

STAFF REPORT

SUBJECT: Clean Air Express Contract Assignment

MEETING DATE: May 21, 2009

AGENDA ITEM: 8

STAFF CONTACT: Scott Spaulding

RECOMMENDATION:

Authorize the chair to execute an agreement to assign existing Clean Air Express contract to the City of Lompoc.

SUMMARY:

The City of Lompoc is interested in taking over from SBCAG the contract for the operation of the Clean Air Express service. In April, the board approved an extension of the contract through the end of the upcoming 2009/10 fiscal year and allocated \$500,000 in funding for the extension from the Measure D regional program. The current Clean Air Express contractor, AmericanStar Transportation, also operates the City of Lompoc Transit (COLT) service. So there are efficiencies to having Lompoc coordinate their local service and the Clean Air Express service through the same contractor and there is additional incentive for Lompoc to assume the contract for a year because many of the riders of the Clean Air Express are city of Lompoc residents. For SBCAG's part, the board has previously expressed an interest in another agency taking on the Clean Air operator responsibilities allowing SBCAG to step out of the transit operator role it assumed when the Air Pollution Control District announced it would stop operation of the service years ago. While this change of roles by SBCAG and Lompoc would be limited to only the extended year of the contract, it would free up SBCAG staff resources to assist in the preparation of the Measure A Strategic Plan, including refining Measure A project scopes and costs, and preparing applications to secure Measure A matching from various new federal stimulus programs. This is, from staff's perspective, a more strategic use of staffing resources in this critical year prior to the implementation of Measure A than duplicating the transit administrator role that Lompoc already largely fulfills with AmericanStar. Staff is therefore recommending that the board authorize the chair to execute an agreement to assign the existing Clean Air Express contract to the city of Lompoc. The agreement is expected to be on the Lompoc city council agenda on June 2nd.

As part of the Measure A Strategic Plan preparation, the consulting team hired to develop the plan is required to recommend which entity is best suited to operate the Clean Air Express service permanently, from FY 2010/11 onward, when the Strategic Plan is submitted to the board for adoption before the end of the calendar year.

DISCUSSION:

An interim plan for SBCAG operation of the Clean Air Express regional bus service through June 2009 was adopted by the SBCAG board in June 2007. The interim plan was intended to provide for the continued operation of the service until after the fate of Measure A was known and there was more certainty regarding funding. A Request for Proposals was issued in September 2007, and a new service contract with a new contractor began in January 2008. Following the approval of Measure A by voters in November 2008, the board approved an additional \$500,000 in regional Measure D funds in April 2009 to operate the service through June 2010 and authorized the Executive Director to execute a contract extension with the current operator, AmericanStar.

The Clean Air Express interagency working group, consisting of staff from Santa Maria, Lompoc, MTD, SBCAG, and the County met on January 30, 2009 and March 26, 2009 to discuss assigning the current Clean Air Express contract to the City of Lompoc. The current Clean Air Express contractor, AmericanStar Transportation, also holds the contract to provide the City's local transit service (COLT). The working group supports consolidating contract management for the City's local service and the Clean Air Express regional service under City transit staff while the permanent operator arrangement for the Clean Air Express and other regional services are evaluated as part of the Measure A strategic plan.

As part of the Measure A strategic plan, inter-regional transit services such as the Clean Air Express, the Coastal Express, and the Valley Express will be evaluated for how they can be most effectively operated and funded to ensure that the maximum benefit is being received with Measure A revenues. It is anticipated the Measure A strategic plan and recommendations for regional transit service provision will be presented to the SBCAG board in December 2009.

In February 2009, the Regional Transit Coordinator position in the Traffic Solutions division was eliminated and a new Transportation Planner position was created to work on, among other things, implementing the Measure A program. The responsibilities of the Traffic Solutions Transit Coordinator position, including managing the Clean Air Express service and the operator contract, are therefore being phased out. Conveniently, the City of Lompoc has expressed an interest in being assigned the existing Clean Air Express operator contract through the end of the Measure D program while all three regional transit services are evaluated as part of the Measure A strategic plan. No operational, customer service or budgetary changes will result from assigning Clean Air Express contract management to Lompoc for the duration of the current contract, which ends on June 30, 2010.

