

## STAFF REPORT

**SUBJECT:** Clean Air Express Reimbursement

**MEETING DATE:** August 1, 2012

**AGENDA ITEM:** 4

**STAFF CONTACT:** Scott Spaulding

### RECOMMENDATION:

- A. Provide direction to staff on a request from the City of Santa Maria that it be reimbursed \$202,929.12 for Clean Air Express operational costs that exceeded the reimbursement limit in the Memorandum of Understanding for FYs 10/11 and 11/12.
- B. Receive a report on the search for agencies and/or contractors that could assume responsibility for administering the Clean Air Express service.

### SUMMARY:

In July, the board approved a recommendation made by the North County Subregional Committee to execute an MOU with the city of Santa Maria for operation of the Clean Air Express at an increased rate not to exceed \$120/revenue hour.

The North County Committee held over to August consideration of a request from the City that it be paid \$202,912 in Measure A funds as a reimbursement for the difference between what it paid its service provider and what it was reimbursed under the Clean Air Express MOU with SBCAG over FYs 10/11 and 11/12. The Committee directed staff to return in August with additional information for consideration.

The city of Santa Maria has notified SBCAG that it intends to stop operating the service on October 28. The committee directed staff to initiate a search for agencies and/or contractors that are willing to assume responsibility for administering the Clean Air Express service.

### DISCUSSION:

In April 2010, SBCAG and the City of Santa Maria approved a two-year MOU (through June 2012) for the city to operate and manage the Clean Air Express. In April 2012, acting on a recommendation from the North County Subregional Committee, the board approved a renegotiated MOU between SBCAG and the City of Santa Maria that extended city operation of the Clean Air Express until June 2013. Following the SBCAG board approval of the revised MOU, SBCAG was notified by city staff that there was a disparity between what the city was being invoiced by their contractor and the amount paid to the city by SBCAG under the terms of the 2010 MOU. SBCAG received a letter on June 5 (attached) identifying the difference over two years in what the City had paid their contractor and the amount invoiced to SBCAG, which totals \$202,912. On July 2, SBCAG received a second letter from the City (attached) requesting the city be reimbursed for the full \$202,912.

Under the terms of the MOU approved in 2010, staff does not have authority to pay the city for costs exceeding the hourly rate specified in the MOU. Any reimbursement to the City to cover

losses during the past two years would need to be approved by the North County Subregional Committee and the SBCAG board.

At the July 11 Committee meeting, Director Linn suggested that Santa Maria could be reimbursed based on the difference between what it was actually paid under the MOU and the amount that would have been paid if the City of Lompoc had been operating the service, based on Lompoc's 2009 cost proposal. The committee made no recommendation to the board regarding the city's reimbursement request, but asked staff to provide information on Director Linn's suggested option.

The table below shows the difference between what the City of Lompoc would have invoiced SBCAG if they had operated the service and the amount the City of Santa Maria actually invoiced over the last two fiscal years. SBCAG and city staff jointly developed this figure.

Fiscal Year	Revenue Hours	Hourly Rate (Santa Maria)	Hourly Rate (Lompoc)	Actual Invoiced Amount (Santa Maria)	Est. Invoiced Amount (Lompoc)	Difference
2011	8,160	\$ 104.00	\$109.22	\$848,640	\$891,235	\$42,595
2012	8,884	\$ 107.74	\$113.15	\$957,162	\$1,005,242	\$48,080
Total						<b>\$90,675</b>

The committee is being asked to make a recommendation to the full board regarding the city's request for reimbursement. The following options are presented for the committee's consideration:

1. Provide the requested reimbursement amount of \$202,912.
2. Provide no reimbursement to the city.
3. Provide partial reimbursement in the amount of \$90,675.

#### Future Clean Air Express Operator

The City of Santa Maria has notified SBCAG of its intent to stop its operation of the Clean Air Express effective October 28, 2012. Staff has had preliminary discussions with the City of Lompoc regarding its interest in administering the service and has formally requested a cost estimate from the city based on the MOU approved by the board in April. Lompoc administered the Clean Air Express in the final year of an SBCAG issued service contract in FY2009/10 and participated in the multi-agency cost estimate process conducted in the fall of 2009.

If the city is not interested in administering the service or develops a cost estimate that may be significantly higher than what may be possible through direct SBCAG management, staff will conduct an RFP process in order to secure a private contractor to operate the service. An RFP process would require 5-8 months to complete.

