

THIS PRINT COVERS CALENDAR ITEM NO. : 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation, or his designee, to approve a program of projects, to execute the required Certifications and Assurances, including any amendments to such documents, with the California Department of Transportation for all transit projects funded by the Low Carbon Transit Operations Program for Fiscal Year 2019; and authorizing the SFMTA to comply with all conditions and requirements set forth in the Certifications and Assurances and applicable statutes, regulations and guidelines.

SUMMARY:

- The Low Carbon Transit Operations Program (LCTOP) is one of several programs that are part of the Transit, Affordable Housing, and Sustainable Communities (Cap-and-Trade) Program established by the California Legislature in 2014.
- The SFMTA is an eligible project sponsor, and anticipates receiving \$15,900,745 in Fiscal Year 2019 LCTOP funds for transit projects.
- The funding administrator, the California Department of Transportation Division of Rail and Mass Transportation (Caltrans), requires a board resolution approving a program of projects, authorizing the execution of Certifications and Assurances, and designating the SFMTA's Authorized Agent(s) to sign documents with Caltrans for LCTOP.

ENCLOSURES:

1. SFMTAB Resolution
2. Program of Projects
3. LCTOP Certifications and Assurances
4. <https://www.sfmta.com/about-sfmta/reports/central-subway-final-seisseir> (Central Subway Final SEIS/SEIR and Mitigation Monitoring and Reporting Program)

APPROVALS:

DIRECTOR  _____

SECRETARY  _____

DATE

June 11, 2019

June 11, 2019

ASSIGNED SFMTAB CALENDAR DATE: June 18, 2019

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PURPOSE

The purpose of this item is for the SFMTA Board to authorize the Director of Transportation, or his designee, to approve a program of projects, to execute the required Certifications and Assurances, including any amendments to such documents, with the California Department of Transportation for all transit projects funded by the Low Carbon Transit Operations Program for Fiscal Year 2019; and authorizing the SFMTA to comply with all conditions and requirements set forth in the Certifications and Assurances and applicable statutes, regulations and guidelines.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item will support the following Strategic Plan Goals:

Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel

Goal 3: Improve the quality of life and environment in San Francisco and the region

This item will support the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

DESCRIPTION

LCTOP is one of several programs that are part of the Cap-and-Trade Program established by the California Legislature in 2014 by Senate Bill 862. LCTOP was created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving disadvantaged communities.

Beginning in Fiscal Year 2015, LCTOP received five percent of all statewide Cap-and-Trade auction proceeds. LCTOP follows the established State Transit Assistance (STA) formula, with 50 percent of the funds awarded to transit operators and 50 percent awarded to the State's regional transportation planning agencies. The transit operator funds are distributed according to population and in proportion to the agency's generation of transit fare revenue. Acting as the Bay Area's regional transportation planning agency, the Metropolitan Transportation Commission (MTC) has approved programming \$2,184,830 in LCTOP funds towards the West Portal Optimization and Crossover Activation Project.

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Based on the State Controller's Office Fiscal Year 2019 LCTOP fund estimate, the SFMTA will receive \$13,715,915 in revenue-based LCTOP funding in addition to the \$2,184,830 of MTC funding mentioned above.

LCTOP is unique in that both operating and capital projects are eligible for funding. The Director of Transportation, Director of Transit, and Chief Financial Officer have determined that the highest priority for use of the \$15,900,745 in Fiscal Year 2019 LCTOP funds is:

- Central Subway Project (\$4,000,000)
- Light Rail Vehicle Replacement & Expansion Equipment Procurement (\$4,115,915)
- Prototype Battery Conversion Pilot (\$5,600,000)
- West Portal Optimization and Crossover Activation Projects (\$2,184,830).

The actual LCTOP funds for each project may vary based on project scope and schedule. Caltrans reviews the program of projects to ensure that they are eligible under LCTOP guidance.

Caltrans requires a program of projects and a board resolution authorizing the execution of Certifications and Assurances and designating an Authorized Agent for LCTOP for Fiscal Year 2019. The Agent will be the Director of Transportation or his designee. The required Certifications and Assurances are contained in Enclosure 2.

STAKEHOLDER ENGAGEMENT

The SFMTA's biennial budget process includes review and approval of the Capital Improvement Program (CIP), a listing of projects that includes three of the four projects listed above. The Prototype Battery Conversion Pilot was not included in the CIP for lack of funding. The Pilot is consistent with the Board's intent to begin procuring all-electric vehicles beginning in 2025. Should Caltrans approve expenditure of LCTOP funds for this project, it will be amended into the CIP. Community outreach and engagement for the CIP included the following: outreach meetings to community and citizen's groups were held to effectively engage stakeholders in understanding and providing feedback on the proposed SFMTA operating and capital budget/CIP.

In early 2018, SFMTA conducted two budget town halls to gather feedback from the public at large on the proposed Fiscal Year 2019-2020 Capital and Operating Budgets and the Fiscal Year 2019-2023 CIP. These town hall meetings included both evening online and daytime in-person events to ensure a variety of options for participation. Following additional public hearings at the SFMTA Board, the operating and capital budgets were adopted by the SFMTA Board in April 2018. The Fiscal Year 2019-2023 CIP was subsequently approved by the SFMTA Board in December 2018 and the published document was made available to the public at the [SFMTA Fiscal Year 2019-2023 CIP website](#).

