

**Members of the Board**

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**SAN FRANCISCO BAY AREA  
WATER EMERGENCY TRANSPORTATION AUTHORITY  
BOARD OF DIRECTORS MEETING  
Thursday, November 4, 2021 at 1:00 p.m.**

**VIDEOCONFERENCE**  
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## **AGENDA**

1. CALL TO ORDER
2. ROLL CALL
3. REPORT OF BOARD CHAIR **Information**
  - a. Chair's Verbal Report
4. REPORTS OF DIRECTORS **Information**

Directors are limited to providing information, asking clarifying questions about matters not on the agenda, responding to public comment, referring matters to committee or staff for information, or requesting a report to be made at another meeting.
5. REPORTS OF STAFF **Information**
  - a. Executive Director's Report on Agency Projects, Activities and Services
    - i. Business Plan Workshop
    - ii. Plan Bay Area
    - iii. CARB Harbor Craft Rule
    - iv. Federal COVID Relief Funding
  - b. Monthly Review of Financial Statements
  - c. Federal Legislative Update
  - d. State Legislative Update
  - e. Monthly Ridership and Recovery Report

**Water Emergency Transportation Authority**  
**November 4, 2021 Meeting of the Board of Directors**

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|--|--------------------|
| 6. <u>CONSENT CALENDAR</u>   | <b>Action</b>      |
| a. Adopt a Resolution in Accordance with Assembly Bill 361 Finding that the Proclaimed State of Emergency Continues to Impact the Ability to Meet Safely in Person |                    |
| b. Board Meeting Minutes – October 7, 2021   |                    |
| c. Approve Board of Directors Meeting Schedule for Calendar Year 2022  |                    |
| d. Authorize Execution of Documents for Transit and Intercity Rail Capital Program   |                    |
| e. Authorize Submission of State Transit Assistance Claim  |                    |
| f. Authorize Release of a Request for Proposal for an Integrated Fare Ticketing System   |                    |
|  |                    |
| 7. <u>REVISIONS TO THE ADMINISTRATIVE CODE TO ADDRESS THE FTA'S FINDINGS IN THE FISCAL YEAR 2021 TRIENNIAL REVIEW FINAL REPORT</u>                                 | <b>Action</b>      |
|  |                    |
| 8. <u>AUTHORIZE RELEASE OF A REQUEST FOR PROPOSAL FOR CONSTRUCTION MANAGEMENT SERVICES FOR THE REPLACEMENT VESSEL – MV INTINTOLI PROJECT</u>                       | <b>Action</b>      |
|  |                    |
| 9. <u>BERKELEY PIER/FERRY STUDY AND FERRY SERVICE BUSINESS PLAN UPDATE</u>   | <b>Information</b> |
|  |                    |
| 10. <u>WETA EMERGENCY RESPONSE UPDATE</u>  | <b>Information</b> |
|  |                    |
| 11. <u>PANDEMIC RECOVERY PROGRAM MARKETING AND OUTREACH CAMPAIGN UPDATE</u>  | <b>Information</b> |
|  |                    |
| 12. <u>PUBLIC COMMENTS FOR NON-AGENDA ITEMS</u>  |                    |

ADJOURNMENT

***All items appearing on the agenda are subject to action by the Board of Directors. Staff recommendations are subject to action and change by the Board of Directors.***

**CHANGES RELATED TO COVID-19**

Consistent with AB 361, codified in Government Code Section 54953, this meeting will be conducted through an internet-based service option. The public is invited to participate via the link provided at the top of this agenda.

**PUBLIC COMMENTS** WETA welcomes comments from the public.

*If you know in advance that you would like to make a public comment during the videoconference, please email BoardOfDirectors@watertransit.org with your name and item number you would like to provide comment on no later than 15 minutes after the start of the meeting. Comments will also be accepted in real time. During the public comment period, speakers will be allotted no more than 3 minutes to speak and will be heard in the order of sign-up. Said time frames may be extended only upon approval of the Board of Directors.*

Agenda Items: Speakers on individual agenda items will be called in order of sign-up after the discussion of each agenda item.

Non-Agenda Items: A 15-minute period of public comment for non-agenda items will be held at the end of the meeting. Please indicate on your speaker card that you wish to speak on a non-agenda item. No action can be taken on any matter raised during the public comment period.

**Water Emergency Transportation Authority**  
**November 4, 2021 Meeting of the Board of Directors**

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Upon request, WETA will provide written agenda materials in appropriate alternative formats to individuals with disabilities. In addition, WETA will arrange for disability-related modifications or accommodations including auxiliary aids or services to enable individuals with disabilities to participate in public meetings. Please send an email with your request to: [contactus@watertransit.org](mailto:contactus@watertransit.org) or by telephone: (415) 291-3377 as soon as possible and no later than 5 days prior to the meeting and we will work to accommodate access to the meeting.

**AGENDA ITEM 1**  
**CALL TO ORDER**

**AGENDA ITEM 2**  
**ROLL CALL**

**AGENDA ITEM 3**  
**REPORT OF BOARD CHAIR**

**AGENDA ITEM 4**  
**REPORTS OF DIRECTORS**

**NO MATERIALS**

TO: WETA Board Members

FROM: Seamus Murphy, Executive Director

DATE: November 4, 2021

RE: Executive Director's Report

**SERVICE DEVELOPMENT UPDATE:****Berkeley Ferry Terminal**

The proposed Berkeley Ferry Recreational Pier and Ferry Terminal is a joint project proposed by the City of Berkeley and WETA that will rebuild a recreational pier with ferry terminal infrastructure at the Berkeley Marina. The project is in the initial planning stages and is part of a larger master planning effort focusing on the Berkeley Marina.

November 2021 Update: The project team has refined landside and waterside terminal designs based on feedback from community meetings and public input. WETA staff have developed a business plan that includes ridership estimates, operating expenses and a conceptual service. Terminal designs and business plan findings will be shared with the general public at a community workshop on October 27.

**PLANS, STUDIES & INITIATIVES****2050 WETA Service Vision and Business Plan**

WETA is embarking on an effort to create a long-term plan for the expansion of San Francisco Bay Ferry service. The plan will include definition of a 2050 service vision and corresponding enhancement of the agency's emergency response capabilities. This service vision will inform WETA planning, budget, and operational decisions as it is phased in over time. The service visioning process will occur throughout Fall 2021. The business planning process will occur between January and December 2022. The process will involve thorough and continued stakeholder and public engagement.

November 2021 Update: An initial round of outreach to collect impressions and identify issues for further discussion has concluded. The effort featured individual interviews, focus group discussions and an online survey. Over 45 stakeholders attended the first Business Plan workshop on October 22. Staff and the facilitator team will present a summary of the workshop and larger discussions at the November Board meeting.

**MTC/ABAG Plan Bay Area 2050**

Plan Bay Area 2050 is a 30-year plan that charts a course for a Bay Area that is affordable, connected, diverse, healthy and vibrant for all residents through 2050 and beyond. Thirty-five strategies comprise the heart of the plan to improve housing, the economy, transportation and the environment across the Bay Area's nine counties. This long-range plan, developed by the Bay Area's two regional planning agencies, the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG), lays out a \$1.4 trillion vision for a more equitable and resilient future for Bay Area residents.

November 2021 Update: In March 2019, MTC issued a request for CTAs and multi-county project sponsors, such as WETA, to each submit a list of their regionally-significant projects for consideration for inclusion in Plan Bay Area 2050. In April 2020 the WETA Board formally approved the final list of WETA projects to be included in Plan Bay Area 2050. MTC/ABAG formally adopted the plan on

October 21, 2021 at their joint Commission/Board meeting. The Final Plan Bay Area 2050 includes all of the projects submitted by WETA and approved by the WETA board, including new ferry service to Berkeley, Redwood City, Treasure Island, and Mission Bay, along with frequency enhancements across the WETA system.

## **CAPITAL PROJECTS**

### **Main Street Float Rehabilitation**

The Main Street Float Rehabilitation project will construct a new float to replace the one currently in operation. The project kicked off in early October with a meeting of the design team and outreach to the City of Alameda. Preliminary design is underway. The total project budget is \$6,271,700. Construction is anticipated to be completed in Fall 2022 with timing dependent on resource agency permits.

## **OTHER BUSINESS**

### **COVID-19 Federal Relief Funding**

Signed into law on March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) provides \$350 billion in additional funding for state and local governments to respond to the COVID-19 emergency and bring back jobs. ARPA appropriated \$30.5 billion to support public transit and the Bay Area will receive \$1.68 billion. As the designated recipient of these funds, MTC is responsible for programming these funds to eligible transit operators in the Bay Area using a set of principles adopted on MTC Commission in May, including 1) Stabilize and Sustain Transit, 2) Restore and Reimagine Service, and 3) Improve Customer Experience. On July 28, MTC approved the first of two tranches, allocating approximately \$912 million or 60 percent of total ARPA funding to Bay Area transit. WETA received \$13.4 million.

November 2021 Update: On October 27, MTC approved allocation of the remaining ARP funding to regional transit operators. WETA received \$10,670,874, which includes an additional \$1,248,305 from funds that were set aside to implement future initiatives related to the regional Blue Ribbon Task Force initiatives. MTC indicates that they will backfill funding for those initiatives using future STA and/or FTA formula funding. Allocation of the remaining ARP funds will allow agencies to be more competitive when competing for FTA's upcoming award of \$2.2 billion in additional ARP assistance.

### **November 2021 Schedule Changes**

On October 8, WETA staff began passenger notification regarding schedule changes going into effect on November 8, 2021. This multi-lingual outreach will continue into November and includes onboard signage, email and text alerts, website information and partner communications. Passenger feedback is being collected for future consideration. Meanwhile, WETA staff is also implementing its communications plans for the November 8 launch of the South San Francisco route and the Alameda Short Hop.

### **Temporary Pier 41 Short Hop Schedule Adjustment**

Due to necessary repairs at the Pier 41 Marine Terminal berth typically used for San Francisco Bay Ferry service, WETA has temporarily altered its Pier 41 Short Hop schedule. Notification was posted on the San Francisco Bay Ferry website and onboard vessels. Captains are making announcements on weekend trips to inform passengers of the adjustments.