**COMMITTEE REVIEW:** The North County Subregional Committee discussed this issue at their July 11 meeting and directed staff to return with options for reimbursing the City of Santa Maria for committee consideration.

**ATTACHMENTS:**

1. June 5 letter from City of Santa Maria
2. July 2 letter from City of Santa Maria

CITY OF SANTA MARIA  
ENGINEERING DIVISION

110 S. PINE ST. #101 (ON HERITAGE WALK) • SANTA MARIA, CA 93458-5082 • 805-925-0951, EXT. 225 • FAX 805-928-4995 • TDD 800-735-2929

DEPARTMENT OF PUBLIC WORKS

June 5, 2012

Jim Kemp, Executive Director  
Santa Barbara County Association of Governments  
260 North San Antonio Road  
Santa Barbara, CA 93110

**SUBJECT: CLEAN AIR EXPRESS**

On April 7, 2010, the City of Santa Maria City Council executed the Memorandum of Understanding to operate the Clean Air Express (CAE). This Memorandum of Understanding represents a partnership between the City of Santa Maria and Santa Barbara Association of Governments (SBCAG) with the common mission to serve our customers in North Santa Barbara County. The successful transition of the CAE is largely due to this partnership and support the City received from SBCAG.

The City prepared its cost estimate using the projected operating data provide by SBCAG. After a year of experience operating the service, the City evaluated the actual service data. Staff found that reimbursements from SBCAG do not cover the payments to the City's transit contractor.

After investigating the matter further, staff learned the cause of the problem. Table 1 (below) compares the projected operating data and the actual operating data for the first year and second year of service. Based on actual operating data, revenue hours were about 59.66 hours more than the projected revenue hours, and revenue miles were 41,750 miles more than the projected revenue miles. The problem is that SBCAG reimburses the City based on revenue hours and the City pays its transit contractor based on revenue miles. In the first year, this difference in revenue miles caused a financial disparity of \$87,371 dollars to the City's operation of the CAE. The City used local transit funds budgeted for local service to cover payments for the CAE to its transit contractor.

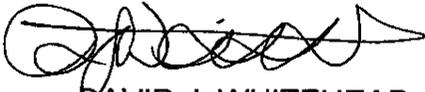
The City values its partnership with SBCAG in the operation of the Clean Air Express. Please direct your earliest attention to this matter. I will make City staff available for a meeting to discuss these issues at your convenience.

**Table 1**

<b>Variable</b>	<b>FY 2010-11 Projected Data</b>	<b>FY 2010-11 Actual</b>	<b>2011-12 Projected<sup>1</sup></b>
<b>Revenue Hours</b>	8,100	8,159.66	8,884.26
<b>Revenue Miles</b>	331,000	372,750	395,696
<b>Hourly Rate</b>	\$104.00	\$104.00	\$107.74
<b>Mileage Rate</b>	\$2.561	\$2.511	\$2.711
<b>SBCAG Reimbursement</b>	\$847,725	\$848,604.64	957,190.18
<b>City Payments to First Transit</b>	\$847,725	\$935,975.25	1,072,731.86
<b>City Revenues</b>	\$0	(\$87,370.61)	(\$115,541.68)

<sup>1</sup> Estimated operating data for April, May and June.

If you have any questions or need additional information regarding this matter, please contact me or Transit Services Manager Austin O'Dell at (805) 925-0951, ext. 225.



DAVID J. WHITEHEAD  
Director of Public Works/City Engineer *A3*

xc: Transit Services Manager

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Santa Barbara County  
Association of Governments

CITY OF SANTA MARIA  
ENGINEERING DIVISION

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DEPARTMENT OF PUBLIC WORKS

July 2, 2012

By facsimile transmission to (805) 961-8901  
and USPS Mail

Jim Kemp  
Executive Director, SBCAG  
260 North San Antonio Road, Suite B  
Santa Barbara, CA 93110

**SUBJECT: FUTURE OPERATION OF CLEAN AIR EXPRESS  
CORRECTION TO MEMORANDUM OF UNDERSTANDING**

Enclosed, unsigned, is the Memorandum of Understanding (MOU) by which you propose that the City of Santa Maria continue to operate the Clean Air Express (CAE). This document appears to be incorrect, and it is unacceptable because it would force the City to accept less reimbursement from SBCAG than the actual cost to operate the CAE.

As I indicated in my correspondence dated June 5, 2012 addressed to you, the original reimbursement rate in the MOU for the first two (2) years of service provided by the City resulted from inaccurate route mileage estimates provided by your staff, and caused the City of Santa Maria to be reimbursed less than the cost of the service. We now have a balance in arrears in the amount of \$202,912.29. We brought this matter to your attention because we believe that the intent of the SBCAG Board was for Santa Maria to operate the service on a cost-neutral basis, to be funded in entirety by Measure A sales tax proceeds.

