



Alameda Corridor-East Construction Authority

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

ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY

BOARD OF DIRECTORS SPECIAL MEETING AGENDA

Monday, December 19, 2011 – 3:00 P.M.

Industry City Hall
15651 Stafford Street
Industry, CA 91744

**NOTE CHANGE OF
TIME & LOCATION**

Members of the public may comment on any item on the agenda at the time it is taken up by the Board. We ask that members of the public come forward to be recognized by the Chair and keep their remarks brief. If several persons wish to address the Board on a single item, the Chair may impose a three-minute time limit on individual remarks at the beginning of the discussion.

- | | | |
|-------|---|-------------|
| I. | Pledge of Allegiance | |
| II. | Roll Call and Introductions | |
| III. | Approval of Minutes of Regular Meeting of November 28, 2011 (Pages 1-6) | Action |
| IV. | Public Comment | |
| V. | Chairman's Remarks | |
| VI. | Board Member Comments | |
| VII. | Chief Executive Officer's Report (Page 7) | Information |
| VIII. | Approval of Amendment to Demolition & Other Construction Related Contract with Clauss Construction (Page 8) | Action |
| IX. | Approval of Construction Project Retention Withholding Practices (Page 9) | Action |
| X. | Approval and Adoption of Labor Compliance Program (Pages 10-13) | Action |
| XI. | Approval of 2012 Schedule of Meetings (Page 14) | Action |
| XII. | Closed Session: The Board will adjourn to closed session in accordance with Government Code Section 54956.9(a) to discuss existing litigation | Possible |

The ACE Construction Authority is constituted of seven (7) member jurisdiction; the Cities of El Monte, Industry, Montebello, San Gabriel and Pomona, the County of Los Angeles and the San Gabriel Valley Council of Governments. A San Bernardino County Council of Governments representative is an ex-officio Board member. Each member or alternate has one vote. A quorum of the ACE Construction Authority is no less than four (4) of its total voting membership. Actions taken by the ACE Construction Authority shall be by simple majority of the members present with a quorum in attendance except for personnel actions, the annual budget, matters dealing with the Administrative Code or matters requiring subsequent approval by the SGVCOG, all of which shall require five (5) votes. All disclosable public records related to this meeting are available for viewing at the ACE office above during normal working hours.

ACE Construction Authority Board of Directors
December 19, 2011 Meeting
Special Meeting Agenda

(two cases):

- Los Angeles Superior Court Case No. BC429699
Alameda Corridor-East Construction Authority vs MIPCO, L.L.C.,
et al., and
- Los Angeles Superior Court Case No. BS 125565
MIPCO, L.L.C., et al., vs Alameda Corridor-East Construction
Authority and

Action

In accordance with Government Code Section 54956.9(a) Conference with
legal counsel regarding existing litigation:

LASC Case No. 457829 ACE vs Newton Heat Treating Company

Possible
Action

XIII. Adjournment

Action



Alameda Corridor-East Construction Authority

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

ACE Construction Authority Board of Directors November 28, 2011 Meeting Minutes

1. **Roll Call** – Chairman Spohn called the meeting to order at 2:00 PM at the City of Irwindale Council Chambers. In attendance were:

Tim Spohn, Industry
Angel Carrillo, SGVCOG
David Gutierrez, San Gabriel
Freddie Rodriguez, City of Pomona
Frank Gomez, Montebello
Gloria Molina, LA County Board of Supervisors
Patricia Wallach, El Monte
Paul Eaton, SANBAG

Staff

Rick Richmond, Chief Executive Officer
Joe Silvey, Legal Counsel
Deanna Stanley
Victoria Butler
Phillip Balmeo
Cecilia Cardenas
Paul Hubler

Guests

Allen Ude, LACDPW
Natasha DeBenon, Arcadis
Ralph Magna, MIPCO
Kevin Day, Alvarado
Al Contreas, SCE
Jack Owen, Owen Bros.

