design and construction of transportation projects within the ACE Project, a Member may request that the involved transportation project be modified to include a betterment, which shall be defined as an addition or supplemental structure, facility or undertaking that is not necessary for the project but that can be cost effectively performed by ACE while construction forces are available or project activities are underway ("Betterment"). A Betterment cannot be funded with the resources available to the ACE Project. A Betterment may only be funded pursuant to an agreement (a "Betterment Agreement") approved by the Governing Board. Any such Betterment Agreement shall authorize ACE to implement, manage and administer all activities associated with the engineering and construction of the Betterment and shall require that any and all costs incurred by ACE in connection with such Betterment, including indirect costs, be borne only by the Member or Members who requested the Betterment and who are parties to the Betterment Agreement.

Section 22. Termination of Agreement. ACE shall continue in existence until such time as this Agreement is terminated by action of the Governing Board in accordance with Section 7(e) or until fewer than five Members remain in ACE, whichever first occurs, except that all of the liabilities of ACE must be satisfied and all of the remaining assets of ACE must be distributed before such termination will be effective.

Section 23. Application of Laws. ACE shall comply with all applicable laws in the conduct of its affairs, including, but not limited to, the Ralph M. Brown Act. (Section 54950 et seq., of the Government Code.)

Section 24. Members.

a. Withdrawal. If all projects being undertaken by ACE within the jurisdiction of a Member, or within the jurisdiction of another Member that is immediately adjacent, have been completed, including the closing of all contracts, the acceptance of all work and the concurrence regarding completion by all funding agencies, a Member may withdraw from ACE by filing its written notice of withdrawal with the Chairman of the Governing Board 60 days before the actual withdrawal. Such a withdrawal shall be effective at 12:00 o'clock a.m. on the last day of that 60-day period. The withdrawal of a Member shall not in any way discharge, impair or modify any obligations or liabilities of the withdrawn Member due to matters or actions, whether known or unknown by the withdrawn Member, and having occurred or in existence as of the effective date of its withdrawal. Withdrawal of a Member shall not affect the remaining Members except that the Governing Board, in its sole discretion, may adjust the amount of any Member contributions of a withdrawn Member to reflect, on a pro rata basis, the effective date of the withdrawal.

b. Non-Payment of Member Contributions. If a Member fails to pay Member contributions as identified in Section 26, if any, within three months of the payment date established and after a 30-day written notice is provided to that Member, the Member shall be deemed to be suspended.. When a Member is suspended, no representative of that Member shall participate in or vote on the Governing Board or any committee. Such a Member shall have its suspension revoked and its voting rights restoredonly upon the payment of all Member contributions then owed by the Member, including Member contributions incurred prior to the suspension and during the suspension; however, the Governing Board, in its sole discretion, may adjust the amount of the Member contributions that must be paid by such a Member.

c. Admitting and Readmitting Eligible Members. Eligible public entities whose names are set forth on Exhibit A to this Agreement ("Eligible Public Entities") shall be admitted to ACE by: adopting this Agreement by majority vote of the legislative body of the Eligible Public Entity; properly signing this Agreement; and paying in full all Member contributions, as required by Section 26, if any, then owed; however, the Governing Board, in its sole discretion, may adjust the amount of any Member contributions that must be paid by a Member being so admitted. An Eligible Public Entity may be admitted regardless of whether it adopted and signed this Agreement before or after the Effective Date (as defined in Section 29 of this Agreement). An Eligible Public Entity that has withdrawn from ACE in accordance with Section 24. a. may be readmitted to the ACE by adopting this Agreement or any subsequent version of this Agreement by a majority vote of the legislative body of the Eligible Public Entity; properly signing this Agreement or any subsequent version of this Agreement and paying all Member contributions for the current July to June fiscal year and past July to June fiscal years for which the Eligible Public Entity had been withdrawn from ACE; however, the Governing Board, in its sole discretion, may adjust the amount of the Member contributions that must be paid by a Member being so readmitted. No vote of the Governing Board shall be required to admit or readmit an Eligible Public Entity.

d. Admitting New Members. New Members who are not Eligible Public Entities may be admitted to ACE upon an affirmative vote of the Governing Board that is in accord with Section 7. e. provided that the new member is a city or other public agency as defined by Section 6500 of the Government Code. Admission shall be subject to any additional terms and conditions as the Governing Board, in its sole discretion, may deem appropriate including payment of all or part of past or current Member contributions.

