

Council Meeting
March 4, 2008

Honorable Mayor and Members
Of the City Council
City Hall
Torrance, California

Members of the City Council:

SUBJECT: Transit – Authorize participation in the Municipal Area Express (MAX) Commuter Bus Service program.
Expenditure: Not to exceed \$247,221.00

RECOMMENDATION

Recommendation of the Transit Director that City Council authorize participation in the Municipal Area Express (MAX) Commuter Bus Service program with a term of July 1, 2008 through June 30, 2011.

FUNDING

The Transit Department has budgeted \$247,221.00 in its FY 2008-09 operating budget to participate in the program.

BACKGROUND

Since 1990, a consortium of local jurisdictions that sponsor the MAX Commuter Bus Service have operated under an inter-agency agreement that does the following:

1. Defines the purpose of the Municipal Area Express (MAX) transit service.
2. Establishes a Policy Steering Committee and defines the scope of its policy-making role.
3. Establishes the City of Torrance as Lead Agency.
4. Establishes the agencies participating in the agreement with Torrance and the City of El Segundo, the City of Lawndale, the City of Lomita, the City of Los Angeles, the City of Rancho Palos Verdes, and the County of Los Angeles.
5. Sets minimum liability insurance limits which the Lead Agency must require of the contract operator for the service.
6. Sets basic parameters for funding of the commuter service, including the financial responsibilities of the participating agencies.

The current MAX inter-agency agreement is scheduled to expire on June 30, 2008. The first such agreement began on the date service was inaugurated in April 1990. Subsequent agreements were tied to the budgetary fiscal year (July 1 – June 30) for ease of program administration. The agreement has worked well to date over the span of time that MAX has been in service, since it is written in broad policy-oriented terms.

ANALYSIS

The current MAX inter-agency agreement will expire on June 30, 2008. Lead Agency staff has prepared a new inter-agency agreement with updated time periods and signatory pages for review and approval by your honorable body. Lead Agency legal council has examined the previous agreement and is recommending no changes.

We are beginning the re-authorization process at this time in order to provide the Council and the participating agencies ample time to review the document and authorize execution of a new agreement prior to expiration of the current one on June 30, 2008. The MAX Policy Steering Committee at its December 3, 2007 meeting approved the new agreement and directed the Lead Agency staff to forward to your honorable body for approval and then distribution to the participating agencies.

If any of the current participating agencies should opt not to continue their participation in MAX beyond the agreement's 2008 expiration date, then the remaining participants would need to jointly fund the annual financial contribution of the departing agency in order for the MAX service to continue in FY 2008-2009.

Any future actions by the MAX Policy Steering Committee to alter the level of MAX service would impact the participant contributions accordingly. Any future actions by the Los Angeles County Metropolitan Transportation Authority (MTA) changing the terms of the funding programs from which MAX finances part of its annual budget would likewise impact each agency's annual contribution.

Respectfully submitted,


 Kim Turner
 Transit Department

Concur:


 LeRoy J. Jackson
 City Manager

Attachment:

- A) Inter-Agreement for MAX Commuter Bus Service.

AGREEMENT FOR MAX COMMUTER BUS SERVICE

THIS AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the City of Torrance (hereinafter referred to as "LEAD AGENCY") and the City of El Segundo, the City of Lawndale, the City of Los Angeles, the City of Rancho Palos Verdes, City of Lomita, and the County of Los Angeles, (hereinafter referred to as "AGENCIES" or individually as "AGENCY").