2. **Pledge of Allegiance** – Vice Chair Gutierrez led the pledge of allegiance.
3. **Approval of October 24, 2011 Regular Meeting Minutes** – A motion was made to approve the minutes of the Board of Directors meeting of October 24, 2011. *M/S/C/Gutierrez/Gomez*
4. **Public Comments** - There were no public comments at this time.

5. **Chairman's Remarks** – Chairman Spohn reported the Senate Environment and Public Works Committee has approved MAP-21, a bipartisan bill to authorize the nation's transportation programs for two years. Letters of appreciation for their support were sent to Senator Boxer, whose committee authored the bill and Representatives Chu, Napolitano and Schiff.

Chairman Spohn, along with the Board acknowledged Patricia Wallach for her service on the ACE Board. The Chairman reported Mrs. Wallach has been a member since 2009 but was one of the original members in the creation of the ACE Construction Authority. He read a list of community involvement boards and activities Mrs. Wallach has been involved. Mrs. Wallach thanked the Board and indicated she would remain active in the community and a supporter of the Project.

Chairman Spohn also indicated this would conclude Supervisor Gloria Molina's rotation for the Board of Supervisor's seat on the Board. He thanked Mrs. Molina for her support. He reported that Supervisor Michael Antonovich will assume the position in December.

Lastly, Chairman Spohn indicated beginning December 19 the City of Irwindale would be closed for the remainder of the year. Therefore, the December meeting would be held in the City of Industry's Council Chamber. Vice Chairman requested the meeting time be moved to 3PM and it was agreed.

6. **Board Member Comments** – There were no Board member comments.
7. **Chief Executive Officer's Reports** – Mr. Richmond reported MAP-21 bill referenced earlier includes provisions which strengthen the focus on a freight program to improve the movement of goods. He also reported that staff provided an update on the Nogales project and the Board recommended Phase II projects to the Rowland Coordinating Council. Lastly, Mr. Richmond reminded the Board that the San Gabriel Economic Partnership and the San Gabriel Valley Council of Governments was holding its annual Merry Mingle Holiday reception on Thursday, December 1 at the San Gabriel Valley Corporate Center.
8. **Approval of Resolution of Necessity No. 11-14** – Mr. Silvey reviewed the process and purpose of the hearings. He indicated staff has requested to

change the order of the hearings to hear Resolution No. 11-14 first then Resolution No. 11-13. He indicated the Resolution of Necessity is the Board's authorization to move forward with eminent domain should negotiations not be successful. He indicated negotiations would continue with the adoption of the Resolutions. He indicated the hearings would be opened to provide opportunity for public to speak, staff would describe the project and summarize negotiations. He indicated the Board would have to approve three findings which were outlined in the staff report. He reminded the Board that an affirmative two-thirds vote was necessary to approve all Resolutions.

Ray Mehler of Epic Land Solutions reviewed the design options and elements of the Nogales Street grade separation and Gale Ave/Walnut Drive widening project. He reviewed at length the schedule of negotiations. He indicated the subject property is currently used as an industrial building. He reviewed the requirements for the project which were a permanent easement, a slope easement and two construction easements for work areas and re-grading of a driveway. He indicated negotiations have been ongoing and staff was advised by counsel that negotiations could potentially conclude soon but adoption of the Resolution of Necessity was necessary to complete Caltrans certification. The Chairman opened public comment period. There were no public comments. The Chairman closed the public comment period.

A motion was made to approve Resolution No. 11-14.
Gutierrez/Wallach/Unanimous

9. **Approval of Resolution of Necessity No. 11-13** – Mr. Mehler indicated the subject property is also used as an industrial building and the property required is for a storm drain easement and temporary construction easement for work area. He indicated an offer was made in June and negotiations have been ongoing and staff anticipated a purchase and sale agreement shortly. Mr. Mehler indicated the adoption of the Resolution of Necessity was necessary to complete Caltrans certification. There were no questions.

The Chairman opened public comment period. There were no public comments. The Chairman closed the public comment period.

