

**MINUTES OF THE
ACCEL BOARD OF DIRECTORS
ONTARIO, CA
THURSDAY, DECEMBER 2, 2004, 3:00 P.M.**

MEMBERS PRESENT

Mary Akin, City of Modesto
Sandra Blanch, City of Palo Alto
Patrick Flaherty, City of Bakersfield
Sherrell Freeman, City of Monterey
Ann Garcia, City of Ontario
Beverly Jensen, City of Mountain View
Brad Landreth, City of Santa Barbara
Jim Patricola, City of Burbank
Tom Phillips, City of Santa Monica
Tom Vance, City of Anaheim

MEMBERS ABSENT

Charlotte Dunn, City of Visalia
Erwin Young, City of Santa Cruz

GUESTS AND CONSULTANTS

Keyan Aghili, Carl Warren & Company
Ray Aromatorio, Carl Warren & Company
Janelle Cabanding, Driver Alliant Insurance Services
Dan Howell, Driver Alliant Insurance Services
Mike Simmons, Driver Alliant Insurance Services

President Tom Phillips called the meeting to order at 3:11 p.m.

B. CONSENT CALENDAR

B1. Approval of Minutes – October 9 and 10, 2004 Board of Directors Meeting

A motion was made to accept the minutes as submitted.

MOTION: Mary Akin

SECOND: Beverly Jensen

MOTION CARRIED

The minutes were approved with no changes.

C. REPORTS

C2. CLAIMS COMMITTEE'S REPORT

C2a. The ACCEL Board of Directors entered into Closed Session pursuant to Government Section Code 54956.95.

A motion was made to enter into closed session at 3:13 p.m. pursuant to Government Section Code 54956.95.

MOTION: Jim Patricola **SECOND:** Mary Akin **MOTION CARRIED**

A motion was made to come out of closed session at 3:56 p.m.

MOTION: Beverly Jensen **SECOND:** Sherrell Freeman **MOTION CARRIED**

Claims Committee Chair, Brad Landreth had nothing to report from Closed Session.

C3. FINANCIAL AND TREASURER'S REPORT

C3a. Ratification of Disbursements for Months Ending September 30, 2004 and October 31, 2004.

There was no discussion on this item.

C3b. Report of Investments – Pursuant to Government Section Code 53646(b)(1) for Months Ending September 30, 2004 and October 31, 2004.

There was no discussion on this item.

C3c. Estimated Earnings Report for Month Ending September 30, 2004

Janelle Cabanding reviewed the summary of activities with members. Mike Simmons mentioned that there is a minor rounding error which is why while “zeroing out” years, a negative zero appears in some columns. Dan Howell and Janelle Cabanding will be making corrections to this soon.

After a discussion regarding investment interest rates, members would like research done by the Program Administrators and/or Finance Committee to do a quick survey on other pools to see how they manage their investments and if they are earning more than 2.5%, ACCEL's current estimated interest rate. They also may need to contact investment firms for advice.

C3d. Financial Statement Ending September 30, 2004

There was a handout provided at the meeting, replacing handwritten pages 43 through 46. There was no discussion on this item.

C3e. Administrative Budget 2004/2005 Budget Year-to-Date

There was no discussion on this item.

A motion was made to file and accept Agenda Items C3a through C3e.

MOTION: Brad Landreth **SECOND:** Sandra Blanch **MOTION CARRIED**

C3f. Changes to Administrative Checking Account – Draft Resolution 04/05-03 – Adoption of Administrative Policy & Procedure F – Accounting Guide (Draft)

Mike Simmons reviewed this item and recommended that action be taken at today's meeting to accept the draft Chart of Accounts format and also secondly, to give direction to the Finance Committee to evaluate the Draft Accounting Guide Policy & Procedure and after reviewing, make a recommendation at the next Board Meeting.

A motion was made to accept the Draft Accounting Guide Policy & Procedure subject that it is reviewed by the Finance Committee with a formal recommendation at the February Board Meeting, and also to accept the Chart of Accounts format as presented in the agenda.

MOTION: Brad Landreth **SECOND:** Mary Akin **MOTION CARRIED**

It was noted that members should also provide input on the Accounting Guide and to contact the Financial Auditor for additional review.

C3g. Annual Report of Financial Transactions of Special Districts – Pursuant to Government Section Code 26909.

Patrick Flaherty noted that this was not available as a handout at today's meeting. Janelle Cabanding noted that the report has been filed as required, however since it was submitted electronically, a hard copy was not exportable in a viewable handout.

C4. PROGRAM ADMINISTRATOR'S REPORT

C4a. ACCEL Website Update

Janelle Cabanding presented this item and asked members to provide input as necessary. Members expressed an interest to have archived agenda and minutes backdating to when ACCEL was formed in 1986. Mike Simmons replied that some files due to the age and storage location, take time to retrieve out of storage and also is costly.