RECITALS

- A. LEAD AGENCY and AGENCIES are located in the South Bay area of Los Angeles County, a region which continues to experience a high level of peak-hour traffic.
- B. The AGENCIES have previously jointly funded a commuter transportation transit service known as Municipal Area Express (MAX), which provides a much-needed bus service to and within the South Bay aerospace employment center.
- C. The AGENCIES recognize the potential cost savings and increased transit efficiency of providing a network of commuter transportation services and a connection to the Metro Green Line in the South Bay by coordinating transit services, administration and marketing.
- D. Each AGENCY is willing to fund a share of the cost of MAX by using each AGENCY's Proposition A and/or Proposition C Local Return Funds.
- E. The operation of this joint program is eligible for regional monies to partially fund the cost of MAX.
- F. Since 1990, MAX has operated a viable, effective commuter transit alternative for South Bay residents.

AGREEMENT:

1. Administration of Service

The LEAD AGENCY shall implement and administer MAX on behalf of AGENCIES.

2. Term of Agreement

This agreement shall be effective as of July 1, 2008 and shall expire on June 30, 2011, unless the Agreement is terminated earlier as provided in Sections twelve (12) and fourteen (14). This agreement thereafter may be extended on a year to year basis upon the consent of AGENCIES.

3. Organization

A. Policy for MAX shall be set by The Policy Steering Committee (“PSC”). The LEAD AGENCY and each AGENCY shall have the right to appoint either its Mayor, or one member of its City Council or Board, or its City Manager to the PSC. Each member of the PSC shall have one vote. The LEAD AGENCY and each AGENCY shall also appoint an alternate member who shall be its Mayor, a member of its City Council or Board, or a permanent deputy to the Council or Board member representative, or its City Manager. The alternate shall have all of the powers and duties of the regular member at any PSC meeting which the regular member does not attend. Regular and alternate members shall serve at the pleasure of their AGENCY and until their successors are appointed and qualified. Each AGENCY shall notify the LEAD AGENCY staff of its appointees and of any change thereof.

(1) The PSC shall set policy for MAX on the following:

- (a) Fares
- (b) Route Structure
- (c) Award of Contracts
- (d) Annual Operating Budget
- (e) Participating AGENCY Funding Shares
- (f) Lease or Purchase of Vehicles
- (g) Increase or Decrease in Scope of Overall Service
- (h) Approval of program funding agreements entered into by the LEAD AGENCY
- (i) Insurance
- (j) Governmental mandates that may require direction for compliance

B. All decisions of the PSC shall be made by majority vote. For the purpose of conducting business, a quorum of the PSC shall comprise of fifty percent (50%) plus one of all the member AGENCIES represented on the PSC.

C. The PSC Chair will lead business meetings. The Vice-Chair will assume the role of Chair. The Vice-Chair will be selected alphabetically by participating agencies based on members’ participation exceeding 60% of attendance within a two-year period.

D. Technical assistance shall be provided to the PSC by the LEAD AGENCY Staff.

4. Provision of Service

The LEAD AGENCY shall implement MAX as described in Exhibits “A” and “B” (attached hereto and incorporated herein as MAX Service Requirements and the MAX Routes, respectively). Substantive changes to Service may only be authorized by the PSC.

5. Fares

The PSC shall establish and authorize changes to the fare structure for patrons utilizing MAX. The annual fare revenues shall be utilized by the LEAD AGENCY to fund the annual expense of operating MAX.

6. Operating Funds and Payment for Service

The LEAD AGENCY shall obtain funds to operate MAX from passenger fares and other sources as they are available. The remainder required to fund MAX shall be provided by the AGENCIES. Each AGENCY shall pay quarterly, upon receipt of an itemized billing from the LEAD AGENCY, one fourth of its annual share, which shall be established by the PSC as part of the annual operating budget.

In addition, each AGENCY agrees to pay the LEAD AGENCY any additional funds as authorized by the PSC which might be required to provide service during any budget year should the costs be greater than anticipated, provided, however, that such additional funds shall not exceed twenty (20) percent of the amount adopted in the annual budget for one year. All billings shall be paid by each AGENCY within thirty (30) days of receipt of an itemized billing by the LEAD AGENCY. Further, if any member jurisdiction pays more than their budget share of actual costs, as determined by an annual audit of the MAX budget, then an equal amount will be deducted from their next quarterly billing in the subsequent budget year. If any member jurisdiction pays less than their budget share of actual costs, as determined by annual audit of the MAX budget, then an equal amount will be added to their next quarterly billing in the subsequent budget year.

