



Agenda Item No. (5)(a)

To: Finance-Auditing Committee/Committee of the Whole
Meeting of March 25, 2021

From: Clifford Duong, Analyst, Capital and Grant Programs
Amy Frye, Director, Capital and Grant Programs
Joseph M. Wire, Auditor-Controller
Denis J. Mulligan, General Manager

Subject: **AUTHORIZE ACTIONS RELATED TO GRANT PROGRAMS**
(a) **APPROVE ACTIONS RELATIVE TO THE LOW CARBON
TRANSIT OPERATIONS PROGRAM (LCTOP)**

Recommendation

The Finance-Auditing Committee recommends that the Board of Directors approve the following actions necessary to secure FY 20/21 Low Carbon Transit Operations Program (LCTOP) grant funds to support transit capital and operating projects for the Golden Gate Bridge, Highway and Transportation District (District):

1. Approve submission of one LCTOP grant application in FY 20/21 for the new vessel acquisition project;
2. Certify that the District will comply with all conditions and requirements set forth in the LCTOP certification and assurances, authorized agent documents, applicable statutes, regulations, and guidelines for all LCTOP-funded transit projects; and,
3. Authorize the General Manager, or his designee, to execute for and on behalf of the District any documents necessary to apply for and receive LCTOP funding, including certifications and assurances, authorized agent forms, and agreements relative to the FY 20/21 LCTOP program.

This matter will be presented to the Board of Directors at its March 26, 2021 meeting for appropriate action.

Summary

LCTOP is one of several programs that are part of the Transit, Affordable Housing, and Sustainable Communities Program established by the California Legislature in 2014 by Senate Bill 862. LCTOP is a formula program created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility. Approved projects in LCTOP will support new or expanded bus, ferry, or rail services, including restarting stopped service for

2021, expand intermodal transit facilities, and may include equipment acquisition, fueling, maintenance, and other costs to operate those services or facilities with each project reducing greenhouse gas emissions. Senate Bill 862 (Statutes of 2014) appropriated \$25 million for LCTOP for FY 14/15 and continuously appropriates five percent of the annual auction proceeds in the Greenhouse Gas Reduction Fund (GGRF) for LCTOP beginning in FY 15/16.

This program is administered by the California Department of Transportation (Caltrans) in coordination with the California Air Resources Board (CARB) and the State Controller's Office (SCO). Caltrans is responsible for ensuring that the statutory requirements of the program are met in terms of project eligibility, greenhouse gas reductions, disadvantaged community benefits, and other requirements of law. Caltrans requires agencies to report on their compliance with the statutory requirements. Local agency recipients are responsible to ensure that the projects selected provide maximum public benefits. As such, recipients are strongly encouraged to select those projects that maximize public benefits for transit ridership, greenhouse gas reductions, disadvantaged community benefits, and other co-benefits.

Per Section 39719 of the Health and Safety Code, LCTOP funds are distributed by formula based on prior use of State Transit Assistance (STA) funds and is divided in two equal parts.

1. Population-based LCTOP funds: One-half of LCTOP funds are available to regional entities and are allocated based on the ratio of population of the area under its jurisdiction to the total population of the State. The Metropolitan Transportation Commission (MTC) receives these funds and distributes them to Bay Area transit operators. MTC adopted a framework that will allocate approximately \$286,115 to be shared among public transit operators in Marin County, i.e., Marin Transit, SMART, and the District (MTC Resolutions 4123 and 4130). Based on revenue-sharing formulas for STA funds that are in the District's operating contract with Marin Transit, District staff estimates that the District will receive approximately \$161,769 in population-based LCTOP funds for FY 20/21.
2. Revenue-based LCTOP funds: The other half of LCTOP funds are based on total revenue of each jurisdiction during the prior fiscal year to the total revenue of all the operators of the state. This portion is disbursed directly to operators by the State Controller's Office. The State Controller estimated an allocation of \$997,429 for the District for FY 20/21. The District's FY 20/21 LCTOP population- and revenue-based allocations total \$1,159,198.

Caltrans has adopted certifications and assurances for the LCTOP. As a condition of the receipt of LCTOP funds, project sponsors must comply with these terms and conditions. Project Sponsors are required to sign the Certifications and Assurances document (Attachment 1) prior to receiving an allocation of FY 20/21 LCTOP funds. The Certifications and Assurances document contains general conditions of the LCTOP program, as well as Cost Principles, Record Retention, and Special Situations requirements that are standard for other State-funded projects. Project applicants are required to:

1. Adopt a resolution appointing individuals or positions to act on behalf of the applicant and its governing body;
2. To provide the related certifications and assurances; and,
3. To approve project(s) that will receive LCTOP funds.

Fiscal Impact

Approval of this item will authorize \$1,159,198 in LCTOP funds to Project #1940: Purchase New Vessel. Project #1940 includes the design, construction, and delivery of a new ferry boat and is currently budgeted at \$30 million. District staff are pursuing federal and future-year LCTOP funding opportunities for the completion of this project. This is the third of four years of LCTOP funding planned for the Project.