Brad Landreth mentioned that he has many file boxes of information and offered the Program Administrators the opportunity to copy and/or scan the information as needed for archiving electronically or via the ACCEL Website's "Members" Section. Sandra Blanch also mentioned she is closer to San Francisco and has information dating to at least 1990. Program Administrators will contact Brad and Sandra to coordinate this task.

The meeting was adjourned at 5:01 p.m. and will reconvene tomorrow morning at 8:30 a.m.

(CONTINUED)
MINUTES OF THE
ACCEL BOARD OF DIRECTORS
ONTARIO, CA
FRIDAY, DECEMBER 3, 2004, 8:30 A.M.

MEMBERS PRESENT

Mary Akin, City of Modesto
Sandra Blanch, City of Palo Alto
Patrick Flaherty, City of Bakersfield
Sherrell Freeman, City of Monterey
Ann Garcia, City of Ontario
Beverly Jensen, City of Mountain View
Brad Landreth, City of Santa Barbara
Jim Patricola, City of Burbank
Tom Phillips, City of Santa Monica
Tom Vance, City of Anaheim

MEMBERS ABSENT

Charlotte Dunn, City of Visalia
Erwin Young, City of Santa Cruz

GUESTS AND CONSULTANTS

Keyan Aghili, Carl Warren & Company
Ray Aromatorio, Carl Warren & Company
Janelle Cabanding, Driver Alliant Insurance Services
Dan Howell, Driver Alliant Insurance Services
Mike Simmons, Driver Alliant Insurance Services

President Tom Phillips reconvened the meeting at 8:36 a.m.

C5. UNDERWRITING COMMITTEE'S REPORT

C5a. Discussion Regarding Changes in Members' Risk Profiles

Underwriting Committee Chair, Tom Vance mentioned that the Underwriting Committee met via telephone on November 17, 2004, and discussed the issue of change in members' risk profile. Although there was a consensus by the Underwriting Committee that there are some situations where a change in risk profile should be underwritten, it was quite difficult to define what a change in risk profile is. The Underwriting Committee is still evaluating this issue and will provide a status and/or recommendation at the February Board Meeting.

This agenda item also relates to a draft contractual agreement between the City of Mountain View and NASA. The City of Mountain View would be contracted to provide firefighting services to NASA, outside the City's jurisdiction. A copy of the letter from the City of Mountain View's City Attorney was distributed at the meeting. The original proposed scope of services from NASA was not approved and revisions are currently being proposed by the City of Mountain View.

Beverly Jensen provided an update to members. The City of Mountain View formed a task force who is preparing a proposal to NASA with a different scope of services of their City's services. This proposal should be complete mid-December, giving NASA 30 days to review and agree. The City of Mountain View put this issue forth to ACCEL and agreed not to execute without prior review/approval by ACCEL. Tom Vance requested a full copy of the proposal to NASA. Beverly Jensen replied that the City is outlining a detailed summary of the proposal, as it is currently about 150+ pages.

Mike Simmons added that if ACCEL was an excess carrier, a contract involving such services would be normally subject to underwriting approval, and an additional premium may apply. It was generally agreed that in the case of Mountain View, an additional premium should apply only if there were any added payroll exposures. There was discussion as to what a change in profile was, such as years ago when the City of Santa Barbara informed ACCEL about building a skateboard park. This is still unclear and it was suggested that a definition of a change in risk profile be identified and discussed at a future meeting.

Sherrell Freeman asked what the possible outcome would be if ACCEL had the decision to underwrite this type of risk profile. Tom Vance replied that the following are possible outcomes if this decision is made by ACCEL:

- This should be covered as any operation and report new payroll if applicable;
- This would not be covered as the type of change in risk profile is excessive and outside scope of the entity; or
- Work with the member entity and see if ACCEL can give suggestions to make/modify or work with them to make the agreement acceptable.

Brad Landreth suggested not to make a decision right now, but to review underwriting process. Brad expressed that perhaps ACCEL would need to obtain a legal opinion. Do fire fighter immunities apply to all members who have these types of activities. Brad also added that he feels ACCEL should participate in legal research to determine if fire fighter immunities would apply to a situation where the contracting party is a Non-California or non-public entity in the State of California.

A motion was made to approve that this City of Mountain View change in risk profile is to be underwritten and there would be no automatic coverage through ACCEL without prior approval, and to approve a maximum budget of \$3,000 to allow the Underwriting Committee to hire legal counsel, if needed.

MOTION: Brad Landreth

SECOND: Jim Patricola

MOTION CARRIED

The motion was passed with one abstain and one opposed.

The Underwriting Committee will continue to communicate with the City of Mountain View on this issue and keep the Board updated as needed. Tom Vance mentioned that ACCEL may need to schedule a telephone Board Meeting if needed to prior to the next scheduled Board meeting in February.