The temporary schedule adjustments provide similar levels of service to and from Pier 41 and were designed to minimize inconvenience and crewing impacts. Repairs are expected to be completed in mid-November.

### **FY 21 FTA Passenger Ferry Grant Application**

WETA submitted a grant application in early October for the FY21 FTA Passenger Ferry Grant Program requesting \$6.88M to support the construction of two zero emission vessels to serve San Francisco waterfront terminals including Mission Bay, Treasure Island and Downtown San Francisco, connecting

these areas with existing San Francisco Bay Ferry service from Alameda, Oakland, Richmond, South San Francisco and Vallejo. Total project cost is \$8.6 million. WETA is providing match of \$1.72M. The requested funding will allow WETA to provide fast, convenient, clean and reliable public water transit service to these emerging San Francisco neighborhoods, which have limited surface street access and infrequent existing public transit options. WETA's application is supported by 29 stakeholders including neighborhood associations, committees, regional organizations, county transportation authorities, cities, unions, 13 state senators and assemblymembers, and 7 members of the congressional delegation, including Speaker Pelosi. It is anticipated that FTA will announce awards in early 2022.

### **California Air Resources Board (CARB) Commercial Harbor Craft Regulation**

The California Air Resources Board (CARB) is in the process of developing revisions to regulations that are applicable to California commercial harbor craft, including ferry vessels. The draft proposed regulations include many new initiatives such as in-use and new vessel requirements mandating cleaner engines and the addition of emission reduction systems, a new zero-emission vessel requirement for short routes (less than 3 miles), new idling restrictions at terminals, new shore power requirements, new opacity testing requirements, new operating reporting requirements, and \$1.9 million in new annual fees to be paid by the industry. Several of these new initiatives can be integrated into WETA's operations with relatively little effort; however, the in-use and new vessel requirements pose a significant challenge. Staff is developing an alternative compliance plan to maximize the agency's flexibility in meeting CARB's regulations with a focus on advancing zero-emission technology. WETA has submitted comments to CARB on its initial draft of the proposed amendment to ensure that the rule is consistent with the development of WETA's alternative compliance plan.

November 2021 Update: On September 21, CARB released proposed amendments to its Commercial Harbor Craft regulation. The proposed regulation was revised to address nearly all of WETA's comments, Staff will continue to develop an alternative compliance plan that is consistent with the proposed rule. CARB will conduct a hearing on November 19 to consider approval of the proposed amendments to the regulation.

\*\*\*END\*\*\*

**MEMORANDUM**

**TO: Board Members**

**FROM: Seamus Murphy, Executive Director  
Erin McGrath, Chief Financial Officer**

**SUBJECT: Monthly Review of FY 2021-22 Financial Statements Ending September 30, 2021**

**Recommendation**

There is no recommendation associated with this informational item.

**Summary**

This monthly report provides financial information incorporating budget, revenues, and expenses through September 30, 2021. The summary below compares monthly allocated Budget to Actual operating data for the first three months of the Fiscal Year 2021-22 and summarizes capital revenue and expense compared to the full year budget. The attached Financial Statements provide full fiscal year Budget and Actual information.

**Operating Budget vs. Actual**

	Prior Actual	Current Budget	Current Actual
<b>Revenues - Year To Date:</b>			
Fare Revenues	\$6,347,277	\$1,961,748	\$2,044,560
Federal - COVID-19 Relief Funds	-	5,434,142	3,766,484
State Operating Assistance	-	-	-
Bridge Toll Revenues	3,714,298	3,918,042	4,147,554
Contra Costa Measure J	-	912,825	912,830
Other Revenue	5,400	-	-
<b>Total Operating Revenues</b>	<b>\$10,066,975</b>	<b>\$12,226,757</b>	<b>\$10,871,427</b>
<b>Expenses - Year To Date:</b>			
Planning & Administration	\$490,519	\$750,000	\$485,142
Ferry Services	9,576,455	11,476,757	10,386,284
<b>Total Operatings Expenses</b>	<b>\$10,066,975</b>	<b>\$12,226,757</b>	<b>\$10,871,427</b>
<b>System-Wide Farebox Recovery %</b>	<b>66%</b>	<b>17%</b>	<b>20%</b>

**Capital Actual and % of Total Budget**

	YTD Actual	% of FY 2021-22 Budget
<b>Revenues:</b>		
Federal Funds	\$48,613	
State Funds	2,651,149	
Bridge Toll Revenues	46,967	
Other Revenues	20,004	
<b>Total Capital Revenues</b>	<b>\$2,766,733</b>	<b>5.82%</b>
<b>Expenses:</b>		
<b>Total Capital Expenses</b>	<b>\$2,766,733</b>	<b>5.82%</b>

**Fiscal Impact**

There is no fiscal impact associated with this informational item.

\*\*\*END\*\*\*



**San Francisco Bay Area Water Emergency Transportation Authority**  
**FY 2021-22 Statement of Revenues and Expenses**  
**For Three Months Ending 9/30/2021**

% of Year Elapsed 25%

	Sep-21 Actual	Year - To - Date			Total FY2021-22 Budget	% of Total Budget
		FY2018-19 Actual	FY2021-22 Budget	FY2021-22 Actual		
<b>OPERATING EXPENSES</b>						
<b>FERRY OPERATIONS:</b>						
<b>Harbor Bay FerryService (AHBF)</b>						
Vessel Crew Labor	\$123,431		\$423,300	\$396,642	\$1,693,200	23.4%
Vessel Fuel	62,400		164,675	182,019	658,700	27.6%
Vessel Operations & Maintenance	22,021		168,350	77,428	673,400	11.5%
Facility Operations & Maintenance	39,098		189,650	122,715	758,600	16.2%
System Expense	52,096		224,375	157,031	897,500	17.5%
<b>Total Harbor Bay Farebox Recovery - AHBF</b>	<b>\$299,046</b> 10%	<b>\$825,775</b> 52%	<b>\$1,170,350</b> 15%	<b>\$935,837</b> 10%	<b>\$4,681,400</b> 15%	<b>20.0%</b>
<b>Alameda/Oakland Ferry Service (AOFS)</b>						
Vessel Crew Labor	\$291,746		\$944,450	\$962,612	\$3,777,800	25.5%
Vessel Fuel	196,113		508,225	563,340	2,032,900	27.7%
Vessel Operations & Maintenance	50,971		248,175	194,822	992,700	19.6%
Facility Operations & Maintenance	120,568		315,550	361,803	1,262,200	28.7%
System Expense	137,263		596,950	437,583	2,387,800	18.3%
<b>Total Alameda/Oakland Farebox Recovery - AOFS</b>	<b>\$796,662</b> 23%	<b>\$3,310,388</b> 72%	<b>\$2,613,350</b> 18%	<b>\$2,520,160</b> 25%	<b>\$10,453,400</b> 18%	<b>24.1%</b>
<b>Vallejo FerryService (Vallejo)</b>						
Vessel Crew Labor	\$347,851		\$1,106,775	\$1,034,934	\$4,427,100	23.4%
Vessel Fuel	454,626		1,204,325	1,343,229	\$4,817,300	27.9%
Vessel Operations & Maintenance	60,819		315,125	258,928	\$1,260,500	20.5%
Facility Operations & Maintenance	387,737		992,275	1,001,791	3,969,100	25.2%
System Expense	154,265		677,875	477,722	2,711,500	17.6%
<b>Total Vallejo Farebox Recovery - Vallejo</b>	<b>\$1,405,298</b> 23%	<b>\$4,612,950</b> 71%	<b>\$4,296,375</b> 23%	<b>\$4,116,605</b> 26%	<b>\$17,185,500</b> 23%	<b>24.0%</b>
<b>South San Francisco Ferry Service (SSF)</b>						
Vessel Crew Labor	\$0		79,257	\$79,257	\$1,018,700	7.8%
Vessel Fuel	-		-	-	385,000	0.0%
Vessel Operations & Maintenance	18,777		146,325	65,356	585,300	11.2%
Facility Operations & Maintenance	36,788		177,425	119,057	709,700	16.8%
System Expense	11,260		142,150	57,423	568,600	10.1%
<b>Total South San Francisco Farebox Recovery - SSF</b>	<b>\$66,825</b> 0%	<b>\$827,343</b> 30%	<b>\$545,157</b> 0%	<b>\$321,093</b> 0%	<b>\$3,267,300</b> 13%	<b>9.8%</b>
<b>Richmond FerryService (Richmond)</b>						
Vessel Crew Labor	\$213,199	<i>Service launched in January 2019</i>	\$688,825	\$640,280	\$2,755,300	23.2%
Vessel Fuel	115,885		286,675	338,036	1,146,700	29.5%
Vessel Operations & Maintenance	28,273		219,650	97,934	878,600	11.1%
Facility Operations & Maintenance	78,112		291,100	244,576	1,164,400	21.0%
System Expense	61,443		277,200	191,846	1,108,800	17.3%
<b>Total Richmond Farebox Recovery - Richmond</b>	<b>\$496,912</b> 10%	<b>\$0</b> 0%	<b>\$1,763,450</b> 52%	<b>\$1,512,672</b> 9%	<b>\$7,053,800</b> 8%	<b>21.4%</b>
<b>Seaplane Lagoon FerryService (SPL)</b>						
Vessel Crew Labor	\$145,873	<i>Service launched in July 2021</i>	\$393,475	\$395,216	\$1,573,900	25.1%
Vessel Fuel	62,400		149,100	173,652	596,400	29.1%
Vessel Operations & Maintenance	26,351		136,625	98,816	546,500	18.1%
Facility Operations & Maintenance	39,170		154,575	119,845	618,300	19.4%
System Expense	57,594		254,300	192,389	1,017,200	18.9%
<b>Total Seaplane Lagoon Farebox Recovery - SPL</b>	<b>\$331,388</b> 11%	<b>\$0</b> 0%	<b>\$1,088,075</b> 19%	<b>\$979,918</b> 11%	<b>\$4,352,300</b> 19%	<b>22.5%</b>
<b>Sub-Total Ferry Operations</b>	<b>\$3,396,130</b>	<b>\$9,576,455</b>	<b>\$11,476,757</b>	<b>\$10,386,284</b>	<b>\$46,993,700</b>	<b>22.1%</b>
<b>FAREBOX RECOVERY - SYSTEMWIDE</b>	<b>18%</b>	<b>66%</b>	<b>17%</b>	<b>20%</b>	<b>18%</b>	