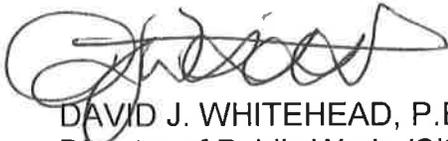
We now have accurate route mileage data resulting from actual operation of the service. This new data will allow the reimbursement rate to be corrected so that Santa Maria can operate the service on a cost-neutral basis. As a simple way to avoid future problems with reimbursement, the MOU should reflect a reimbursement rate tied directly to the cost of service.

For two (2) years, the City of Santa Maria has managed the operation of the Clean Air Express under terms SBCAG set and drafted. Your staff has required us to pay our operator and then request reimbursement. After months of negotiations on the renewal of the MOU, whereby we have earnestly tried to correct the funding imbalance, we have received this MOU which appears to ignore our position.

Obviously I cannot sign this document. Moreover, the City will **discontinue the Clean Air Express service on August 1, 2012** unless we receive an MOU which results in the City of Santa Maria being made whole. Discontinuance will follow an orderly progression including notice to passengers beginning July 21, 2012.

The City of Santa Maria will continue to contract to operate the Clean Air Express beyond August 1, 2012, *if and only if*, all of the following conditions occur:

- This matter is placed before the North County Subregional Committee and SBCAG Boards for action at their next meetings;
- A reimbursement check in the amount of the funding deficiency (caused by the incorrect mileage data) for the first two (2) years (\$202,912.29) is received by the City; and
- SBCAG agrees and directs its staff to reimburse Santa Maria for the Clean Air Express on a cost-neutral ongoing basis by means of an agreement in a form approved by the City.



DAVID J. WHITEHEAD, P.E.  
Director of Public Works/City Engineer

xc: City Manager  
Mayor of City of Santa Maria  
Transit Services Manager

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE**  
**SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS**  
**AND THE**  
**CITY OF SANTA MARIA**  
**April 2012**

This revised Memorandum of Understanding (MOU) is entered into between the Santa Barbara County Association of Governments, hereinafter referred to as "SBCAG", and the City of Santa Maria, hereinafter referred to as "AGENCY", for the purpose of defining agency roles and responsibilities in conjunction with the operation of interregional commuter transit service in Santa Barbara County.

WHEREAS, the service to be provided is the "Clean Air Express" a weekday commuter transit service between the cities of Lompoc, Santa Maria, Buellton, Solvang and the South Coast and,

WHEREAS, SBCAG recognizes that AGENCY is empowered to provide public transportation service in Santa Barbara County, and SBCAG recognizes that AGENCY has the experience and expertise necessary to provide or cause to be provided interregional commuter transit service, which meet the objectives of SBCAG; and,

WHEREAS, the Measure A Transportation Investment Plan, adopted by Santa Barbara County voters in November 2008, includes specific funding for interregional commuter transit services;

NOW THEREFORE, this document reflects the intent of both parties to coordinate the continuation of the Clean Air Express commuter bus service, funded by Measure A, as described below.

**1. Clean Air Express Service**

**A. Project Description**

The Clean Air Express is an interregional commuter bus service currently providing seven weekday round trips from Lompoc to the South Coast, five weekday round trips from Santa Maria to the South Coast, and one weekday trip from Solvang and Buellton to the South Coast. Cash fares, 10-Ride, and monthly passes are accepted, and the service is open to the public, fully ADA accessible, and subject to all applicable local, state, and federal regulations.

**B. AGENCY Responsibility**

AGENCY shall be responsible for providing the Clean Air Express commuter bus service, either directly or through a contracted service provider. AGENCY responsibilities shall include, but not be limited to, reporting per-trip ridership information and other reports as requested by SBCAG, collecting and reporting farebox revenue, servicing pass sale outlets in Lompoc, Santa Maria, Santa

Barbara, and Buellton and/or Solvang, maintaining an invoicing service for customers, managing and maintaining wireless internet access on fleet vehicles, hiring and training bus operators and maintenance personnel, administrative support, and providing phone and email based customer service.

### **C. Policy Board**

Acting on recommendations from the North County Subregional Committee, the SBCAG board shall be the policy board for the Clean Air Express. The policy board shall be responsible for approving fare increases in accordance with all applicable state and federal regulations, and service adjustments that result in a change of 20% or more in total daily revenue service hours.