Section 25. Interference with Function of Members. The Governing Board shall not take any action which constitutes an interference with the exercise of lawful powers by a Member of ACE.

Section 26. Member Contributions. There are no annual or periodic dues. The Governing Board may, from time to time, require contributions from the Members to pay for expenditures to carry out the purpose of this Agreement when such expenditures cannot be applied to the federal, state and local government funding sources for the ACE Project. Such expenditures may include the costs of a Betterment or project and administrative costs that are determined to be unallowable by ACE's federal, state and local funding agencies. The costs of a Betterment, as defined in Section 21, will be assessed against the Member that requested the Betterment. Unallowable costs that cannot be paid from ACE's reserve accounts and that are associated with a specific project will, subject to Governing Board approval, be applied equally to those Members in whose jurisdiction the project is located or who are immediately adjacent to the jurisdiction in which the project is located. Any other unallowable costs that cannot be paid from ACE's reserve accounts will, subject to Governing Board approval, be assessed in equal amounts to all of the agencies that were Members of ACE when said costs were incurred. Members shall not be assessed contributions that total more than One Hundred Thousand Dollars for any single July to June fiscal year for the payment of ACE unallowable costs.

Section 27. Disposition of Assets. Upon termination of this Agreement, after the payment of all obligations of ACE, any assets remaining shall be distributed equally to the public entities that are Members at the time of termination of the Agreement and whose voting rights at the time of termination have not been suspended in accordance with Section 24 b..

Section 28. Amendment. This Agreement may be amended at anytime with the consent of a majority of the Members.

Section 29. Effective Date. The effective date ("Effective Date") of this Agreement shall be November 1, 2012, if by that date five of the Eligible Public Entities, whose names are set forth in Exhibit A, adopt this Agreement by a majority vote of their legislative bodies and execute a copy of this Agreement. If five of the Eligible Public Entities have not adopted and signed this Agreement by November 1, 2012, then the Effective Date of the Agreement shall be the first date by which five of the Eligible Public Entities have adopted and signed this Agreement.

Section 30. Liability of Governing Board Representatives and Alternate Governing Board Representatives... All of the privileges and immunities from liability, exemption from laws, ordinances, and rules and all workers' compensation benefits and other benefits which apply to the activities of Governing Board Representatives and Alternate Governing Board Representatives when performing their duties as members of the legislative bodies of their respective public agencies shall apply to them to the same degree and extent while they are engaged in the performance of any of their duties on behalf of ACE.

Section 31. Indemnification of Members. ACE shall indemnify, defend and hold harmless, jointly and severally, each of its Members and the Members' officers, officials, employees, agents and representatives from and against any loss, damage, injury, claim, litigation or liability, including attorney fees and costs, arising out of or in any way related to the creation, operation, decisions or actions of ACE or ACE's officers, officials, employees, agents or representatives.

Section 32. Insurance Requirements. ACE shall obtain adequate insurance coverage as may be required by law or as necessary and appropriate for all of ACE's activities and shall require, whenever possible, that parties who enter into contracts or agreements with ACE agree to defend, indemnify and hold harmless and name as additional insureds ACE and the Members.

Section 33. Severability. In the event of any litigation over the meaning of this Agreement, this Agreement shall be liberally construed to effectuate its purposes. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California or federal law, or otherwise rendered unenforceable or invalid, the validity of the remaining portions and provisions of this Agreement shall not be affected thereby.

Section 34. Assignment. This Agreement shall inure to the benefit of any successor to any of the Members; provided, however, that no Member may assign and right or obligation under this Agreement without the written consent of ACE as approved by the Governing Board.

Section 35. Counterparts. This Agreement may be executed in counterparts, which together shall constitute the same and entire Agreement.

The Members of this Joint Powers Agreement have caused this Agreement to be executed on their behalf, respectively, as follows:

Public Agency

____

____

Supervisor/Mayor/Chairperson

ATTEST

____

Clerk

DATE ______________________________

EXHIBIT A

Eligible Public Entities

County of Los Angeles

El Monte

Industry

Montebello

Pico Rivera

Pomona

San Gabriel

Walnut