**San Francisco Bay Area Water Emergency Transportation Authority**  
**FY 2021-22 Statement of Revenues and Expenses**  
**For Three Months Ending 9/30/2021**

% of Year Elapsed 25%

	Sep-21 Actual	Year - To - Date			Total FY2021-22 Budget	% of Total Budget
		FY2018-19 Actual	FY2021-22 Budget	FY2021-22 Actual		
<b>OPERATING EXPENSES (continued)</b>						
<b><u>PLANNING &amp; GENERAL ADMIN:</u></b>						
Wages and Fringe Benefits	\$148,585	\$294,451	\$400,400	\$408,368	\$1,601,600	25.5%
Services	123,580	231,829	513,550	216,530	2,054,200	10.5%
Materials and Supplies	68	779	14,950	587	59,800	1.0%
Utilities	767	8,652	10,950	7,031	43,800	16.1%
Insurance	1,307	1,200	4,275	3,921	17,100	22.9%
Miscellaneous	2,915	30,958	23,675	14,771	94,700	15.6%
Leases and Rentals	26,368	93,739	81,600	78,769	326,400	24.1%
Admin Overhead Expense Transfer	(85,181)	(171,088)	(299,400)	(244,835)	(1,197,600)	20.4%
<b>Sub-Total Planning &amp; Gen Admin</b>	<b>\$218,410</b>	<b>\$490,519</b>	<b>\$750,000</b>	<b>\$485,142</b>	<b>\$3,000,000</b>	<b>16.2%</b>
<b>Total Operating Expenses</b>	<b>\$3,614,540</b>	<b>\$10,066,975</b>	<b>\$12,226,757</b>	<b>\$10,871,427</b>	<b>\$49,993,700</b>	<b>21.7%</b>
<b>OPERATING REVENUES</b>						
Fare Revenue	\$616,805	\$6,347,277	\$1,961,748	\$2,044,560	\$8,268,000	24.7%
Federal Operating Assistance	1,570,976	-	5,434,142	3,766,484	22,069,400	17.1%
State Operating Assistance		-	-	-	450,000	0.0%
Regional - Bridge Toll	1,199,273	3,714,298	3,918,042	4,147,554	15,555,000	26.7%
Regional - Contra Costa Measure J	227,486		912,825	912,830	3,651,300	25.0%
Other Revenue	-	5,400	-	-	-	0.0%
<b>Total Operating Revenues</b>	<b>\$3,614,540</b>	<b>\$10,066,975</b>	<b>\$12,226,757</b>	<b>\$10,871,427</b>	<b>\$49,993,700</b>	<b>21.7%</b>

**San Francisco Bay Area Water Emergency Transportation Authority**  
**FY 2021-22 Statement of Revenues and Expenses**  
**For Three Months Ending 9/30/2021**

Project Description	Total Project Budget	Total Prior Expense	Total FY2021/22 Budget	Total FY2021/22 Expense	Total Future Year	% of Total Project Budget Spent
<b>CAPITAL EXPENSES:</b>						
<b>FACILITIES:</b>						
<b>Operations and Maintenance Facilities</b>						
North Bay Facility Fuel System Improvement	\$530,450	\$220,680	\$309,770	\$41,797	\$0	49%
Central Bay Facility Oil System Modification	650,000	-	650,000	54,949	-	8%
<b>Terminal Improvement</b>						
Terminal Rehabilitation - Alameda Main Street	6,127,700	21,269	2,429,831	15,684	3,676,600	1%
Shoreside Infrastructure for All-Electric Vessel	4,760,000	-	2,002,000	-	2,758,000	0%
Passenger Float Rehabilitation - South San Francisco	908,500	-	908,500	1,448	-	0%
Terminal Dredging - Vallejo	2,787,600	-	2,787,600	-	-	0%
<b>FERRY VESSELS:</b>						
<b>Vessel Construction</b>						
New Commuter Class High-Speed Vessels - 2 each	30,082,500	18,583,816	11,498,684	2,596,162	-	70%
New All-Electric Vessel	4,300,000	-	1,834,000	-	2,466,000	0%
Replacement Vessels - MV Bay Breeze and MV Solano	34,600,000	3,277,919	17,825,781	40,200	13,496,300	10%
Replacement Vessel - MV Intintoli	26,446,700	-	500,000	1,831	25,946,700	0%
<b>Vessel Rehabilitation and Refurbishment</b>						
Vessel Engines Conversion - Gemini Class Vessels <sup>1</sup>	5,982,500	61,869	3,891,431	12,008	2,029,200	1%
Vessel Engines Overhaul - MV Argo and MV Carina	240,000	125,730	114,270	-	-	52%
Vessel Engines Overhaul - MV Cetus	419,100	-	419,100	-	-	0%
Vessel Engines Overhaul - MV Hydrus	419,100	-	419,100	-	-	0%
Vessel Reduction Gears Overhaul - MV Pisces	120,000	3,728	116,272	2,653	-	5%
Vessel Engines & Reduction Gears Overhaul - MV Bay Breeze	491,400	49	491,351	-	-	0%
Vessel Engines & Fuel Injectors Overhaul - MV Pyxis	613,200	-	613,200	-	-	0%
Vessel Engines & Fuel Injectors Overhaul - MV Vela	613,200	-	613,200	-	-	0%
Vessel Fuel Injectors Overhaul - MV Intintoli	127,300	-	127,300	-	-	0%
<b>Total Capital Expenses</b>	<b>\$120,219,250</b>	<b>\$22,295,061</b>	<b>\$47,551,389</b>	<b>\$2,766,733</b>	<b>\$50,372,800</b>	
<b>CAPITAL REVENUES:</b>						
Federal Funds	\$58,684,860	\$2,725,949	\$21,720,621	\$48,613	\$34,238,290	5%
State Funds	47,543,850	13,583,816	21,225,184	2,651,149	12,734,850	34%
Regional - Bridge Toll	9,078,490	5,298,448	2,894,082	46,967	885,960	59%
Regional - Alameda Sales Tax Measure B / BB	4,912,050	686,848	1,711,502	20,004	2,513,700	14%
<b>Total Capital Revenues</b>	<b>\$120,219,250</b>	<b>\$22,295,061</b>	<b>\$47,551,389</b>	<b>\$2,766,733</b>	<b>\$50,372,800</b>	

<sup>1</sup> On 9/2/2021, Board approved project budget increase of \$458,400, bringing total project budget from \$5,524,100 to \$5,982,500.

**TO: WETA Board Members**

**FROM: Peter Friedmann, WETA Federal Legislative Representative  
Ray Bucheger, WETA Federal Legislative Representative**

**SUBJECT: WETA Federal Legislative Board Report – November 2021**

This report covers the following topics:

1. Congress Still Seeking Path Forward on Legislative Priorities of Interest to WETA
  - o FY22 Appropriations
  - o Infrastructure Investment and Jobs Act / Bipartisan Infrastructure Bill (BIB)
  - o Budget Reconciliation Bill / Build Back Better (BBB)
2. Soliciting Support for WETA's Application for Funding from the FTA 5307(h) Ferry Program

**Congress Still Seeking Path Forward on Legislative Priorities of Interest to WETA**

Congressional leaders are working with President Joe Biden to complete work on at least three major legislative initiatives this year, including the FY22 appropriations bills; the Infrastructure Investment and Jobs Act (aka the Bipartisan Infrastructure Bill, or BIB); and the Budget Reconciliation Bill (aka President Biden's Build Back Better (BBB) Proposal). While progress is being made on several fronts, it is becoming increasingly likely that to the extent Congress completes work on these legislative initiatives, much of it won't happen until December, at the earliest.

Here is a run-down of the status of each of these legislative priorities and information about possible benefits to WETA.

***FY22 Appropriations:***

Congress passed a continuing resolution (CR) to fund the federal government through December 3. It is likely that as we approach December 3, that Congress will pass another CR that funds the federal government through December 17, which we hope will serve as the final deadline before Congress passes an omnibus appropriations bill that funds the federal government through the end of the fiscal year (September 30, 2022).

**BENEFIT TO WETA:**

We submitted a programmatic appropriations request to the House and Senate Congressional delegation, seeking a plus-up to the FTA 5307(h) Ferry Grant Program for FY22. As a result of this request, the House Transportation-HUD Appropriations bill includes an additional \$20 million for the 5307(h) program (which would be on top of whatever amount is included in the bipartisan infrastructure bill) and the Senate version of the Transportation-HUD Appropriations bill increases funding for the 5307(h) program by \$13 million. These two numbers will need to be reconciled before a final bill can be sent to President Biden – we are advocating for the higher (House) funding level.

### ***Infrastructure Investment and Jobs Act / Bipartisan Infrastructure Bill (BIB)***

While the Senate passed this bill in early August, we do not expect the House to vote on the infrastructure bill until Congressional leaders are able to forge a compromise on the Budget Reconciliation Bill (more on this below). The bipartisan infrastructure bill includes supplemental funding for several big infrastructure grant programs and contains a reauthorization of surface transportation programs (including funding for roads, bridges, transit and other DOT programs). The most recent surface transportation bill, the FAST Act, was set to expire on September 30<sup>th</sup> but was extended to give Congressional leaders more time to reach a deal on the broader bill.

#### **BENEFIT TO WETA:**

While the infrastructure bill contains additional funding for the Federal Highway Administration (FHWA) ferry formula program and stands up a new program to fund low or zero emission ferries, we are continuing to advocate for the \$1.25 billion for the FTA 5307(h) program that was left out due to a drafting error. This remains a priority for the Congressional delegation, which is seeking to have the funding included in a technical corrections bill. However, that legislation would not move forward until the House first passes the bipartisan infrastructure bill, which can't happen until a deal is reached on the reconciliation bill.