The Bay Area economy has been significantly impacted by the COVID-19 pandemic. Unemployment rates have increased across all nine counties over the last year and uncertainty remains about possible shifts in population, work from home policies, and commute patterns – all of which could potentially impact Cap and Trade LCTOP revenues. To illustrate this decline in revenue, statewide LCTOP revenues in FY 18/19 were \$54 million, then dropped to \$42 million in FY 19/20, and FY 20/21 revenues are now estimated at just \$37 million. Projections for FY 21/22 LCTOP funds are \$39 million.

Attachment: Low Carbon Transit Operations Program (LCTOP), Certifications and Assurances

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Attachment
FY 2020-2021 LCTOP
Certifications and Assurances

Lead Agency: Golden Gate Bridge, Highway and Transportation District

Project Title: New Vessel Acquisition

Prepared by: Clifford Duong, Capital and Grant Programs Analyst

The California Department of Transportation (Caltrans) has adopted the following Certifications and Assurances for the Low Carbon Transit Operations Program (LCTOP). As a condition of the receipt of LCTOP funds, Lead Agency must comply with these terms and conditions.

A. General

1. The Lead Agency agrees to abide by the current LCTOP Guidelines and applicable legal requirements.
2. The Lead Agency must submit to Caltrans a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

B. Project Administration

1. The Lead Agency certifies that required environmental documentation is complete before requesting an allocation of LCTOP funds. The Lead Agency assures that projects approved for LCTOP funding comply with Public Resources Code § 21100 and § 21150.
2. The Lead Agency certifies that a dedicated bank account for LCTOP funds only will be established within 30 days of receipt of LCTOP funds.
3. The Lead Agency certifies that when LCTOP funds are used for a transit capital project, that the project will be completed and remain in operation for its useful life.
4. The Lead Agency certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.
5. The Lead Agency certifies that they will notify Caltrans of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
6. The Lead Agency must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the project.
7. Any interest the Lead Agency earns on LCTOP funds must be used only on approved LCTOP projects.
8. The Lead Agency must notify Caltrans of any changes to the approved project with a Corrective Action Plan (CAP).



Attachment FY 2020-2021 LCTOP

9. Under extraordinary circumstances, a Lead Agency may terminate a project prior to completion. In the event the Lead Agency terminates a project prior to completion, the Lead Agency must (1) contact Caltrans in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.

C. Reporting

1. The Lead Agency must submit the following LCTOP reports:
 - a. Semi-Annual Progress Reports by May 15th and November 15th each year.
 - b. A Close Out Report within six months of project completion.
 - c. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of LCTOP funds. A copy of the audit report must be submitted to Caltrans within six months of the close of the year (December 31) each year in which LCTOP funds have been received or expended.
 - d. Project Outcome Reporting as defined by CARB Funding Guidelines.
 - e. Jobs Reporting as defined by CARB Funding Guidelines.
2. Other Reporting Requirements: CARB develops and revises Funding Guidelines that will include reporting requirements for all State agencies that receive appropriations from the Greenhouse Gas Reduction Fund. Caltrans and project sponsors will need to submit reporting information in accordance with CARB's Funding Guidelines, including reporting on greenhouse gas reductions and benefits to disadvantaged communities.

D. Cost Principles

1. The Lead Agency agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
2. The Lead Agency agrees, and will assure that its contractors and subcontractors will be obligated to agree, that:
 - a. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allow ability of individual project cost items and
 - b. Those parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving LCTOP funds as a contractor or sub-contractor shall comply with



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Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

3. Any project cost for which the Lead Agency has received funds that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 2 CFR, Part 200, are subject to repayment by the Lead Agency to the State of California (State). All projects must reduce greenhouse gas emissions, as required under Public Resources Code section 75230, and any project that fails to reduce greenhouse gases shall also have its project costs subject to repayment by the Lead Agency to the State. Should the Lead Agency fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the Lead Agency from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

A. Record Retention

1. The Lead Agency agrees and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the Lead Agency, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP) and enable the determination of incurred costs at interim points of completion. All accounting records and other supporting papers of the Lead Agency, its contractors and subcontractors connected with LCTOP funding shall be maintained for a minimum of three (3) years after the "Project Closeout" report or final Phase 2 report is submitted (per ARB Funding Guidelines, Vol. 3, page 3.A-16), and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the Lead Agency, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the Lead Agency pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the Lead Agency's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the Lead Agency's contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times



**Attachment
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during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the Lead Agency shall furnish copies thereof if requested.

- 3. The Lead Agency, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

Caltrans may perform an audit and/or request detailed project information of the project sponsor’s LCTOP funded projects at Caltrans’ discretion at any time prior to the completion of the LCTOP.

I certify all of these conditions will be met.

Denis J. Mulligan
(Print Authorized Agent)

General Manager
(Title)

(Signature)

(Date)