E. NEW BUSINESS

E1. Program Administrators Contract with Driver Alliant Insurance Services

Mike Simmons requested that this item not be discussed in closed session and believes that it is important to do so within the laws of the Brown Act.

President, Tom Phillips provided a background on this item. Tom wanted this item on the agenda due to discussions resulting from the recent prosecution of Marsh bid rigging scandal from global broking. These discussions have expanded to the subject of contingent commissions, which is common country wide. There are issues of ethics and corporate governance everyone has been hearing about even with Enron. The insurance industry has political motivation and it appears that bid rigging problems have surfaced.

A few weeks ago, Erwin Young sent an email to Tom Phillips relative to a law suit filed by the County of Santa Clara naming three major brokers' Driver Alliant Insurance Services, Keenan & Associates and Marsh, Inc. Most Joint Powers Authorities are reviewing their Brokerage and Program Administration contracts to carefully look at the legal arrangements and where their insurance programs are placed. Contingent commissions is currently and generally a "hot topic".

Mike Simmons provided a response to members' concerns regarding contingent commissions. Currently there is a clause in ACCEL's contract with Driver Alliant Insurance Services that allows Driver the ability collect contingent commissions. This clause has been in the Driver Contract for more than 10 years, so this is not new news. Driver currently does not collect any contingent commissions from AIG, where most of ACCEL's insurance is placed by Driver, so Mike feels that should not be an issue. However, Driver does place the Employee Dishonesty Coverage through Hartford Fire who does offer contingent commissions. Mike estimates that the contingent commission amount is very minimal since the annual premium is just around \$10,000 (with any broker commission rebated back to ACCEL).

Agenda Item E1 includes a recommendation for members to approve deletion of any reference to contingent commissions (Handwritten Page 63), which should generally amend the contract to exclude the ability to collect contingent income. Mike Simmons added that Driver, on a company wide basis, is working on drafting new wording on all their contracts to address these issue, and the proposed global change may set boundaries and/or limitations to these contingent commissions.

The CSAC EIA Executive Committee met recently and sent out a 13-page email to various CSAC clients and other recipients regarding contingent income. Mike Simmons assured that all ACCEL members participating in CSAC EIA/CPEIA Programs will receive a copy of this email

and any other correspondence to members who were not included on the email (Mike passed out a copy of the email during the meeting for members to review). Dan Howell added that the largest payer of contingency income State Compensation Insurance Fund (public benefit corporation). Driver currently does not place any business with the State Fund.

After this discussion, ACCEL requested the Program Administrators to respond formally in a letter addressed to the President regarding contingent commissions. The letter should be a minimal statement as to which carriers placed for ACCEL by Driver currently pay contingent commission and at what amount. Tom Phillips said the letter definitely should include the last year, and hope that the Program Administrators will be able to present something historical.

At the current time, ACCEL will not make any amendments to the Program Administration Contract as recommended in Agenda Item E1. ACCEL will wait for the suggested amendments from Driver corporate prior to making any changes to their contract with Driver.

E2. City of Gardena – Outstanding Retro Payment

The City of Gardena currently owes ACCEL \$89,000. Gardena is on the brink of filing bankruptcy or Chapter 11. ACCEL would like to take action to demand the payment now. The Program Administrators were given direction to assist President, Tom Phillips to prepare a letter giving them 45 days providing appropriate documentation. The letter should include a firm statement that ACCEL will pursue legal action to recover these monies. This item may need to be readdressed at the next Board Meeting if payment has not yet been received.

E3. Next Two Meetings Schedule

There was no discussion on this item.

F. CORRESPONDENCE

There was no discussion on the following items.

F1. City of Gardena – Contra Costa Times News Article Nov. 14, 2004

F2. PeriScope September 2004

F3. The Risk Management Letter – Fall 2004

F4. Workers' Compensation Law Bulletin – September 25, 2004

F5. The Risk Report – October 2004

F6. 2005 PARMA Conference Information

H. GENERAL RISK MANAGEMENT ISSUES

H1. Additional Insured Endorsement Wording Changes and Impact on Contract

Effective July 1, ISO has a new CG2010 Endorsement which Driver feels limits coverage. The information in the agenda packet includes comments from Robin Johnson of Driver on the coverage issues. Mike Simmons mentioned that Driver will be updating and addressing these issues in the updated Insurance Requirements in Contracts Manual early next year. Patrick Flaherty wanted this item placed on today's agenda to have a discussion to see if any other members are experiencing problems with insufficient endorsement wording to their contracts.

Robin Johnson and Marilyn Kelley are currently working on these issues and will provide updates in the next coming weeks.

ADJOURNMENT

A motion was made to adjourn the meeting at 11:20 a.m.

MOTION: Tom Vance

SECOND: Sandra Blanch

MOTION CARRIED