### ***Budget Reconciliation Bill / Build Back Better (BBB)***

Progressives in Congress want to pass a \$3.5 trillion+ bill to tackle climate change and expand social safety net programs, but moderate Democrats are seeking a level of funding closer to \$1.5 trillion. Until a compromise can be reached, Congress will be unable to move forward with budget reconciliation, and the infrastructure bill will remain in limbo. In general, the budget reconciliation bill is expected to contain funding for renewable energy and social safety net programs. However, because negotiations are ongoing, it is too early to speculate about what, exactly, will be in this funding package, and whether there will be additional funding for transit.

### **Soliciting Support for WETA's Application for Funding from the FTA 5307(h) Ferry Program**

We worked with WETA staff to secure Congressional support for WETA's application to the FTA for \$6.88M through the FTA 5307(h) Ferry Grant program for construction of two zero emission ferry boats for a new loop that will link Mission Bay, Treasure Island and Downtown San Francisco. Letters of support were sent to FTA at our request by House Speaker Nancy Pelosi, Senator Dianne Feinstein, and members of the Bay Area Congressional delegation, including Representatives Jackie Speier, Mike Thompson, Anna Eshoo, John Garamendi, Mark DeSaulnier and Barbara Lee.

Respectfully Submitted,  
Peter Friedmann and Ray Bucheger



# NOSSAMAN LLP | Memorandum

**TO:** WETA Board of Directors

**FROM:** Nossaman LLP - Nate Solov  
Jennifer M. Capitolo & Associates – Jennifer Capitolo

**DATE:** October 22, 2021

**RE:** November 2021 - Legislative Update

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## Legislative Update

Legislators concluded the 2021 legislative session on September 10 and Governor Newsom took action on all bills by the October 10 deadline signing 770 and vetoing 66. The transportation trailer bill was not finalized due to disagreement on high-speed-rail funding. Negotiations will continue throughout the fall in hopes that a resolution can be adopted when the legislature reconvenes for the 2022 session on January 3.

## Funding for WETA Priorities

Earlier this year, staff conducted several meetings with key legislators and budget staff to raise awareness about transit funding equity (including ferries in funding allocations for other forms of transit) and securing the funding necessary to complete the Mission Bay Ferry Terminal. Several meetings have been scheduled with key legislators this fall to provide briefings on WETA's funding needs in advance of the 2022 session.

## Budget Update

As we reported last month, the legislature and Governor were not able to come to agreement in September on a funding compromise for high-speed rail and various transportation infrastructure expenditures that were included in the prior budget passed in July. As a result, the following investments approved in July will revert to the General Fund on October 10:

- **\$2.5 billion** in supplemental investment for the Transit and Intercity Rail Capital Program;
  - Note: The reversion to the General Fund of this supplemental investment **does not** impact the estimated \$500M-\$600M available to TIRCP from the ongoing appropriation from the Greenhouse Gas Reduction Fund nor SB 1's Transportation Improvement Fee.
- **\$500 million** for the Active Transportation Program; and,
- **\$400 million** for Climate Adaptation on Transportation Infrastructure.

We expect negotiations between the Newsom Administration and State Legislature to recommence as we approach 2022. It is possible that these negotiations will include discussion of additional investment benefiting public transit and rail systems.

On October 15, Speaker Rendon and Assembly Transportation Committee Chair Laura Friedman sent the attached letter to Governor Newsom signaling their continued interest in negotiating a deal on high-speed rail funding that also includes large investments for transit and transportation projects around the state.

## Federal Funding Request

We worked with legislative offices to secure 12 signatures from assemblymembers and senators in support of the Federal Transit Administration Passenger Ferry Grant Program application that staff submitted in early October for \$6.88 million to support construction of two 75-100-passenger zero emission ferry vessels to serve on the region's first zero-emission high-frequency ferry service loop.

## 2022 Legislative Preview

We have been working with staff to develop concepts for WETA's state legislative program for 2022. A draft legislative program will be brought to the board in December, with a final program for approval in January.

MEMORANDUM

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**TO:** Board Members

**FROM:** Seamus Murphy, Executive Director  
Kevin Connolly, Planning & Development Manager  
Taylor Rutsch, Transportation Planner

**SUBJECT:** Monthly Ridership and Recovery Report

**Background**

The WETA Pandemic Recovery Plan (Plan) began on July 1, 2021 with the enhancement of the Vallejo, Oakland & Alameda, and Richmond routes, the restart of the suspended Harbor Bay route, and the launch of the new Alameda Seaplane route. The following weekend also marked the relaunch of weekend service on the Vallejo, Oakland & Alameda, and Richmond routes. The Plan lowered fares across the WETA system. Future modifications in service will generally follow state guidelines for reopening the economy and subsequent changes in demand. The Plan calls for a monthly evaluation of ridership demand together with other measures relating to how the Bay Area is responding to the COVID-19 health crisis. The Monthly Ridership and Recovery Report presents a status report of the WETA system along with anticipated service adjustments for the upcoming weeks.

**Discussion**

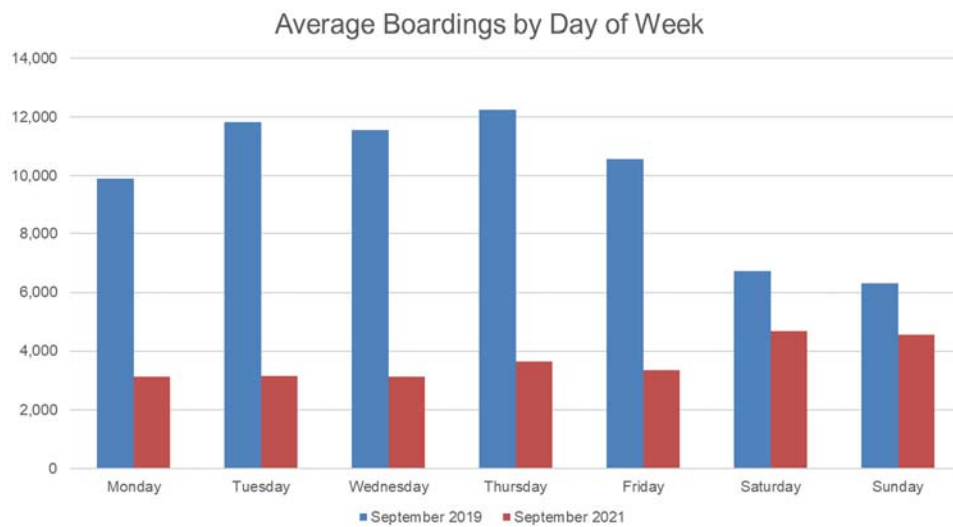
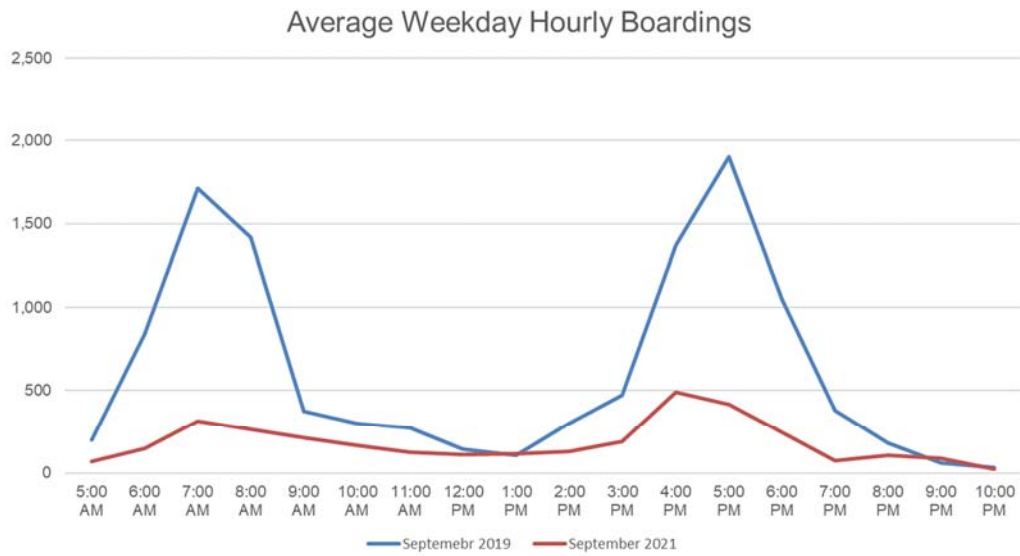
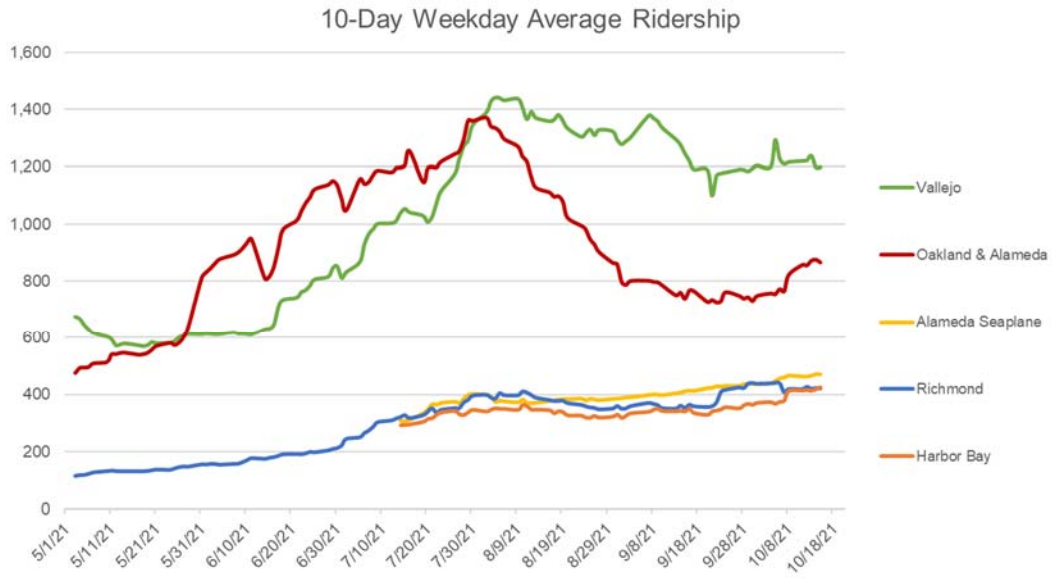
Systemwide ridership grew significantly in July as WETA launched the Plan. Ridership dropped slightly in August and early September due to impacts of the COVID Delta Variant and the subsequent increased social distancing and mask requirements that followed. Ridership has since begun to rise again through the first three weeks of October. Even with the pullback ridership is still above WETA's budget projections and compares favorably to other regional transit operators (measured as a percent of pre-pandemic ridership).