A motion was made to approve Resolution No. 11-13
M/S/C/Molina/Wallach/Unanimous

10. Approval of Purchase Agreement for Property Rights from 4265 N.

Baldwin LLC for the Baldwin Avenue Grade Separation Project – Kevin Day of Alvarado, Smith representing MIPCO offered public comments. He expressed at length MIPCO's concerns regarding the date of the appraisal used for the property at 4265 Baldwin versus the appraisal date used for the MIPCO property. He indicated that MIPCO disagreed with the description in the staff report of the planned access to the MIPCO site and indicated MIPCO's opinion was that the access was substandard, at best, probably not permissible, arranged by ACE after the approval of the MIPCO Resolution of Necessity, and still not approved by the City of El Monte. He indicated possible concerns regarding the Brown Act for this item as he had been unable to find a copy of the complete purchase agreement in the agenda package or on ACE's website.

Genichi Kanow, Senior Project Manager reviewed the property requirements which were a series of part takes on the subject commercial property owned by Mr. Owens. He indicated the requirement was based on a design which replaced access to Baldwin Avenue for the larger parcel with limited driveway access, MIPCO. He indicated Mr. Owens contended the severance was greater than estimated by ACE and staff evaluated alternatives. In 2009 the Board directed staff to continue negotiations. He reviewed the proposed staff recommendation and asked if there were any questions.

Member Gutierrez asked Mr. Silvey to respond to the comments from Mr. Day before the Board continued its discussions on this item. Mr. Silvey indicated that most of the comments offered pertained to MIPCO and not the matter before the Board. He reminded the Board that ACE and MIPCO were in litigation and some of the issues raised by Mr. Day related to the litigation. Further he indicated that he did not believe that there were any Brown Act issues with regard to this item. Finally, he indicated the Board should consider the comments may by MIPCO's attorney regarding the planned access for MIPCO using the 5465 N Baldwin property but also balance those comments against information and guidance that has been presented by staff regarding the access and the need for 4265 Baldwin property rights to help make access available.

A motion was made to approve an agreement with 4265 N. Baldwin Avenue LLC to purchase property located at 4255-4275 Baldwin Avenue, El Monte for \$1,738,420 and sell 26,349 sq. ft. of adjacent land to Baldwin for \$658,725 and 5,248 sq. ft. for \$78,720 and compensate Baldwin for building

modifications and relocation assistance benefits in an amount not to exceed \$75,000. M/S/C/Gutierrez/Rodriguez/Unanimous

11. Approval of Plans, Specifications and Estimates for the San Gabriel Trench Project

– Phil Balmeo presented a simulation of the overall San Gabriel trench project area and construction phases. He reviewed the completed tasks to date which included, receipt of environmental clearance, encroachments being addressed, nearly all easements complete, Union Pacific C&M agreement received in June, final design accepted by the UP and City and the prequalification process underway with a prequalification list to return to the Board for approval likely in January.

A motion was made to approve the plans, specifications and estimates for the San Gabriel Trench Project. M/S/C/Carrillo/Gomez/Unanimous

12. Approval of Additional Staff Position

– Mr. Richmond indicated the increased volume of construction activities and project management responsibilities he felt it was timely to recommend the addition of Chief Engineer position which would also serve as a Deputy Chief Executive Officer. He reviewed an organizational chart to depict the position would supervise four project managers handling over \$450M worth of construction projects by summer with an additional \$400M going into design. He indicated this position would provide valuable supervisory assistance and engineering skills. He indicated the salary range was developed in accordance with other positions of similar nature. Member Carrillo asked Mr. Richmond to explain the liability this position would create for the COG, as COG members have voiced concerns. Mr. Richmond responded that staff salaries and benefits were eligible project expenses and fully reimbursable from funding agencies. Mr. Richmond reported further that well in advance of project completion steps would be taken with CalPERS to close the contract and pay outstanding liabilities with CalPERS. He indicated after the contract was closed there would be no further obligations of the COG but rather the obligation would be between the individual employee and CalPERS directly.

