

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: 10/17/11

Reviewed by: BP

SUBJECT: Revised Joint Powers Authority Agreement for the Associated
Community Action Program

FROM: Beth Pollard, City Manager
Robert Zweben, City Attorney

STAFF RECOMMENDATION

That the City Council approve Resolution No. 2011- 53 authorizing amendments to the Joint Powers Authority Agreement for the Associated Community Action Agency (ACAP) to facilitate winding up this program.

BACKGROUND

The Associated Community Action Program (ACAP) is a joint powers authority (JPA) with a governing board comprised of elected officials from its member agencies, which include Alameda County and twelve cities within its jurisdiction, including the City of Albany. The other members are the cities of: Alameda, Hayward, Dublin, Emeryville, Fremont, Livermore, Newark, Piedmont, Pleasanton, San Leandro, and Union City. ACAP's purpose has been to administer programs and services for the low-income population through a variety of public and private funding sources. These programs included housing assistance, jobs training and education, and youth development services.

In February 2011, staff of ACAP presented a number of concerns about management of the agency to the ACAP Governing Board. Significant financial and performance issues have given rise to a close out process for the entire ACAP agency. This process was initiated by the Alameda County City Managers' Association (ACCMA) and confirmed by action of the ACAP Board of Directors. The close out plan resulted in the hiring of Management Partners, Inc, a management consulting firm specializing in assisting public entities, and the termination and layoff of most of the ACAP staff, as well as the cessation of all ACAP client services and the termination of property leases and other on-going obligations.

An Ad Hoc Committee comprised of two city managers and three city attorneys have been guiding this work and the close-out process. The City of Dublin has been providing financial assistance and reporting, and the City of Hayward has been providing

equipment disposal services through our Finance-Purchasing Division and the Maintenance Services Department.

Management Partners was engaged to close out ACAP with a minimum of expense while minimizing liabilities to ACAP member agencies. These liabilities stem from various sources such as disallowed grant costs, existing leases and contracts, and employee-related obligations.

The JPA was last amended in 1995 and states that the members are liable for repayment of any misspent funds in the event that ACAP is unable to meet those obligations. The representatives of the members and the ACAP board of directors have determined that the existing joint powers agreement that created ACAP must be amended to reflect the current status of ACAP, in order to limit liability to the members of the JPA and to reflect the close out mission of the ACAP agency.

DISCUSSION

Mr. Rich Ambrose, retired City Manager from Dublin, acting through the Management Partners' contract and as appointed by the existing Board of Directors, has been the Interim Executive Director. All known grant obligations have been or will be closed out by September 30, 2011 or very soon thereafter. All leases have been terminated or renegotiated on a short-term basis. All prudent and possible steps have been taken to conclude associated audits for FY 2009, FY 2010, and FY 2011.

Current invoices are being processed and older invoices are being cleared in the system or paid. Management Partners is in the process of identifying a third-party administrator to manage ongoing obligations, and this will result in a recommendation forthcoming for approval by the new ACAP Governing Board.

There is little doubt that all member agencies of the ACAP JPA would prefer to end the ACAP relationship and close out the entire matter. However, there remains custodial obligations for the records as well as employer responsibilities for current and future workers' compensation claims. Further, grantors have certain and varying requirements for records retention. Finally, there remain existing lawsuits and claims that must be addressed, managed, and responded to over time. Therefore, it is necessary to continue the ACAP JPA for some as yet undefined time period.

With that understanding, it is not advisable to continue any version of ACAP under the current JPA agreement which:

1. Requires the continued participation of elected members from each agency;
2. Does not allow the ACAP Board to modify its own by-laws;
3. Requires the continued existence of the Community Action Board (CAB), an advisory body to the Board of Directors; and, most importantly,
4. Does not limit the liability and financial exposure of the current members.

With concurrence from the ACCMA Ad Hoc Committee, and at direction from Mr. Ambrose, John Bakker of Meyers/Nave prepared a JPA amendment that will limit future exposure for member agencies and delegate oversight to the Chief Executive Officers (CEO) of the member agencies, rather than the elected officials. It will also delete

requirements associated with grant programs and ACAP original purposes, such as the CAB, and it will allow the by-laws to be changed consistent with close-out goals. Specifically, the amendment will:

1. Restructure ACAP's powers to be consistent with its current "wind up" task (see Section I.C). This deletes all program activities and describes ACAP as a caretaker/close out organization.
2. Specifies that, by entering into the agreement, none of the members are admitting that they were parties to the original JPA or that they are liable for any go-forward debts of ACAP (See Section VI.G). This limits member liabilities to programs prior to adoption of the amended JPA and limits subsequent liabilities to the close out process.
3. Eliminates the CAB and related actions. Without this change, the Governing Board would be required to continue appointing members to the CAB and for the CAB to hold quarterly meetings.
4. Reconstitutes the governing board to be made up of the CEO of each member agency (i.e., the County Manager and the respective City Managers); and authorizes the CEO to send an alternate to meetings (See Section II. A.1). This is recommended since the remaining close out activities will be administrative in nature.

After Management Partners concludes its task and the third party administrator is retained, most of the ongoing obligations of the agency will be administrative. The ACAP Governing Board met September 15, 2011 and voted to recommend to their respective governing bodies that they approve the amendment to the ACAP JPA Agreement. The amendment has been reviewed and revised by the legal counsels of all the member agencies. The recommended JPA amendment is attached (Attachment I). The JPA requires that all members approve the amendment to the JPA for it to take effect.

SUSTAINABILITY

N/A

FINANCIAL IMPACT

It is currently unknown what the final total financial liability of each member agency will be for past liabilities, although all available steps have been and are being taken by the ACCMA Ad Hoc Task Force and the Interim Director to limit exposure. However, until all grants are closed out and associated audits completed, all employee-related claims and costs are closed out, and all associated and possible law suits concluded, we cannot know the specific exposure to the member agencies.

To date, since the close out process was begun, the Albany City Council has approved a total of \$100,385 to assist in paying down the outstanding obligations of ACAP. In May

the City was put on notice that an additional \$50,000 may be needed to complete the wind up of ACAP. The City Council directed that it wished to see more detailed financial information before authorizing any further payment.

NEXT STEPS

Upon approval and signature by all member agencies, the revised ACAP Governing Board will meet in October or early November to revise the by-laws and take additional actions to move the ACAP agency to close out and record maintenance mode. A Third Party Administrator will be retained to provide records retention for required periods, records retrieval as needed, reporting and other administrative tasks as may be required by grantors, as well as state and federal governments. The Governing Board will then convene only on an as-needed basis to resolve any outstanding legal issues, assure administrative actions are finalized, or as required by applicable laws for such a body.

ATTACHMENT

- 1) Amendment to JPA Agreement
- 2) Resolution No. 2011-53