**Highlights:**

- Through the first three weeks of October weekday ridership is up about 10 percent over September and 38 percent of pre-pandemic levels
- Weekend ridership has remained particularly strong through September and October, especially thanks to a busy Fleet Week and several sold out Giant's games. This year's Fleet Week ridership was at 80 percent of the 2019 Fleet Week levels
- The Alameda & Oakland route has continued to boast the highest weekend ridership in the system; however weekday ridership on this route decreased significantly in August and September before rebounding some in October
- The Alameda Seaplane route's ridership has continued to grow even with the decrease on the Oakland & Alameda suggesting that many riders have made the "Seaplane Shift"
- Wednesday, October 6 was fare-free due to Clean Air Day – ridership was 20 percent higher than the average from the prior four Wednesdays and Alameda Seaplane had its best day ever on Clean Air Day
- After tracking with BART and Caltrain for most of the year, WETA's ridership growth increased at a greater rate than other regional carriers since July with the launch of the Plan, even with the pullback in August and September

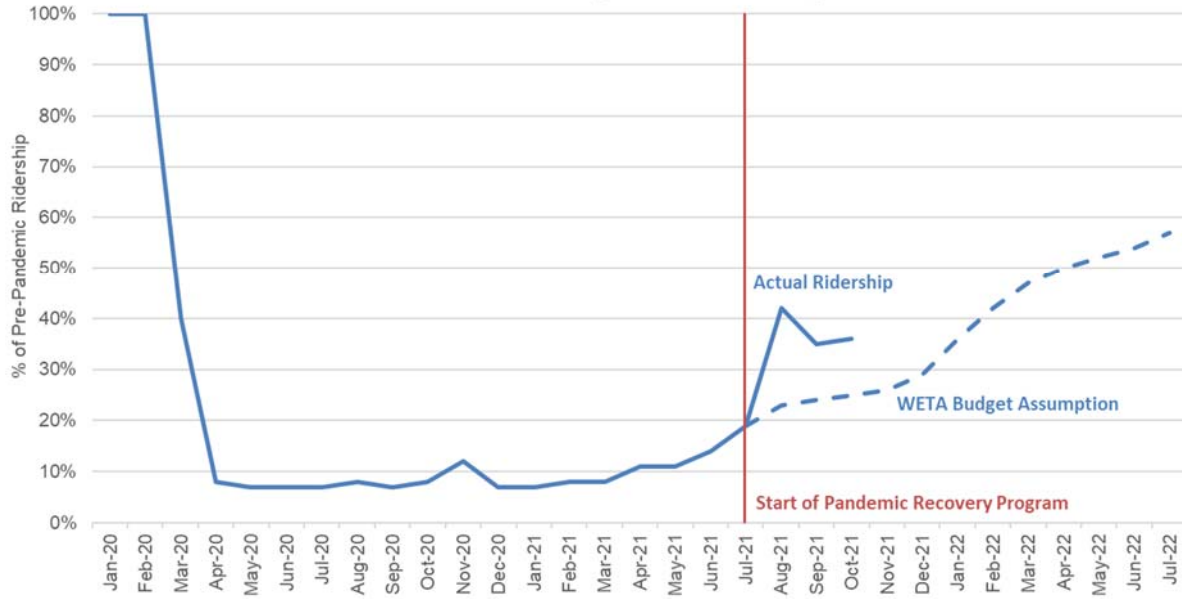
**Recommendations**

There are no proposed service adjustments at this time.

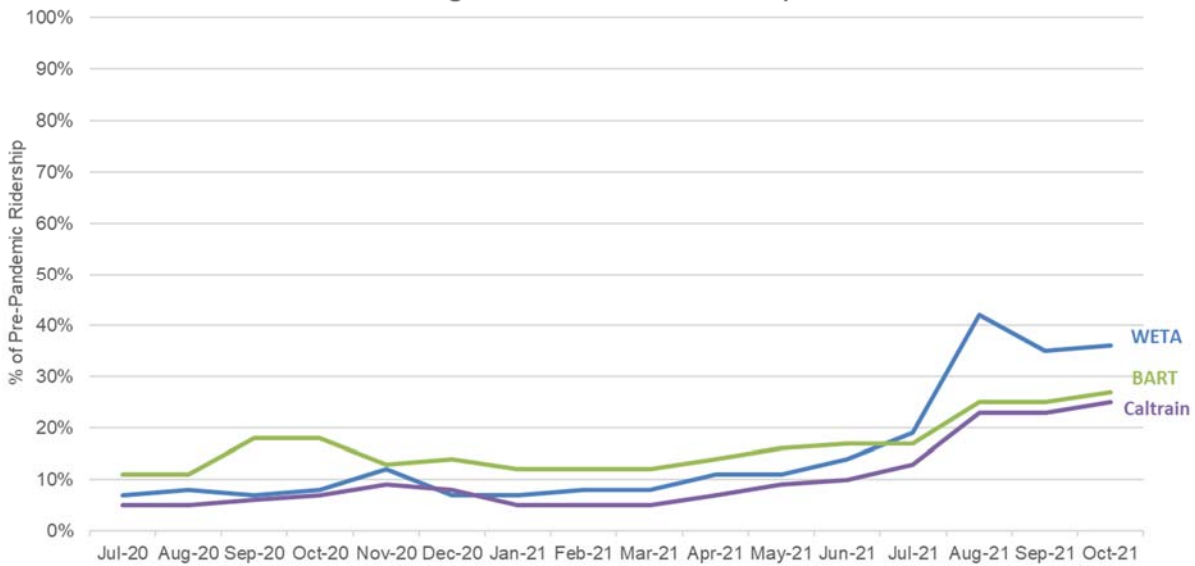




Actual vs. Budgeted Ridership



Regional Transit Ridership



September 2021		Oakland & Alameda*	Vallejo*	Richmond	Harbor Bay	Alameda Seaplane	South San Francisco**	Systemwide	
Boardings	vs. last month	Total Passengers September 2021	19,977	27,325	8,674	7,467	8,917		72,360
		Total Passengers August 2021	39,484	39,939	10,290	7,520	8,237		105,470
		Percent change	-49.40%	-31.58%	-15.70%	-0.70%	8.26%		-31.39%
	vs. same month last year	Total Passengers September 2021	19,977	27,325	8,674	7,467	8,917		72,360
		Total Passengers September 2020	4,963	9,777	1,578				16,318
		Percent change	302.52%	179.48%	449.68%	-	-		343.44%
	vs. prior FY to date	Total Passengers Current FY To Date	111,993	113,322	29,919	22,033	24,856		302,123
		Total Passengers Last FY To Date	16,638	21,452	4,473	-	-		42,563
		Percent change	573.12%	428.26%	568.88%	-	-		609.83%
	Avg Weekday Ridership September 2021	908	1,242	394	339	405		3,289	
Ops Stats	Passengers Per Hour September 2021	42	37	24	36	58		37	
	Revenue Hours September 2021	481	731	355	209	154		1,930	
	Revenue Miles September 2021	6,919	19,926	6,377	4,317	2,541		40,080	
	Farebox Recovery Year-To-Date	25%	26%	9%	10%	11%		20%	
	Peak hour utilization, AM – September 2021	11%	17%	15%	16%	14%		15%	
	Peak hour utilization, PM – September 2021	15%	34%	18%	19%	13%		20%	
Fuel	Fuel Used (gallons) – September 2021	64,770	150,150	38,273	20,609	20,609		285,846	
	Avg Cost per gallon – September 2021	\$3.03	\$3.03	\$3.03	\$3.03	\$3.03		\$3.05	

\* Includes special event ridership to/from Oracle Park and/or Chase Center

\*\* Service suspended on the South San Francisco route until November 2021

\*\*\*END\*\*\*

MEMORANDUM

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**TO:** Board Members

**FROM:** Seamus Murphy, Executive Director

**SUBJECT:** Adopt a Resolution In Accordance with Assembly Bill 361 Finding that the Proclaimed State of Emergency Continues to Impact the Ability to Meet Safely In Person

**Recommendation**

Adopt Resolution No. 2021-28, finding that the proclaimed State of Emergency continues to impact the ability to meet safely in person.

**Background/Discussion**

In March 2020, the Governor of California issued several executive orders in response to the COVID-19 pandemic suspending portions of the Ralph M. Brown (Brown) Act to allow Board members to participate remotely in Board meetings without complying with the Brown Act's restrictions on such remote attendance. (Executive Order N-25-20 and N-29-20)

The Governor's executive order that specifically waived certain requirements of the Brown Act expired on September 30, 2021. On September 16, 2021, the Governor signed Assembly Bill (AB) 361 into law, effective on October 1, 2021. AB 361 amends the Brown Act to allow legislative bodies to meet remotely without complying with traditional teleconference meeting rules, provided there is a state of emergency and either (1) state or local officials have imposed or recommended measures to promote social distancing or (2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees.

The Governor-declared state of emergency continues to be in effect and both state and local officials continue to recommend measures to promote physical distancing. WETA's Board meetings therefore are in accordance with AB 361's requirements.

In order to qualify for AB 361, the Board must, within 30 days of its first meeting under AB 361, and every 30 days thereafter, make findings that it has reconsidered the circumstances of the state of emergency and that either or both (a) the state of emergency continues to directly impact the ability to meet safely in person and/or (b) state or local officials continue to impose or recommend measures to promote social distancing. The first virtual meeting under AB 361's requirements was the October 7, 2021 Board meeting; therefore, the Board must adopt findings at this meeting that will allow the Board to continue to meet remotely (including at this meeting) without complying with traditional notice and access rules for teleconference meetings.

