



October 5, 2012

TO: VENTURA COUNTY TRANSPORTATION COMMISSION

FROM: GENERAL COUNSEL

SUBJECT: CUSA CC, LLC – PARTICULATE TRAPS

RECOMMENDATION:

1. Ratify securing local bankruptcy counsel in Delaware Coach America bankruptcy court proceeding; and
2. Authorize pursuit of performance surety bond supplied by Platte River Insurance Company.

BACKGROUND:

In connection with a 3-year VISTA extension of the equipment lease and operating agreements with CUSA CC, LLC, VCTC applied for and was granted \$238,563.00 in federal FTA funds and state Proposition 1B funds in the amount of \$90,000.00 to reimburse CUSA CC, LLC for its purchase and installation of diesel exhaust particulate traps required by CARB on passenger buses. VCTC also allocated the sum of \$49,069.04 of STA funds toward those purchases. The condition of providing those funds is contained in the Amended and Restated Agreement (FY 2009-10, FY 2010-11, FY 2011-12) for Lease of Fully Maintained Buses and Miscellaneous Equipment, etc.

The language of the Agreement reads in two places:

“The CONTRACTOR . . . agrees to uninstall the traps and return them to COMMISSION or purchase the devices from COMMISSION, at the agreed depreciated value, if the buses are no longer used by COMMISSION/VISTA within the ‘useable life’ of the particulate traps, in compliance with Federal Transit Administration regulations and state laws dealing with public property.”

Prior to and following the expiration of the emergency extension agreement on or about July 30, 2012, CUSA CC, LLC made no effort to the return of the traps or pay for them as the Agreement required. Communications between VCTC staff and CUSA CC, LLC has not succeeded in bringing about compliance with the Agreement.

The Proposition 1B funding required VCTC to maintain control of the traps during their useful life. Nothing about depreciation is mentioned. That could mean the entire \$90,000.00 grant is at risk.

Therefore, applying the depreciation schedule to the FTA portion of the particulate trap expense and not to the other two funding sources, means that CUSA CC, LLC could owe VCTC as much as \$372,189.00.

1. VCTC staff, with my approval, has withheld the final payments for the July 2012 VISTA service in the amount of slightly more than \$204,000.00 as an offset. In the months of July and August, bankruptcy counsel for Coach America, the parent company, had threatened to seek recourse in the Delaware bankruptcy proceeding for our failure to make those payments. Because the Commission was not expected to meet until September 7, 2012, your General Counsel and Executive Director took the necessary step to seek out and employ a bankruptcy specialist on the East Coast to protect VCTC's interest as may be required. The bankruptcy specialist is Mr. Richard Lear of the Washington, D.C. law firm of Holland & Knight. His hourly rate is \$585.00, but he uses an appearance counsel in Delaware whose hourly rate is \$450.00. Your Executive Director and I initially specified a "not-to-exceed" in the retainer agreements of \$18,000.00 total. Attached is a proposed scope of issues and estimated cost for addressing each issue as the Commission may direct.

2. Platte River Insurance Company provided VCTC with a performance surety bond as required of CUSA CC, LLC, in connection with its operating agreement and the extension of that agreement. Your General Counsel has filed a timely claim with the surety company seeking the funds for the loss of the particulate traps or the payment for them from CUSA CC, LLC. Litigation must be commenced, if at all, within one year of the bond expiration date of July 1, 2012. I seek your authority to pursue the payment under the surety bond as may be required.