### **D. Service Plan**

The Clean Air Express service provided by AGENCY shall be based on the schedule in effect on July 1, 2012. To maintain compliance with the Public Fleet Rule, all service expansions or reductions must be approved in writing by SBCAG. In consultation with the City of Lompoc, AGENCY and SBCAG staff shall coordinate any service adjustments or revisions to meet demand and increase the efficiency and effectiveness of the service.

### **E. Hourly Rate**

AGENCY shall invoice SBCAG on a calendar monthly basis for revenue hours provided as identified on the published Clean Air Express schedule at the rate of \$107.74 per revenue vehicle hour for FY 2012/13 indexed to the national consumer price index (CPI) for FY2011/12. A Revenue Vehicle Hour is defined as any sixty-minute period in which a CAE vehicle is used to transport paying passengers as defined on the published Clean Air Express schedule. Revenue Vehicle Hours exclude boarding time at the initial stop of all runs, deboarding time at the terminal stop of all runs, hours consumed while traveling to and from storage facilities, and all other deadhead travel. This hourly rate includes the following costs associated with operating the Clean Air Express: routine maintenance, vehicle insurance, operator/driver compensation, benefits and insurance (including workers' compensation insurance). This rate does not include the cost of fuel, pass printing, bus storage, wireless internet access fees, and park and ride lot lease(s). SBCAG shall continue to manage the Clean Air Express website and will reimburse AGENCY for up to \$20,000 per fiscal year in direct advertising costs.

Clean Air Express buses may be fueled from any source, but if fuel is purchased through facilities owned and operated by the County of Santa Barbara, SBCAG shall pay the fuel cost directly. Fuel consumption shall be monitored closely and AGENCY shall have as a performance goal to consume no more than eighty four thousand (84,000) gallons per year.

All fare revenue collected by AGENCY and the value of any penalties or damages imposed on AGENCY contractor for deficiencies in operating Clean Air Express service during a calendar month shall be deducted from the monthly invoice. AGENCY shall include with the monthly invoice a report that includes the number

and type of passes sold each month, the number of cash fares, and the total amount of fares collected.

**F. Vehicles**

AGENCY will use SBCAG-owned and member agency-owned vehicles in Clean Air Express service as of June 30, 2012 and is responsible for providing or causing to provide all maintenance and repairs of all Clean Air Express vehicles. All Clean Air Express fleet vehicles shall be returned to SBCAG should the AGENCY terminate this agreement. AGENCY is not financially responsible for full engine or transmission rebuild or replacement or for extraordinary or unplanned repair of major engine components on non-warranted vehicles.

**G. Performance Goals**

System performance and efficiency are crucial for a successful service and all routes and stops should be regularly evaluated for their effectiveness. AGENCY shall collect all data required to evaluate Clean Air Express performance and shall provide a written report to SBCAG three weeks prior to the April 2013 SBCAG board meeting. The information in the report shall include the performance of the service to date. The Clean Air Express performance goals identified below are recognized as high standards that shall be used to measure the effectiveness of the entire system rather than individual routes.

Performance Criteria	Goal
Average monthly passengers per trip	55% of seats
Farebox ratio	85%
Fuel Consumption	84,000 gallons per year

**2. Funding**

Measure A North County Interregional Transit Program will fund the revenue vehicle hour rate, engine or transmission rebuild or replacement, repairs resulting from extraordinary or unplanned major engine component failure, and vehicle replacement and/or expansion. AGENCY is not responsible for using other public transit funds including, but not limited to, the following: State of California Transportation Development Act (both LTF and STA), State of California Proposition 1b, Federal Transit Administration (FTA) 5307, FTA 5340, and FTA 5336j.

**3. Amendment**

This MOU may be amended with the written consent of both parties.

**4. Term**

The term of this Memorandum of Understanding is from July 1, 2012 to June 30, 2013. One one-year extension to this MOU is included if agreed to in writing by both

parties. Exercising this extension option will extend the termination date to June 30, 2014.

**5. Termination**

This Agreement may be terminated by either party upon written notification to the other 90 days prior to the proposed the date of termination.

**6. Service Adjustments**

Any changes, adjustments, increases, reductions or losses of service by reason of new or lost funding sources shall be on the basis of the hourly rate described in the appropriate section of this Agreement. In the event of increase in services that result in additional direct costs, Measure A shall fund differential costs.