The Executive Director recommends that the Board adopt these findings with the understanding that the Board would need to approve a similar resolution every 30 days if it wishes to continue to meet under AB 361's requirements for teleconference Board meetings.

**Fiscal Impact**

There is no fiscal impact associated this recommendation.

\*\*\*END\*\*\*

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**

**RESOLUTION NO. 2021-28**

**FINDING THAT THE PROCLAIMED STATE OF EMERGENCY CONTINUES TO IMPACT THE ABILITY TO MEET SAFELY IN PERSON**

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of COVID-19; and

**WHEREAS**, on March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions of the Ralph M. Brown (Brown) Act in order to allow legislative bodies to conduct meetings electronically without a physical meeting place; and

**WHEREAS**, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which specified that Executive Order N-29-20 would expire on September 30, 2021; and

**WHEREAS**, on September 16, 2021, the Governor signed Assembly Bill 361 into law as urgency legislation that went into effect on October 1, 2021, amending Government Code Section 54953 of the Brown Act to allow legislative bodies to continue to meet remotely during a proclaimed state of emergency, provided certain conditions are met and certain findings are made; and

**WHEREAS**, the Governor's proclaimed state of emergency remains in effect, and state and local officials, including the California Department of Public Health and the Department of Industrial Relations, have imposed or recommended measures to promote social distancing; now therefore, be it

**RESOLVED** that the WETA Board of Directors has considered the circumstances of the state of emergency, and finds that:

- a. The factors triggering the state of emergency continue to directly impact the ability of the members of the Board and members of the public to meet safely in person; and
- b. state or local officials continue to recommend measures to promote social distancing; and be it further

**RESOLVED**, that the Board of Directors will reconsider the circumstances of the state of emergency and revisit the need to conduct meetings remotely within 30 days of the adoption of this resolution.

**CERTIFICATION**

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on November 4, 2021.

YEA:  
NAY:  
ABSTAIN:  
ABSENT:

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/s/ Board Secretary

2021-28

\*\*\*END\*\*\*

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**  
**MINUTES OF THE BOARD OF DIRECTORS MEETING**

*(October 7, 2021)*

The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority met in regular session via videoconference consistent with AB 361 as codified in Government Code Section 54953.

**1. CALL TO ORDER / ROLL CALL**

Chair James Wunderman called the meeting to order at 12:31 p.m. He welcomed directors, staff, and meeting guests and noted that the meeting was being recorded. He advised guests about offering public comment and how guests could sign up to speak throughout the meeting.

Chair Wunderman, Vice Chair Monique Moyer, Director Jessica Alba, Director Jeffrey DelBono, and Director Anthony Intintoli were in attendance.

**2. RECESS INTO CLOSED SESSION**

a. Public Employee Performance Evaluation

The Directors recessed into closed session pursuant to Government Code Section 54957.

The Directors returned to open session at 1:11 p.m. with no action to report.

**3. REPORT OF BOARD CHAIR**

Chair Wunderman thanked Vice Chair Moyer for chairing the October meeting in his absence. He recognized Executive Director Seamus Murphy for Mr. Murphy's testimony before the House of Representatives Transportation & Infrastructure Highways and Transit Subcommittee on the topic of "Examining the Role of Ferries in Improving Mobility" and noted that WETA was leading the way on a whole number of things. He reported on probable changes on the indoor masking requirement, future funding for transportation, and the return to work schedule. He commended Public Information & Marketing Manager Thomas Hall and his team for the phenomenal job they were doing.

**4. REPORTS OF DIRECTORS**

Vice Chair Moyer complimented Mr. Murphy on his testimony and presence in representing the WETA and keeping light on the importance of ferry transit. She expressed her excitement about the Giants postseason and the impacts on ridership.

**5. REPORTS OF STAFF**

Mr. Murphy thanked the Directors for their kind words about the testimony and for giving good policy direction to be able to promote the WETA.

Mr. Murphy reported that the Vallejo dredging project had been completed on time and on budget with minimal impact to customers. He recognized Senior Planner/Project Manager Chad Mason for his management of the project who would be working on planning the reconfiguration to the Vallejo Ferry Terminal to minimize the low tide impacts.

Mr. Murphy discussed some of the funding happening at the regional and federal level including an additional funding opportunity and noting that WETA received \$772 thousand from Metropolitan Transportation Commission (MTC) from the American Rescue Plan Act (ARPA) that was added to the first tranche.

Mr. Murphy talked about changes in the COVID protocols on indoor mask requirements and vaccine mandates. He said that the vaccine mandates announced by the Biden Administration would apply to private sector business employers with more than 100 employees including WETA's contract operator, Blue & Gold Fleet (Blue & Gold). Though this mandate did not apply to WETA, he said that WETA will be requiring its employees to be vaccinated by the end of November.

Mr. Murphy introduced WETA General Counsel Steven Miller from Hanson Bridgett LLP to talk about another COVID protocol, AB 361, requiring the Board to take action on a regular basis to maintain virtual meetings. Mr. Miller reported that the Executive Order N-29-20 relaxing the Brown Act teleconference restrictions had expired and that AB 361 permanently amended the Brown Act to allow WETA to conduct virtual meetings as long as there is a state-proclaimed state of emergency and local officials impose measures promoting social distancing. He said that the Board would need to adopt findings each month that meeting in person would present an imminent safety risk for attendees to meet safely in person and that the Board would see an item on this for the November meeting and at each meeting thereafter.

Mr. Murphy updated the Board on the California Air Resources Board (CARB) Harbor Craft Rules language and on the funding opportunities of the Chase Center/Pier 48 Ferry Terminal adding that the temporary terminal that was supporting the Vallejo dredging project was back at Pier 48.

Mr. Murphy provided five written reports and offered to answer questions.

In response to a question from Director Del Bono, Mr. Miller said that Blue & Gold indicated that it was planning on complying and cooperating and that there did not seem to be a need to use the contract as a tool to require vaccinations or testing. He added that requiring vaccination should be considered on a case by case basis consistent with WETA's statutory powers under its enabling legislation and the specific need to protect the safety of WETA's facilities, systems, and customers. Mr. Murphy reminded the Board that companies with more than 100 employees would be covered by the federal mandate.

Mr. Murphy invited Planning & Development Manager Kevin Connolly to report on ridership and recovery. Mr. Connolly reported that WETA was ahead of schedule of where it expected to be and that ridership was highly dependent on weather. He noted a lot of occasional and recreational ridership midday and on weekends. He said that for Fleet Week, there would be no enhancement of transbay service because of the increases in services already implemented but that there would be enhanced Ferry Building to Pier 41 shuttle service.

He stated that South San Francisco service would be introduced on November 8 as biotech commuters plan their return to office on a gradual basis over the next few months. Mr. Connolly said that Blue & Gold's monohulls would be utilized for baseball service because of the demand and conflicts with basketball. Lastly, he noted that with the exception on the Harbor Bay and South San Francisco service, there would be schedule changes on all the other services

Chair Wunderman called for public comments, and there were none.

## **6. CONSENT CALENDAR**

Director Intintoli made a motion to approve the consent calendar:

- a. Board Meeting Minutes – September 2, 2021
- b. Authorize Update of Signature Authority for Local Agency Investment Fund Account
- a. Authorize Release of a Request for Proposals for a Real-Time Transit Information System

Chair Wunderman called for public comments on the consent calendar, and there were none.

Vice Chair Moyer seconded the motion, and the consent calendar carried unanimously.

Yeas: Alba, DelBono, Intintoli, Moyer, Wunderman. Nays: None. Absent: None.

## **7. APPROVE LEASE AGREEMENT WITH THE PORT OF SAN FRANCISCO FOR ADMINISTRATIVE OFFICE AND BERTHING SPACE AT PIER 9**

Mr. Murphy presented this item recommending approval of a five-year lease with the Port of San Francisco for administrative office and berthing space at Pier 9 and authorizing the Executive Director to execute the lease agreement.

Director DelBono made a motion to approve the item.

Chair Wunderman called for public comments, and there were none.

Director Intintoli seconded the motion, and the item passed unanimously.

Yeas: Alba, DelBono, Intintoli, Moyer, Wunderman. Nays: None. Absent: None.

## **8. WETA ZERO EMISSION STUDY UPDATE**

Mr. Murphy introduced this informational item to inform development of a plan to transition ferry operations on San Francisco Bay to zero-emission vessels emphasizing the use of electric propulsion systems and resolving the technical and regulatory barriers to implementation.

Mr. Murphy turned the item over to Mr. Mason who along with Aurora Marine Design (Aurora) Principal Shaun Green and Arup Senior Energy Consultant Ewan Frost-Pennington shared their presentation on the feasibility of zero-emission vessels outlining the goals, the workflow stages, study responsibilities for funding and management, and next steps. He said that both he and Operations & Maintenance Manager Timothy Hanners would be managing the study while Aurora would be working on the vessel and route analysis and Arup on the shoreside infrastructure analysis and stakeholder coordination.

The Directors thanked staff and the study team for their important and valuable presentation.

Chair Wunderman called for public comments, and there were none.

## **9. PUBLIC COMMENTS FOR NON-AGENDA ITEMS**

No further public comments were shared.

## **10. RECESS INTO CLOSED SESSION**

- a. Public Employee Performance Evaluation

Chair Wunderman thanked everyone and closed the open session of the meeting. The Directors returned to closed session pursuant to Government Code Section 54957 at 2:20 p.m., and Chair Wunderman noted that any outcomes would be reported at the next meeting.

The Directors returned to open session at 2:47 p.m. with no action to report.

With all business concluded, Chair Wunderman adjourned the meeting at 2:48 p.m.

- Board Secretary

\*\*\*END\*\*\*



MEMORANDUM

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**TO:** Board Members

**FROM:** Seamus Murphy, Executive Director  
Melanie Jann, Board Secretary/Administration & Business Services Manager

**SUBJECT:** Approve Board of Directors Meeting Schedule for Calendar Year 2022

**Recommendation**

Approve WETA Board of Directors meeting schedule for Calendar Year 2022.