ALTERNATIVES CONSIDERED

The SFMTA would be ineligible to receive allocations of funds from LCTOP should the Board decline to authorize the Director of Transportation or his designee to execute the Certifications and Assurances. In the event that the SFMTA chooses not to pursue these funds, the SFMTA would have to identify another \$15,900,745 of funding for these projects.

FUNDING IMPACT

LCTOP provides an ongoing revenue source for which both transit operating and capital expansion projects are eligible. For the program of projects being submitted to Caltrans for Fiscal Year 2019 funds:

- Central Subway: \$4,000,000 is 0.25% of the project's \$1,578,300,000 funding plan.
- Light Rail Vehicles Replacement & Expansion Equipment Procurement: \$4,115,915 is 63% of the project's \$6,500,000 funding need; the \$2,384,085 balance is unfunded. The project is scalable to the amount of funds available, and the remaining needs can be addressed through the Agency's capital prioritization process.
- Prototype Battery Conversion Pilot: \$5,600,000 is 100% of the project's \$5,600,000 funding need.
- West Portal Optimization and Crossover Activation: \$2,184,830 is 18% of the project's \$12,430,136 funding plan.

ENVIRONMENTAL REVIEW

The projects proposed for receipt of LCTOP funding are subject to the California Environmental Quality Act (CEQA).

Central Subway

The Central Subway Final Supplemental Environmental Impact Statement / Supplemental Environmental Impact Report (Central Subway SEIS/SEIR) evaluated the environmental impacts of the Central Subway project, including construction of the subway stations. On August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E). On August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, and adopting the CEQA Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan. The work funded by LCTOP falls within the scope of the Central Subway SEIS/SEIR.

Light Rail Vehicle (LRV) Replacement & Expansion Equipment Procurement

CEQA provides a statutory exemption from environmental review—as defined in Section 21080(b)(10) of the California Resources Code and Section 15275(a) of Title 14 of the California Code of Regulations—for the institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use. On June 19, 2014, the Planning Department determined (Case Number 2014.0929E) that the LRV Procurement is statutorily exempt from environmental review under Section 21080(b)(10) of the California Resources Code and Section 15275(a) of Title 14 of the California Code of Regulations. This is because the

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procurement involves an increase of service on rail lines already in use. The vehicles to be used for the Central Subway Project are within the scope of the Central Subway SEIS/SEIR, described above.

Prototype Battery Conversion Pilot

On May 31, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Prototype Battery Conversion Pilot is not a “project” under the CEQA pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

West Portal Optimization and Crossover Activation

On May 17, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the West Portal Optimization and Crossover Activation is not a “project” under CEQA pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

The CEQA documents and determinations for the four items listed above are on file with the SFMTA Board of Directors, may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and is incorporated herein by reference.

Should the SFMTA designate any other capital projects for receipt of all or a portion of the LCTOP funds, the Agency shall conduct appropriate environmental review prior to approving such capital projects.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar item.

LCTOP allocation requests and other documentation are subject to review by Caltrans.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Director of Transportation, or his designee, to approve a program of projects, to execute the required Certifications and Assurances, including any amendments to such documents, with the California Department of Transportation for all transit projects funded by the Low Carbon Transit Operations Program for Fiscal Year 2019; and authorizing the SFMTA to comply with all conditions and requirements set forth in the Certification and Assurances and applicable statutes, regulations and guidelines.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible project sponsor for California's Low Carbon Transit Operations Program (LCTOP), established under Senate Bill 862 in 2014, and administered by the State Department of Transportation Division of Rail and Mass Transportation (Caltrans); and,

WHEREAS, The statutes related to state-funded transit projects require a local or implementing agency to abide by various regulations; and

WHEREAS, Caltrans has developed guidelines for the purpose of administering and distributing LCTOP funds to eligible project sponsors (local agencies); and

WHEREAS, The SFMTA has requested \$15,900,745 in LCTOP funds for the following projects:

- Central Subway Project (\$4,000,000)
- Light Rail Vehicle Replacement & Expansion Equipment Procurement (\$4,115,915)
- Prototype Battery Conversion Pilot (\$5,600,000)
- West Portal Optimization and Crossover Activation Projects (\$2,184,830); and

WHEREAS, In compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), the Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Central Subway SEIS/SEIR) evaluated the environmental impacts of the Central Subway Project, including construction of the subway stations; on August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E); on August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, and adopting the CEQA Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, The work funded by LCTOP for the Central Subway falls within the scope of the Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report; and,

WHEREAS, CEQA provides a statutory exemption from environmental review—as defined in Section 21080(b)(10) of the California Resources Code and Section 15275(a) of Title 14 of the California Code of Regulations—for the institution or increase of passenger or commuter service on rail lines or high-occupancy vehicle lanes already in use; and,