7. Permits and Licenses

The LEAD AGENCY shall secure and maintain all permits and licenses required by law for the provision of MAX.

8. Marketing

The LEAD AGENCY shall undertake a marketing program to promote MAX. This program may be implemented either by the LEAD AGENCY staff or under a consultant contract, whichever approach is approved by the PSC. All costs for said marketing shall be considered as a portion of the total costs of MAX for purposes of this Agreement, and shall be authorized annually as part of the MAX budget.

9. Service

The LEAD AGENCY shall prepare a Request for Proposals for a private entity to provide the driving, dispatching, and maintenance for the buses used by MAX. The LEAD AGENCY shall enter into an agreement with the respondent approved by the PSC, which hereinafter shall be referred to as "CONTRACTOR".

10. Liability

- A. LEAD AGENCY agrees to indemnify, hold harmless and defend each Agency for any claim, legal action or liability arising out of this Agreement.
- B. Notwithstanding the provisions of Subsection A, each AGENCY hereby agrees to indemnify, hold harmless and defend LEAD AGENCY and every other AGENCY for any claim, legal action or liability arising out of this Agreement and related to the condition of that AGENCY's streets, sidewalks, or other public improvements.

11. Insurance

- A. The LEAD AGENCY shall require the CONTRACTOR providing MAX services to obtain and maintain in force at all times during the term of the Agreement with the CONTRACTOR commercial general liability and property damage insurance in amounts of not less than ten million dollars (\$10,000,000) for injury or death arising out of any one incident; three million dollars (\$3,000,000) for injury or death to any one person; and one million dollars (\$1,000,000) for property damage. The CONTRACTOR shall also obtain automobile insurance, including collision and comprehensive vehicular liability insurance coverage for all vehicles used to provide MAX services, in amounts of not less than ten million dollars (\$10,000,000) for injury or death arising out of any one accident; three million dollars (\$3,000,000) for injury or death to any one person; and one million dollars (\$1,000,000) for property damage.
- B. Certificate of Insurance. The LEAD AGENCY in its agreement with the CONTRACTOR shall require the CONTRACTOR to provide LEAD AGENCY certificates of insurance and a signed agreement form evidencing compliance with Subsection A, above, not less than ten (10) days prior to the commencement of MAX under the Agreement with the CONTRACTOR. Said certificates shall name LEAD AGENCY and each AGENCY and their respective officers, employees and agents, as additional insureds. Each policy shall provide that it may not be canceled or reduced in coverage without sixty (60) days written notice to LEAD AGENCY and each AGENCY.
- C. Workers Compensation Insurance. Throughout the term of the Agreement, the CONTRACTOR will be required to obtain and maintain worker's compensation and employer's liability insurance as required by the laws of the State of California with limits of at least one million dollars (\$1,000,000). A certificate evidencing such insurance coverage shall be filed with LEAD AGENCY and AGENCIES not less than ten (10) days prior to commencement of MAX hereunder.
- D. The insurance provisions of this section shall only be changed by the agreement of both the LEAD AGENCY and the PSC.

12. Failure to Provide Insurance

Failure on the part of the CONTRACTOR to maintain the required insurance shall constitute grounds for any AGENCY to terminate this Agreement. No such termination initiated by an AGENCY may occur until the AGENCY has given the LEAD AGENCY fourteen (14) calendar days written notice of its intention to do so and the Contractor has failed to obtain the insurance during this time.