**Discussion**

The WETA Board of Directors has traditionally met on the first or second Thursday of the month at 1:30 p.m. at the Port of San Francisco's offices at Pier 1 in downtown San Francisco with exceptions made to address holidays, business conflicts, or occasional travel meetings. Beginning in March 2020, WETA meetings have been conducted through virtual participation to promote social distancing and reduce the chance of COVID-19 transmission consistent with Governor Gavin Newsom's Executive Order N-25-20.

Based upon a review of the 2022 calendar, staff proposes to establish the following meeting calendar:

<b>DATE:</b>	<b>TIME:</b>	<b>LOCATION/ADDRESS:</b>
Thursday, January 13	1:00 p.m.	TBD
Thursday, February 3	1:00 p.m.	TBD
Thursday, March 3	1:00 p.m.	TBD
Thursday, April 7	1:00 p.m.	TBD
Thursday, May 5	1:00 p.m.	TBD
Thursday, June 2	1:00 p.m.	TBD
Thursday, July 7	1:00 p.m.	TBD
Thursday, August 4	1:00 p.m.	TBD
Thursday, September 1	1:00 p.m.	TBD
Thursday, October 6	1:00 p.m.	TBD
Thursday, November 3	1:00 p.m.	TBD
Thursday, December 8	1:00 p.m.	TBD

This schedule may be amended during the year to adjust the time, meeting place, or number of meetings held in response to WETA's business needs and at the direction of the Board Chair. Staff

recommends setting the calendar now for the full year, without specifying any location, acknowledging that the location(s) will be set as the status of the COVID-19 pandemic evolves and in the event it becomes safe and advisable to resume in-person public meetings. Consistent with prior year practice and Board interest, once in-person meetings resume, staff would work with the Board and/or the Board Chair to identify and coordinate opportunities for travel or special meetings that provide the best opportunity, considering meeting content and Board member availability, for diverse public engagement.

**Fiscal Impact**

There is no fiscal impact associated with setting the Board meeting calendar.

\*\*\*END\*\*\*

MEMORANDUM

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**TO:** Board Members

**FROM:** Seamus Murphy, Executive Director  
Erin McGrath, Chief Financial Officer

**SUBJECT:** Authorize Execution of Documents for Transit and Intercity Rail Capital Program

**Recommendation**

Authorize the Executive Director or his designee to execute all documents related to the Transit and Intercity Rail Capital Program, on behalf of WETA, including the Master Agreement, supplemental agreements, any related Certifications and Assurances and Authorized Agent forms.

**Background**

The Transit and Intercity Rail Capital Program (TIRCP) was created in 2014 to provide grants from the Greenhouse Gas Reduction Fund (GGRF) to fund transformative capital improvements that will modernize California's intercity, commuter, and urban rail systems, and bus and ferry transit systems, to significantly reduce emissions of greenhouse gases, vehicle miles traveled, and congestion. The GGRF is funded by auction proceeds from the California Air Resources Board's (CARB) Cap-and-Trade Program.

In April of 2020, WETA was awarded \$9.06 million from the State of California through the TIRCP to invest in zero-emission ferries and related shoreside charging infrastructure.

Before providing funding, the state requires WETA's Board to authorize execution of documents related to the grant, which would include a Master Agreement, supplemental agreements with more detailed information relating to the grant, and grant amendments and reports. The certifications and assurances referenced in the resolution are designed to assure the state that WETA will follow applicable accounting, auditing, contracting, environmental and eligibility requirements related to the grant. For the most part these relate to applicable state and federal code sections that WETA would follow regardless of the expense. In addition, WETA's administrative code requires that the Board approve all agreements that include indemnification clauses. The state's Master Agreement includes an indemnification clause and is attached to this report. WETA has entered into similar agreements with the state for other funding sources.

**Fiscal Impact**

The Fiscal Year 2021-22 budget includes \$3.8 million in TIRCP funds for the construction of an all-electric vessel and infrastructure needs. Approval of this item will allow staff to move forward with the execution of the funding agreement and required supplemental forms.

\*\*\*END\*\*\*

California State Transportation Agency  
Transit and Intercity Rail Capital Program

Grant Recipient:

San Francisco Bay Area Water Emergency  
Transportation Authority

CalSTA Transit and Intercity Rail Capital Program Administered by:

California Department of Transportation  
Division of Rail and Mass Transportation  
1120 N Street, Room 3300  
P.O. Box 942874, MS-39  
Sacramento, California 94274-0001

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**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

Effective Date of this Agreement: November 1, 2021, or upon final signature,  
whichever is later

Termination Date of this Agreement: November 1, 2031

Recipient: San Francisco Bay Area Water Emergency  
Transportation Authority

Application Funding: The Greenhouse Gas Reduction Fund and  
Senate Bill 1 Fund are the applicable funding  
source covered by this Agreement and will  
identified in each specific Program  
Supplement, adopting the terms of this  
Agreement.

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**RECITALS**

1. WHEREAS, The Global Warming Solutions Act of 2006 (the "ACT") (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California. AB 32 requires California to reduce greenhouse gases to 1990 levels by 2020, and to maintain and continue reductions beyond 2020. In March 2012, Governor Brown signed Executive Order B-16-2012 affirming a long-range climate goal for California to reduce greenhouse gases from the transportation sector to 80 percent below 1990 levels by 2050.

2. WHEREAS, the Cap-and-Trade Program is a key element in California's climate plan. It creates a limit on the emissions from sources responsible for 85 percent of California's greenhouse gas emissions, establishes the price signal needed to drive long-term investment in cleaner fuels and more efficient use of energy, and gives covered entities flexibility to implement the lowest-cost options to reduce greenhouse gas emissions.

3. WHEREAS, in 2012, the Legislature passed and Governor Brown signed into law three bills, AB 1532 (Pérez, Chapter 807, Statutes of 2012), Senate Bill (SB) 535 (De León, Chapter 830, Statutes of 2012), and SB 1018 (Budget and Fiscal Review Committee, Chapter 39, Statutes of 2012), that established the Greenhouse Gas Reduction Fund (GGRF) to receive proceeds from the distribution of allowances via auction and provided the framework for how those auction proceeds will be

appropriated and expended. These statutes require that expenditures from the GGRF be used to facilitate the achievement of greenhouse gas emission reductions and further the purposes of AB 32.

4. WHEREAS, in 2017, the Legislature passed and Governor Brown signed into law the Road Repair and Accountability Act of 2017 SB 1, which directed additional funding to the Transit and Intercity Rail Capital Program (TIRCP).

5. WHEREAS, TIRCP is one of several programs funded as part of the 2014-2015 State of California Budget (Senate Bill 852 and Senate Bill 862), and implemented pursuant to Public Resources Code section 75220 et seq and Health and Safety Code section 39719 et seq.

6. WHEREAS, as directed by the ACT, CalSTA established TIRCP Program Guidelines that describe the policy, standards, criteria, and procedures for the development, adoption and management of the TIRCP Program.

7. WHEREAS, Recipient has submitted an application, been evaluated and selected by CalSTA in accordance with the TIRCP Program Guidelines.

8. WHEREAS, on August 17, 2015, CalSTA delegated the administration of the TIRCP Program to the Department pursuant to the TIRCP Program Guidelines and the Department's policies and procedures for the administration of similar grant programs.

9. NOW THEREFORE, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following:

10. This Agreement, entered into effective as of the date set forth above, is between the signatory public entity identified hereinabove, (hereinafter referred to as Recipient), and the STATE OF CALIFORNIA, acting by and through the California Department of Transportation (hereinafter referred to as DEPARTMENT), and subject to the approval of the California State Transportation Agency (CalSTA).

## **ARTICLE I - DEFINITIONS**

The terms defined in this Article I shall for all purposes of this Agreement have the meanings specified herein.

1.1 "Act" refers to the Global Warming Solutions Act of 2006 (the "ACT") (Assembly Bill [AB] 32, Nunez, Chapter 488) created a comprehensive program to reduce greenhouse gas emissions in California.



1.2 “Agreement” shall mean this Agreement, inclusive of all appendices and Program Supplements, whereby the Department, on behalf of CalSTA, and pursuant to the Act and as set forth herein, administers the TIRCP Program.

1.3 “Award Agreement” shall mean a project-specific subcontract to this agreement executed following Project award and may include Project specific information, expected outcomes, and deliverables.

1.4 “California Department of Transportation” or “Caltrans” or “Department” means the State of California, acting by and through its Department of Transportation of the State of the State of California, and any entity succeeding to the powers, authorities and responsibilities of the Department invoked by or under this Agreement or the Program Supplements.

1.5 “California Transportation Commission” or “CTC” shall refer to the commission established in 1978 by Assembly Bill 402 (Chapter 1106, Statutes of 1977).

1.6 “Effective Date” means the date set forth on page 4 of this Agreement.

1.7 “Greenhouse Gas Reduction Funds” or “GGRF” shall mean the funds subject to Chapter 26, Statutes of 2014, authorizing the State to fund capital improvements and operational investments for California’s transit systems and intercity, commuter, and urban rail systems.

1.8 “Senate Bill 1” or “SB 1” shall mean the funds subject to Chapter 5, Statutes of 2017, authorizing the State to fund capital improvements and investments for California’s transit systems and intercity, commuter, and urban rail systems.

1.9 “Overall Funding Plan” has the meaning set forth in Article II, Section 2(A)(5)(C).

1.10 “Program Guidelines” shall mean the policy, standards, criteria, and procedures for the development, adoption and management of the TIRCP Projects established by CalSTA and provided in Appendix A.

1.11 “Program Supplement” shall mean a project-specific subcontract to this Agreement that is executed following a CTC approved action and includes all Project specific information needed to encumber funding and shall include expected outcomes and deliverables. Also referred to as Project Supplement Agreement.

1.12 “Program Supplement Last Expenditure Date” and refers to the last date for Recipient to incur valid Project costs or credits.

1.13 “Program Supplement Termination” shall occur when the Recipient's obligations have been fully performed as set forth in Article II, Section 2D and Article III, Section 3(C)(2) or when terminated by convenience as set forth in Article III, Section 3(C)(1).