A motion was made to approve an addition of a Chief Engineer/Deputy Chief Executive Officer position to the ACE Construction Authority staff.
M/S/C/Gomez/Wallach/Unanimous

13. Closed Session: Mr. Silvey announced the Board would adjourn to closed session in accordance with Government Code Section 54956.9(a) conference

with legal counsel regarding LASC Case No. 540376 ACE versus Rowland Ranch Properties, LLC et. al.

The Board returned from closed session and Mr. Silvey reported that the Board unanimously approved a settlement with DSL Service Company for the Nogales Street grade separation project in the amount of \$16,500 for property located at 18800 Railroad Street, Rowland Heights, CA. This approval was made through a motion made by member Gutierrez and seconded by member Rodriguez with Members Spohn, Gutierrez, Carrillo, Wallach, Gomez and Rodriguez voting in favor of the motion and no votes against the motion.

14. **Adjournment** – The meeting was adjourned at 3:09PM



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: ACE Construction Authority Board Members & Alternates

FROM: Rick Richmond
Chief Executive Officer

DATE: December 19, 2011

SUBJECT: CEO Report

The following are items of note since the last meeting:

Community Outreach Update – Staff conducted the following project outreach activities:

- Distributed the Fall 2011 edition of The ACE Report e-newsletter, and;
- Staffed an ACE Project information booth at the Transportation Night expo of the Construction Management Association of America, Southern California Chapter;
- Conducted safety outreach presentations to students at San Gabriel Mission Elementary School, Del Mar High School and San Gabriel High School; and,
- Conducted ongoing community outreach and support activities for the San Gabriel Trench, Baldwin Avenue, and Nogales Street grade separation projects.

Contracting – Our Administrative Code delegates to the CEO the authority to approve new contracts or change orders for Board-approved contracts within certain limits, with a requirement that I report to the Board any such contract action. The following changes have occurred:

Consultant/Vendor	Reason for Change	Change Amount	Total Contract Value
Burke, Williams & Sorensen	Increase FY 2012 task order value for additional services required for property acquisition legal services for various ACE projects.	\$50,000	\$325,000



Alameda Corridor-East Construction Authority

4900 Rivergrade Rd . Ste A120 Irwindale, CA 91706 (626) 962-9292 fax (626)962-9393 www.theaceproject.org

MEMO TO: ACE Construction Authority Board Members and Alternates

FROM: Rick Richmond
Chief Executive Officer

DATE: December 19, 2011

SUBJECT: Approval of Amendment to Demolition and Other Construction-Related Contract with Clauss Construction

RECOMMENDATION: Staff recommends that the Board authorize the Chief Executive Officer to amend the contract with Clauss Construction for demolition and other construction-related services to add \$50,000 for a new contract value of \$266,004.

BACKGROUND: At your January 2009 meeting, I reported in the Chief Executive Officer's report that staff had conducted a procurement to select several contractors to perform on-call demolition and construction related services.

As was reported in the September 2011 Chief Executive Officer's report, two task orders were issued to Clauss for the San Gabriel Trench project:

Task Order No. 1	205, 313 and 327 E. Main Street [encroachment removal]	\$175,422
Task Order No. 2	130 and 210 Agostino Road [encroachments removal]	\$40,582

On November 1st, staff issued bid documents to the four pre-qualified on-call contractors for the 330 S. Del Mar Ave. in San Gabriel for encroachment removal. Bids were received from two of the on-call contractors on November 8th. The bids were as follows:

- Clauss Construction \$48,054.24
- Miller Environmental \$64,100.00

Bids were reviewed and determined to be responsive, with Clauss Construction as the low bid. Clauss' bid, when added to the prior task orders issued under their contract, is over my CEO authorization of \$250,000.

BUDGET IMPACT: Funds for this amended contract are available from Federal and MTA grants.