13. Independent Contractor Status

No employee of the LEAD AGENCY or any AGENCY shall become an employee or officer of the other AGENCY by virtue of entering into this Agreement, and this Agreement shall not create the relationship of agent, servant, employee, partnership, or joint venture between the AGENCIES. No employee or contractor of the LEAD AGENCY will be considered an employee of any AGENCY for purposes of workers' compensation liability. Each AGENCY shall bear full responsibility for furnishing workers' compensation benefits to any of its employees for injuries arising from or connected with activities performed by said employee pursuant to this Agreement.

14. Termination of Agreement

- A. In addition to the grounds of termination provided in Section twelve (12), any AGENCY may withdraw from this Agreement at the end of a given fiscal year by giving written notice to the LEAD AGENCY and the PSC of such intent to terminate ninety (90) days prior to the end of any given fiscal year, which ends on June 30. Within thirty (30) days after such notice is received by the PSC, or at its next regularly scheduled meeting, the PSC shall meet and determine whether to terminate MAX or re-apportion the respective share of any AGENCY terminating participation in MAX. In the event the PSC decides to terminate MAX, the LEAD AGENCY shall terminate all agreements with its CONTRACTOR. AGENCIES shall be responsible for all costs resulting from termination, including the costs resulting from termination of the CONTRACTOR agreements.
- B. This Agreement may also be terminated at any time by agreement of the PSC. In the event the PSC decides to terminate MAX, the LEAD AGENCY shall terminate all agreements with its CONTRACTOR. AGENCIES shall be responsible for all costs resulting from termination, including the costs resulting from termination of the CONTRACTOR agreements.
- C. Each AGENCY shall be responsible for its respective share of the termination costs as provided in the annual MAX budget. In the event the costs of termination are less than the sums held by the LEAD AGENCY, the LEAD AGENCY shall remit, within thirty (30) days after all termination costs have been paid, each AGENCY's proportionate share of the remaining balance.

15. Inability to Perform

The LEAD AGENCY will not be required to administer or provide MAX during the time and to the extent that it is prevented from performing by acts of God, fire, strike, civil disorder, loss of transportation facilities, loss of funding, lockout, commandeering of materials, products, plants, or facilities by the federal government or any other cause beyond the reasonable control of the LEAD AGENCY.

16. Record Keeping, Reporting and Auditing

The LEAD AGENCY will provide access to all records in its possession relating to MAX during normal working hours of the LEAD AGENCY. The LEAD AGENCY shall keep records of all operating costs of MAX in Accordance with generally acceptable accounting procedures and in accordance with the requirements of any entity providing funding. The LEAD AGENCY shall retain all records for a minimum of five (5) years following the close of that fiscal year. At any time, any AGENCY, at its own expense, may conduct an audit of the LEAD AGENCY regarding MAX. If such audit finds that the cost of operating MAX are less than previously indicated by the LEAD AGENCY and LEAD AGENCY agrees with the results of said audit, the member AGENCY agrees the difference may, in the sole discretion of the LEAD AGENCY, be:

1. repaid forthwith by the LEAD AGENCY to the AGENCIES in the proportionate shares provided in the annual MAX budget, or
2. credited against any future payments owed hereunder to the LEAD AGENCY.

If such audit finds that the costs of operating the program are greater than payments made by the AGENCY, then the difference shall be paid to the LEAD AGENCY by the AGENCIES, based upon each AGENCY's proportionate share adopted in the most recent MAX budget.

17. Vehicles

The LEAD AGENCY shall cause to be supplied sufficient and adequate vehicles, including backup vehicles, to insure that MAX is provided on an uninterrupted basis. All equipment and facilities shall meet all requirements of applicable federal, state and local ordinances and laws.

18. Notices

- A. Notices required to be given pursuant to this Agreement shall be given by enclosing the same in a sealed envelope addressed to the party for whom intended and by depositing such envelope with postage prepaid for delivery by Certified Mail in the United States Mail.