**7. Control**

AGENCY contractor (including its employees) is an independent contractor. No employer/employee relationship exists between SBCAG, the AGENCY, and AGENCY contractor. AGENCY contractor's assigned personnel shall not be entitled to any benefits payable to the employees of the AGENCY. The AGENCY is not required to make any deductions or withholdings from the compensation payable to the Contractor under this MOU. The AGENCY and SBCAG shall not interfere with AGENCY contractor's ability to control their ability to perform the service described herein.

**8. Insurance and Indemnification**

AGENCY's Contractor providing the services shall provide the following insurance provisions:

A. **Workers' Compensation Insurance** with Statutory Limits. This policy shall include employer's liability insurance with limits of at least \$1,000,000.

B. **Commercial General Liability Insurance** in the minimum amounts indicated below, including, but not limited to, Contractual Liability Insurance, Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of CONTRACTED SERVICES PROVIDER's work operating the Clean Air Express. Said insurance shall have minimum limits for Bodily Injury and Property Damage Liability equal to the policy limits, but not less than \$1,000,000 each occurrence and \$2,000,000 aggregate.

C. **Automobile Liability Insurance** against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of providing the Clean Air Express, with minimum limits for Bodily Injury and Property Damage Liability equal to the policy limits, but not less than \$1,000,000 each occurrence. Coverages shall include 'any auto'.

D. **Professional Liability (Errors and Omissions) Insurance**, for liability arising out of, or in connection with, the performance providing the Clean Air Express, equal to the policy limits, but not less than \$1,000,000 per claim and \$2,000,000 aggregate.

E. **Additional Insured** for Commercial General Liability and Automobile Liability. AGENCY and Contractor insurance shall include a separate endorsement (Form CG 20 10 10 or similar) naming SBCAG and its board members, officials, officers, agents, and employees as additional insureds.

F. **30-Day Cancellation Notice** – The above stated insurance coverages shall be maintained by the contracted services provider until the completion of all of contracted services provider's obligations under any agreement, and shall not be reduced, modified, or canceled without thirty (30) days prior written notice to the Certificate Holder. Contracted services provider shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

G. **Primary and Non-Contributory** – All insurance carried by the contracted services provider shall be primary and non-contributory with any insurance carried by SBCAG. The policy must be endorsed to include this verbiage and evidence of coverage provided with the certificate.

The City of Santa Maria shall indemnify, defend, and hold SBCAG and their officers and employees harmless from all costs, expenses, losses, liabilities, and judgments arising out of or caused by the acts or omission of City of Santa Maria, its officers, agents, or employees, solely in the performance of this agreement.

SBCAG shall indemnify, defend, and hold the City of Santa Maria, its officers and employees harmless from all costs, expenses, losses, liabilities, and judgments arising out of or caused by the acts or omission of SBCAG, and its officers, agents, or employees, solely in the performance of this agreement. The City of Santa Maria shall require that SBCAG be named additional insured on the service contractor's general liability insurance policy.

## 9. **Notices**

All notices, approvals, acceptances, demands and other communications required or permitted hereunder, to be effective shall be in writing and shall be delivered either in person or by mailing the same by United States mail (postage prepaid, registered or certified, return receipt requested) or by overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

City of Santa Maria  
Transit Manager  
110 South Pine Street  
Suite 101  
Santa Maria, CA 93458-5082

The Santa Barbara County  
Association of Governments  
Attn: Executive Director  
260 N. San Antonio Rd.  
Santa Barbara, CA 93110

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by

overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the other party written notice of its new address as herein provided.

**10. Records, Audit, and Review**

AGENCY shall keep such business records pursuant to this MOU as would be kept by a reasonably prudent transit provider and shall maintain such records for at least four (4) years following the AGENCY's fiscal year end (June 30) in which said records pertain. All accounting records shall be kept in accordance with generally accepted accounting practices. SBCAG shall have the right to audit and review all such documents and records at any time during AGENCY'S regular business hours or upon reasonable notice at SBCAG's expense.

**11. Assignment**

AGENCY shall not assign any of its rights nor transfer any of its obligations under this MOU without the prior written consent of SBCAG.

SBCAG and AGENCY, represented by the undersigned, do commit to this revised Memorandum of Understanding.

**SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS**

  
\_\_\_\_\_  
Jim Kemp  
SBCAG Executive Director

  
\_\_\_\_\_  
Date

**CITY OF SANTA MARIA**

\_\_\_\_\_  
David J. Whitehead, P.E.  
Director of Public Works/City Engineer

\_\_\_\_\_  
Date