Alameda Corridor-East Construction Authority

4900 Rivergrade Rd . Ste A120 Irwindale, CA 91706 (626) 962-9292 fax (626)962-9393 www.theaceproject.org

MEMO TO: ACE Construction Authority Board Members and Alternates

FROM: Rick Richmond
Chief Executive Officer

DATE: December 19, 2011

SUBJECT: Approval of Construction Project Retention Withholding Practices

RECOMMENDATION: Staff recommends that the Board authorize implementation of a policy to allow 10% retention for grade separation construction contracts entered into between January 1, 2012 and December 31, 2015.

BACKGROUND: Senate Bill 293, scheduled to take effect January 1, 2012, imposes a 5% retention withholding limit on construction contracts, unless the project may be found to be of sufficient size or complexity to warrant a waiver of the limit.

Per SB 293, any waiver from the 5% limit requires Board approval and notice of waiver to be incorporated into the bid documents.

ACE proposes to find all grade separation projects to be of sufficient size and complexity to warrant said waiver. This recommended finding is based both on size and complexity. Typical grade separation projects exceed \$30 million in construction costs. They are multi-disciplinary and require integrated construction of retaining walls, roadways and bridges, railroad shooflies and utility relocations.

Projects not meeting the characteristics listed above would adhere to the 5% retention limitation.

BUDGET IMPACT: No budget impact.



Alameda Corridor-East Construction Authority

4900 Rivergrade Rd . Ste A120 Irwindale, CA 91706 (626) 962-9292 fax (626)962-9393 www.theaceproject.org

MEMO TO: ACE Construction Authority Board Members and Alternates

FROM: Rick Richmond
Chief Executive Officer

DATE: December 19, 2011

SUBJECT: Approval and Adoption of Labor Compliance Program

RECOMMENDATION: Staff recommends that the Board authorize the Chief Executive Officer to adopt a Labor Compliance Program (LCP) and authorize submission of the LCP to the State of California Department of Industrial Relations (DIR) for review and approval.

BACKGROUND: As previously reported to the Board, the California Transportation Commission has allocated \$336.6 million in state transportation bond funds for ACE's San Gabriel Trench project and is expected to allocate \$25.6 million in bond funds for the Nogales St. grade separation. On September 30, 2011, Governor Brown signed into law Assembly Bill 436 (AB 436) which was enacted to address certain concerns about the labor compliance monitoring program. As a result of this new bill, public agencies undertaking construction projects using state bond proceeds will be subject to new labor compliance requirements for contracts awarded on or after January 1, 2012. ACE has three options to consider in order to comply with the new law:

1. Develop and implement a State-approved Labor Compliance Program.
2. Pay a reimbursement fee to the DIR to conduct labor compliance monitoring and enforcement. The reimbursement fee would be no more than $\frac{1}{4}$ of 1% of the state bond proceeds used for the public works projects.
3. Establish a policy requiring that all ACE contractors have a collective bargaining agreement that requires payment of prevailing wage and a mechanism for resolving disputes about the payment of wages.

Based on the three options identified above, staff believes that implementing a State-approved Labor Compliance Program would be the best fit for the agency. ACE currently monitors and enforces a labor compliance program including payment of prevailing wages under Federal and State regulations, however, has not been required to obtain formal approval of its program by the DIR until the implementation of AB 436.

With the allocation of \$336.6 million for the San Gabriel Trench and our upcoming request for \$25.6 million in bond funds for the Nogales project, $\frac{1}{4}$ of 1% of project bond proceeds would amount to \$905,500 that ACE would be required to pay the DIR as a reimbursement fee, a much costlier alternative than operating under our own LCP.

If the Board adopts this recommendation, a two-step process would be used. First, an LCP would be developed (already started in house). Carrying out the labor compliance monitoring required by the LCP would be an ongoing activity which could be performed in house or through consultant assistance, which is the manner we've used thus far.

Attached is a draft summary of the LCP. The State is currently providing additional updates of AB 436, as well as applicable statutes, therefore, some sections of the LCP may have to be refined prior to submittal to the DIR.