Staff is recommending that the chair be authorized to sign the attached agreement with the City of Lompoc assigning the Clean Air Express contract to the city. Under the agreement, on July 1, 2009 the City will assume all of the obligations of SBCAG for operating the service for the remainder of the term of the existing contract with AmericanStar (through June 30, 2010). SBCAG will be responsible for reimbursing the City's costs of operating and managing the service, except that SBCAG will continue to pay directly for fuel costs and costs associated with SBMTD's operation of one Clean Air Express route serving Lompoc.

COMMITTEE REVIEW:

The ad hoc Clean Air Express working group supported assigning the current Clean Air Express operator contract to the City of Lompoc at their March 26 meeting.

**ASSIGNMENT OF CLEAN AIR EXPRESS INTERREGIONAL
BUS SERVICE OPERATIONS AGREEMENT
BY
SANTA BARBARA COUNTY ASSOCIATION OF GOVERNMENTS
TO
CITY OF LOMPOC**

THIS ASSIGNMENT is made on _____, 2009, by the Santa Barbara County Association of Governments (“SBCAG”) with reference to the following facts:

- a. SBCAG and AmericanStar Transportation Inc. (“Contractor”) are parties to that certain Agreement for the Operation of the Clean Air Express Interregional Bus Service (“the CAE Agreement”), dated January 7, 2008; and
- b. The term of the CAE Agreement is January 19, 2008, through June 30, 2009; and
- c. SBCAG has elected to extend the term of the CAE Agreement through June 30, 2010; and
- d. SBCAG now wishes to assign the CAE Agreement to the City of Lompoc; and
- e. The City of Lompoc (“City”) is willing to accept assignment of the CAE Agreement provided that SBCAG fully reimburses City for all Agreement costs through June 30, 2010.

NOW, THEREFORE, for good and valuable consideration, SBCAG and the City of Lompoc agree as follows:

1. SBCAG hereby assigns the CAE Agreement, which has not been amended, to the City of Lompoc, and City hereby accepts assignment of the CAE Agreement.
2. City hereby agrees to perform the obligations of SBCAG under the CAE Agreement; provided, however, that the costs incurred by such performance by City between July 1, 2009, through June 30, 2010, shall be solely at SBCAG’s expense, and further provided that SBCAG shall fully and promptly reimburse City, as follows:
 - i. SBCAG’s FY 2009-2010 Clean Air Express Budget (“the CAE 2009-2010 Budget”) is attached as Exhibit A and incorporated herein by this reference.
 - ii. All program fares shall be collected by the Contractor and deposited with the City.

- iii. City and SBCAG agree that the CAE 2009-2010 Budget generally shall guide, but not limit, actual expenses. Expenses include, but are not limited to, contractor costs, administration, management costs, maintenance, and capital costs not the responsibility of Contractor, and other fees, expenses, and costs to be borne by SBCAG under the terms of the CAE Agreement.
 - iv. Expenses shall not include program vehicle fuel costs. SBCAG shall continue to pay fuel costs directly to the County of Santa Barbara or other fuel provider.
 - v. Any CAE service provided by other Contractors, including but not limited to the Santa Barbara Metropolitan Transit District (MTD), shall be paid for directly by SBCAG and is not a part of this Agreement.
 - vi. City shall invoice SBCAG monthly for City's expenses arising from the CAE Agreement. SBCAG shall fully reimburse City not later than thirty days after receipt of the City's invoice.
 - vii. With direction from the City, SBCAG shall continue to host, fund, and manage the Clean Air Express website until City notifies SBCAG to terminate such services.
3. As part of the Measure A Strategic Plan, SBCAG shall include provisions for administering and operating the Clean Air Express after June 30, 2010. The Measure A Strategic Plan is expected to be adopted by the SBCAG board in December 2009.
 4. This Assignment is effective on and after July 1, 2009.
 5. Prior to April 30, 2010, this Assignment may be terminated by City, upon sixty days prior written notice to SBCAG and Contractor. In the event of termination of this Assignment, administration and operation of the Clean Air Express Interregional Bus Service shall revert to its *status quo ante*, i.e., as set forth in the Clean Air Express Agreement dated January 7, 2008, by and between SBCAG and Contractor AmericanStar Transportation, Inc.
 6. The SBCAG Executive Director and TDM Program Administrator are given certain authority under the CAE Agreement. For the purposes of this Assignment, it is understood that "Public Works Director" is substituted for "SBCAG Executive Director" and "Aviation/Transportation Administrator" is substituted for "TDM Program Administrator" in the CAE Agreement.
 7. Notices to the parties shall be delivered as follows:

City of Lompoc
 Transportation Administrator
 City of Lompoc
 Post Office Box 8001 (93438)
 100 Civic Center Plaza
 Lompoc, CA 93436

SBCAG
 Scott Spaulding
 Transportation Planner
 260 North San Antonio Road, Suite B
 Santa Barbara CA 93110

8. If either City or SBCAG is required to bring legal proceedings to enforce or construe any of the provisions of this Assignment, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees. If any provision of this Agreement is adjudged invalid, its remaining provisions shall not be affected.
9. The terms and conditions of this Assignment shall be construed according to their plain and ordinary meaning and shall not be interpreted against the maker by virtue of that party having drafted the Assignment.
10. This document is the full and final understanding of the parties regarding this Agreement and supersedes all oral or other agreements between SBCAG and City related to the Assignment. This Assignment may be modified by a writing signed by SBCAG and City.

IN WITNESS WHEREOF, the City Council of the City of Lompoc, at its duly noticed public meeting of _____, 2009, has authorized acceptance of this Assignment by the Mayor of the City of Lompoc and its attestation by the City Clerk; and the Santa Barbara County Association of Governments at its duly noticed public meeting of _____, 2009, has authorized the execution of this Assignment by its Executive Director.

ASSIGNEE:
CITY OF LOMPOC, a California
municipal corporation

ASSIGNOR:
SANTA BARBARA COUNTY
ASSOCIATION OF GOVERNMENTS,
a joint powers agency

By: _____
Dick DeWees, Mayor

By: _____
Lupe Alvarez, Board Chair

Date: _____

Date: _____

Approved as to form:

Approved as to form:

By: _____
Sharon D. Stuart, Asst. City Attorney
City of Lompoc

By: _____
SBCAG Legal Counsel

Date: _____

Date: _____

ATTEST:

By: _____
Donna N. Terrones, CMC
City Clerk, City of Lompoc

CONSENT TO ASSIGNMENT

As required by Paragraph VI.G. of the CAE Agreement dated January 7, 2008, the undersigned Contractor hereby consents to its assignment by SBCAG to the City of Lompoc. Contractor acknowledges and agrees to the extension of the term of the CAE Agreement from July 1, 2009, through June 30, 2010, and further agrees to comply fully and in good faith with all of Contractor's responsibilities and obligations under the CAE Agreement.

Contractor agrees that its consent to the foregoing Assignment shall be deemed to constitute Contractor's consent to termination of the foregoing Assignment by the City of Lompoc; and thereupon Contractor agrees to comply fully and in good faith with all of Contractor's responsibilities and obligations under the CAE Agreement dated January 7, 2008, and any amendments thereto.

Contractor:
AmericanStar Transportation Inc., a
California corporation

By: _____
_____, President

By: _____
_____, Secretary

Exhibit A

Projected Clean Air Express FY 2009-10 Budget

Operating Costs:

Description	
Operations Contract	\$750,000
Salaries and Benefits	\$75,000
Fuel	\$280,000
Administrative Costs	\$30,000
MTD (Lompoc route, net cash fares)	\$50,000
Total	\$1,185,000

Capital Costs:

Description	
New Bus	\$525,000
PM Traps	\$200,000
Non Contract Maintenance	\$50,000
Total	\$775,000

Total Cost Capital and Operating	\$1,960,000
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Revenue:

Revenue	
Regional Measure D	\$400,000
Fares	\$980,000
Federal Stimulus	\$500,000

Total Revenue	\$1,880,000
FY2009 Carryover	\$80,000
Balance	\$0