WHEREAS, On June 19, 2014, the Planning Department determined (Case Number 2014.0929E) that LRV procurement is statutorily exempt from environmental review under Section 21080(b)(10) of the California Resources Code and Section 15275(a) of Title 14 of the California Code of Regulations; this is because the procurement involves an increase of service on rail lines already in use; and,

WHEREAS, The procurement of LRVs to be used for Central Subway service is within the scope of the Central Subway SEIS/SEIR; and,

WHEREAS, On May 31, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Prototype Battery Conversion Pilot is not a “project” under CEQA pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, On May 17, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the West Portal Optimization and Crossover Activation is not a “project” under CEQA pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, The CEQA documents and determinations for the four items listed above are on file with the SFMTA Board of Directors, may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and are incorporated herein by reference; and,

WHEREAS, Should the SFMTA designate any other capital projects for receipt of all or a portion of the LCTOP funds, the Agency shall conduct appropriate environmental review prior to approving such capital projects; therefore, be it

RESOLVED, That the SFMTA Board has reviewed and considered the Central Subway SEIS/SEIR and record as a whole, and finds that the Central Subway Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report is adequate for the Board’s use as the decision-making body for the actions taken herein relative to funding for the Central Subway, and incorporates the CEQA findings by this reference as though set forth in this Resolution; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation, or his designee, to approve a program of projects, to execute the required Certifications and Assurances for all transit projects funded by the Low Carbon Transit Operations Program for Fiscal Year 2019, including any amendments to such documents, with the California Department of Transportation; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA to comply with all conditions and requirements set forth in the Certification and Assurances and applicable statutes, regulations and guidelines for all transit projects funded by the Low Carbon Transit Operations Program for Fiscal Year 2019.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 18, 2019.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

Fiscal Year 2019 LCTOP Program of Projects

Project Name: Central Subway

Amount of LCTOP funds requested: \$4,000,000

The Central Subway Project will extend the Muni Metro T Third Line through SoMa, Union Square and Chinatown. By providing a direct, rapid transit link between downtown and the existing T Third Line route on 3rd Street, the Central Subway will vastly improve transportation to and from some of the City's busiest, most densely populated areas. The increased service will remedy the restrictions from earthquake damage that occurred during the Loma Prieta quake.

Benefit to Priority Populations: The Central Subway runs through disadvantaged communities, and these changes will both reduce emissions in those areas, as well as expand their service areas.

Contributing Sponsors (if applicable): N/A

Project Name: LRV Replacement & Expansion Equipment Procurement

Amount of LCTOP funds requested: \$4,115,915

The SFMTA is accelerating the expansion of its Light Rail Vehicle fleet to meet growing demand for service. Equipment to maintain and repair the new vehicles is required to provide reliable service. The types of equipment used on the previous Breda vehicles are not compatible with the new Siemens vehicles.

Benefit to Priority Populations: All LRV routes serve disadvantaged communities, and these vehicles will continue to reduce overall emissions in those areas, as well as improve service reliability and reduce trip times for all riders.

Contributing Sponsors (if applicable): N/A

Project Name: Prototype Battery Conversion Pilot

Amount of LCTOP funds requested: \$5,600,000

Short description of project: Two motor coaches will have their hybrid diesel-electric engines replaced by full battery electric engines; another two that are currently limited to a service area within the reach of overhead power will also be converted to battery electric. This will increase the remaining useful life of these four vehicles by eight years.

Benefit to Priority Populations: Many SFMTA Muni routes run proximate to or through disadvantaged communities. It is too soon to say where the four vehicles will run. Nonetheless, introducing four 100% clean vehicles to the system will benefit all riders, including those in disadvantaged communities.

Contributing Sponsors (if applicable): N/A

Project Name: West Portal Optimization and Crossover Activation

Amount of LCTOP funds requested: \$2,184,830

Short description of project: The W1 crossover at West Portal station was installed during the Twin Peak Track Replacement project. It will now be signaled and the surface interlock at West Portal and Ulloa Streets will be integrated into the system. These additions will operate automatically to allow trains in the tunnel to turn back at the inbound platform. This will decrease service delays and increase system reliability.

Benefit to Priority Populations: This improvement will encourage more riders to take transit throughout the City. The benefits accrue to all our low-income or disadvantaged communities, who will more reliably be able to reach a greater choice of employment and services. The entire light rail system (excluding Central Subway with its own alignment) serves disadvantaged communities, and all patrons will benefit from this investment.

Contributing Sponsors (if applicable): The MTC is contributing \$2,184,830 of LCTOP funds to the project.

Enclosure 3

Certifications and Assurances

Lead Agency: San Francisco Municipal Transportation Agency
Project Title: Prototype Battery Conversion Pilot (\$5,600,000), Central Subway (\$4,000,000), LRV Replacement & Expansion Equipment Procurement (\$4,115,915), and West Portal Optimization and Crossover Activation (\$2,184,830)
Prepared by: Angela E. Alter

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, the SFMTA, as the 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).
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 Final 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.
2. Other Reporting Requirements: CARB is developing 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 subrecipient receiving LCTOP funds as a contractor or subcontractor 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.

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 submit 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 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.

Leo Levenson

(Print Authorized Agent)

(Signature)

Chief Financial Officer

(Title)

(Date)