BUDGET IMPACT: Staff is preparing the LCP, therefore, funds for this effort is included in the FY 2012 budget.

ALAMEDA CORRIDOR-EAST CONSTRUCTION AUTHORITY

LABOR COMPLIANCE PROGRAM

SUMMARY

The Alameda Corridor-East Construction Authority (Authority) institutes this Labor Compliance Program for the purpose of implementing its policy relative to the labor compliance provisions of State and Federally funded public works contracts. This program is applicable to all public works projects which are designated as requiring prevailing wages.

California Labor Code Section 1770, *et seq.* requires that contractors on public works projects pay their workers based on prevailing wage rates established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

California Labor Code 1771.5 requires an awarding body to identify prevailing wage requirements in bid invitations, contract language and at pre-construction conferences, to review payroll records to verify compliance with the Labor Code, and to withhold contract payments when payroll records are delinquent or inadequate or when underpayments have occurred.

California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

This Labor Compliance Program ("LCP") contains labor compliance standards required by State and Federal laws, regulations, and directives, as well as policies and contract provisions, which include, but are not limited to, the following:

- Contractors' payment of applicable general prevailing wage rates.
- Contractors' employment of properly registered apprentices.
- Contractors' provision of certified payroll records upon request, but not less than weekly.
- Program's monitoring of Authority construction sites for verification of proper payments of prevailing wage rates and work classification.
- Program's presentation at pre-construction conferences with contractors/subcontractors.
- Program's withholding of contract payments and imposing penalties for noncompliance.
- Program's preparation and submittal of annual reports.

The Authority institutes this general Labor Compliance Program (“LCP”) for the purpose of implementing its policy relative to labor compliance provisions of State and Federally-funded public works contracts and additionally to comply with the provisions of Labor Code section 1771.3 pertaining to the use of funds derived from state-issued public works bonds. This LCP contains labor compliance standards required by State and Federal laws, regulations and directives, as well as policies and contract provisions.

In establishing this LCP, the Authority adheres to statutory requirements as enunciated in Section 1771.5(b) of the Labor Code. Further, on applicable projects, the Authority intends to actively enforce this LCP by monitoring Authority construction sites for payment of prevailing wage rates and to require contractors and subcontractors with workers on applicable Authority projects to submit copies of certified payroll records demonstrating their compliance with payment of prevailing wage rates.

The LCP covers the following standards required by State and Federal laws, regulations and directives, as well as policies and contract provisions, which include, but are not limited to the following:

- I. Public Works Subject to Prevailing Wage Laws
- II. Competitive Bidding on Authority Public Works Contracts
- III. Pre-Construction Conference
- IV. Review of Certified Payroll Records
- V. Reporting of Willful Violations to the Labor Commissioner
- VI. Enforcement Action
- VII. Notice of Withholding and Review
- VIII. Distribution of Forfeited Sums
- IX. Outreach Activities
- X. Annual Reports



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: ACE Construction Authority Board Members & Alternates

From: Rick Richmond
Chief Executive Officer

Date: December 19, 2011

Subject: Approval of 2012 Meeting Schedule

The ACE Construction Authority Board of Directors has met the fourth Monday of each month with exceptions for holidays or member schedule conflicts. Meetings are held at 2PM at the Irwindale City Hall Council Chambers, 5050 Irwindale Avenue, Irwindale.

In addition, the Finance Committee meeting has met the Thursday following the Board meeting at 3PM at the ACE Offices.

Staff recommends the following schedule of meetings for 2012:

<u>BOARD OF DIRECTOR MEETING</u>	<u>FINANCE COMMITTEE MEETING</u>
January 23	January 26
February 27	
March 26	
April 23	April 26
June 4 (May meeting)*	
June 25	
July 23	July 26
August 27	
September 24	
October 22	October 25
November 26	
December 17*	

*Changed due to holiday or schedule conflicts.