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
3. Certified Mail. When mailed Certified Mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service. Notices required to be given pursuant to this Agreement shall be given by enclosing the same in a sealed envelope addressed to the party for whom intended and by depositing such an envelope with postage prepaid for delivery by Certified Mail in the United States Mail.
5. Addresses for purpose of giving notice are as follows:

- a. LEAD AGENCY at the following address:

City of Torrance
Office of the City Manager
3031 Torrance Boulevard
Torrance, CA 90503

With a copy to:

City of Torrance
City Clerk
3031 Torrance Boulevard
Torrance, CA 90503

- b. Any such notice containing same to each AGENCY shall be addressed as follows:

City of El Segundo
Office of the City Manager
350 Main Street
El Segundo, CA 90245

City of Lawndale
Office of the City Administrator
14717 Burin Avenue
Lawndale, CA 90260

Los Angeles County Department
Of Public Works
Transit Operation Section

City of Los Angeles
Office of the General Manager
Department of Transportation

PO Box 1460
Alhambra, CA 91802-1460

200 North Spring Street
Los Angeles, CA 90012

City of Rancho Palos Verdes
Office of the City Manager
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90274

City of Lomita
Office of the City Administrator
P.O. Box 339
Lomita, CA 90717

19. New Parties

The PSC can accept new AGENCIES as participants in MAX. In such an event, the LEAD AGENCY shall enter into an agreement with said AGENCY providing said AGENCY with the same rights and obligations of each other participating AGENCY. The PSC shall determine the percentage contribution required for said entity and the obligation of each signatory to the Agreement reflected in the annual MAX budget shall be proportionately reduced to reflect the percentage allocated to the new AGENCY.

20. Governing Law; Jurisdiction

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

21. Integration; Amendment

This Agreement represents the entire understanding of LEAD AGENCY and each AGENCY as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by all parties. The Agreement may be executed in multiple counterparts.

22. Interpretation

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

23. Severability

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

24. Waiver of Breach

No delay or omission in the exercise of any right or remedy by a nondefaulting party on

any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any default concerning the same or any other provision of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the parties as follows:

CITY OF TORRANCE
LEAD AGENCY

Frank Scotto
Mayor

ATTEST:

Sue Herbers
City Clerk

APPROVED AS TO FORM:

John L. Fellows III
City Attorney

By: _____

CITY OF EL SEGUNDO

Kelly McDowell
Mayor

ATTEST:

Cindy Mortesen
City Clerk

APPROVED AS TO FORM:

Mark Hensley
City Attorney

CITY OF LAWNSDALE

Harold Hofmann
Mayor

ATTEST:

Paula Hartwill
City Clerk

APPROVED AS TO FORM:

William W. Wynder
City Attorney

CITY OF LOS ANGELES
DEPARTMENT OF TRANSPORTATION

Wayne K. Tanda
General Manager

ATTEST:

Frank Martinez
City Clerk

APPROVED AS TO FORM:

Shelley I. Smith
Asst. City Attorney

COUNTY OF LOS ANGELES

Director of Public Works

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel

By _____
Deputy

CITY OF RANCHO PALOS VERDES

Thomas D. Long
Mayor

ATTEST:

Carla Morreale
City Clerk

APPROVED AS TO FORM:

Carol Lynch
City Attorney

CITY OF LOMITA

Mark Waronek
Mayor

ATTEST:

Dawn Tomita
City Clerk

APPROVED AS TO FORM:

Christi Hogin
City Attorney

EXHIBIT A**MAX Service Requirements**

MAX shall operate during peak weekday commuting hours, on a schedule approved by the Policy Steering Committee. MAX will operate Monday through Friday, with the exception of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day.

MAX shall be provided on routes in the South Bay area of Los Angeles County as identified in Exhibit B to this Agreement. MAX service shall be open to the general public and provided as a commuter bus.

MAX shall utilize a fleet of 14 transit coaches with commuter-style amenities such as reclining seats, reading lights and climate control. All MAX coaches shall be fully wheelchair accessible in compliance with the Americans with Disabilities Act.

EXHIBIT B