1.14 “Project” shall mean the project identified in Recipient's application.

1.15 “Project Closeout Report” shall have the meaning set forth in Article II, Section 3(B).

1.16 “Project Financial Plan” shall have the meaning set forth in Article II, Section 2(A)(5)(d).

1.17 “Progress Payment Invoice” shall have the meaning set forth in Article II, Section 3A.

1.18 “Project Schedule” has the meaning set forth in Article II, Section 2(A)(5)(b).

1.19 “Scope of Work” has the meaning set forth in Article II, Section 2(A)(5)(a).

1.20 “Secretary” shall mean the Secretary of the California State Transportation Agency (CalSTA). Unless the context otherwise requires, any reference to the Secretary includes CalSTA and its officers and employees.

1.21 “State” shall mean the State of California.

1.22 “TIRCP Projects” shall mean projects that are selected and funded pursuant to the Transit and Intercity Rail Capital Program.

## **ARTICLE II – TIRCP PROJECTS AND ADMINISTRATION**

### **Section 1. TIRCP Projects and Project Management**

1. TIRCP Projects, pursuant to the Act, are established by CalSTA in accordance with the TIRCP Program Guidelines. Under delegation from CalSTA, the Department will administer the TIRCP Program in accordance with the TIRCP Program Guidelines and best management practices identified in the administration of similar Department grant programs.

2. By this reference, TIRCP Program Guidelines are made an express part of this Agreement and shall apply to each TIRCP Program funded Project as may be amended or updated. Recipient will cause its specific TIRCP mandated Resolution to be attached as part of any TIRCP funded Program Supplement as a condition precedent to the acceptance of GGRF or SB 1 Funds (upon availability and allocation), for such project.

3. All inquiries during the term of this Agreement and any applicable Program Supplement will be directed to the project representatives identified below:

State's Project Administrator:  
Department of Transportation  
Gary Atwal  
Chief, Capital Projects, North Branch  
Phone: 916-657-1798  
Email: [gary.atwal@dot.ca.gov](mailto:gary.atwal@dot.ca.gov)

Recipient's Project Administrator:  
San Francisco Bay Area Water  
Emergency Transportation Authority  
Seamus Murphy  
(415) 364-3188  
[murphy@watertransit.org](mailto:murphy@watertransit.org)

## **Section 2. Program Supplement**

### *A. General*

1. This Agreement shall have no force and effect with respect to the Project unless and until a separate Project specific program supplement hereinafter referred to as "Program Supplement," adopting all of the terms and conditions of this Agreement has been fully executed by both State and Recipient.

2. Recipient agrees to complete the defined scope of work for the Project, described in the Program Supplement adopting all of the terms and conditions of this Agreement.

3. A financial commitment of actual funds will only occur in each detailed and separate Program Supplement. No funds are obligated by the prior execution of this Agreement alone.

4. Recipient further agrees, as a condition to the release and payment of the funds encumbered for the scope of work described in each Program Supplement, to comply with the terms and conditions of this Agreement and all the agreed-upon special covenants and conditions attached to or made a part of the Program Supplement identifying and defining the nature of that specific scope of work.

5. The Program Supplement shall include a detailed scope of work, which shall include but not be limited to, a Project Description, a Project Schedule, an Overall Funding Plan, and a Project Financial Plan as required in the TIRCP Program Guidelines.

a. The Scope of Work shall include a detailed description of the Project and will itemize the major tasks and their estimated costs.

b. The Project Schedule shall include major tasks and/or milestones and their associated beginning and ending dates and duration.

c. The Overall Funding Plan shall itemize the various Project Components, the committed funding program(s) or source(s), and the matching funds to be provided by Recipient and/or other funding sources, if any [these Components include Environmental and Permits; Plans, Specifications and Estimates (PS&E); Right-of-Way (ROW); and Construction (including transit vehicle acquisition)].

d. The Project Financial Plan shall identify estimated expenditures for the Project Component by funding source, provided that for the purposes of this Agreement the State is only monitoring compliance for expenditures for the TIRCP, including but not limited to GGRF and SB 1 Funds allocated for the Project Component.

6. Adoption and execution of the Program Supplement by Recipient and State, incorporating the terms and conditions of this Agreement into the Program Supplement as though fully set forth therein, shall be sufficient to bind Recipient to these terms and conditions when performing the Project. Unless otherwise expressly delegated to a third-party in a resolution by Recipient's governing body, which delegation must be expressly assented to and concurred in by State, the Program Supplement shall be managed by Recipient.

7. The estimated cost and scope of the Project will be as described in the applicable Program Supplement.

8. The State shall not participate in any funding for the Project beyond those amounts actually encumbered by the STATE as evidenced in the applicable Program Supplement unless the appropriate steps are followed and approval is granted by the CTC as described below.

9. Upon the stated expiration date of this Agreement, any Program Supplement executed under this Agreement for the Project with obligations yet to be completed pursuant to the approved Project Schedule, deliverables, and reporting requirements shall be deemed to extend the term of this Agreement only to conform to the specific Project termination or completion date, including completion of deliverables and reporting requirements, contemplated by the applicable Program Supplement to allow that uncompleted Project to be administered under the extended terms and conditions of this Agreement.

9. Total project cost includes the cost of a project for all phases (Plans, Specifications, and Estimates (PS&E), Project Approval and Environmental Document (PA&ED) Right-of-Way (ROW), and Construction (CON) including rolling stock) of a Project from start to finish.

B. *Project Overrun*

1. If Recipient or the State determine, at any time during the performance of the Project, that the Project budget may be exceeded, Recipient shall take the following steps:

a. Notify the designated State representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which Recipient will institute to bring the Project Budget into balance; and

b. Identify the source of additional Recipient or other third-party funds that can be made available to complete Project. Recipient agrees that the allocation of the GGRF and SB 1 funds is subject to the allocation proposed by the CalSTA, submitted by the State, and approved by the CTC.

C. *Cost Savings and Project Completion*

1. Recipient is encouraged to evaluate design and construction alternatives that would mitigate the costs of delivering the commitments for the Project. Recipient shall take all steps necessary on a commercially reasonable basis that would generally be taken in accordance with best management practices. In determining cost savings, the Parties shall take into account all avoided costs, including avoided design, material, equipment, labor, construction, testing, acceptance and overhead costs and avoided costs due to time savings, and all the savings in financing costs associated with such avoided costs.

2. If there is an identification and implementation of any CalSTA approved alternative resulting in reduction of the Project costs, the parties agree that the recipient shall provide a prorated share of Project or TIRCP funded Project component cost savings based on the overall project match to the Department no later than 30 days after the submission of the final invoice. Subject to CalSTA's approval, savings may be used towards another project component or towards increasing project benefits that are consistent with the original project award while maintaining the overall project match referenced in the project award and program supplements.

3. Program supplements will indicate the Project or Component proration of funding match.

4. The Recipient agrees to complete the Project and accepts sole responsibility for the payment of any cost increases. If either the Project or the funded components are not completed, the Recipient shall bear the burden of full TIRCP funds reimbursement to the Department.

*D. Scope of Work*

1. Recipient shall be responsible for complete performance of the work described in the approved Program Supplement for the Project related to the commitment of encumbered funds. All work shall be accomplished in accordance with the applicable provisions of the Act, Public Utilities Code, the Streets and Highways Code, the Government Code, and other applicable statutes and regulations.

2. Recipient acknowledges and agrees that Recipient is the sole control and manager of the Project and its subsequent employment, operation, repair and maintenance for the benefit of the public. Recipient shall be solely responsible for complying with the funding and use restrictions established by (a) the statutes from which the GGRF and SB1 Funds are derived, (b) the CTC, (c) the State Treasurer, (d) the Internal Revenue Service, (e) the applicable Program Supplement, and (f) this Agreement.

3. Recipient acknowledges and agrees that the Recipient is responsible for complying with all reporting requirements established by the TIRCP Guidelines and California Air Resource Board (CARB) Funding Guidelines.

*E. Program Supplement Amendments*

Program Supplement amendments will be required whenever there are CalSTA or CTC approved actions, including but not limited to, Financial Allocations, Financial Allocation Amendments, Time Extensions and Technical Corrections. These changes shall be mutually binding upon the Parties only following the execution of a Program Supplement amendment.

**Section 3. Allowable Costs and Payments**

*A. Allowable Costs and Progress Payment Invoice*

1. Not more frequently than once a month, Recipient will prepare and submit to State signed Progress Payment Invoice for actual Project costs incurred and paid for by Recipient consistent with the allocation and Scope of Work document in the Program Supplement and State shall pay those uncontested allowable costs once the invoice is reviewed and approved by the Department, subject to CalSTA's approval. If no costs were incurred during any given quarter, Recipient is exempt from submitting a signed Progress Payment Invoice.

2. State shall not be required to reimburse more funds, cumulatively, per quarter of any fiscal year greater than the sums identified and included in the Project Financial Plan. The State shall hold the right to determine reimbursement availability based on an approved expenditure plan and TIRCP anticipated or actual funding capacity. Each such invoice will report the total of Project expenditures from GGRF and SB 1 Funds (including those of Recipient and third parties) and will specify the percent of State reimbursement requested and the GGRF and SB 1 Funds source.

B. *Final Invoice*

The Program Supplement Last Expenditure Dates(s) refer to the last date for Recipient to incur valid Project costs or credits. Recipient has one hundred and eighty (180) days after that Last Expenditure Date to make already incurred final allowable payments to Project contractors or vendors, prepare the Project Closeout Report, and submit the final invoice to State for reimbursement of allowable Project costs before those remaining State funds are unencumbered and those funds are reverted as no longer available to pay any Project costs. Recipient expressly waives any right to allowable reimbursements from State pursuant to this Agreement for costs incurred after that termination date and for costs invoiced to Recipient for payment after that one hundred and eightieth (180<sup>th</sup>) day following the Project Last Expenditure Date.

## **ARTICLE III – GENERAL PROVISIONS**

### **Section 1. Funding**

1. Recipient agrees to contribute at least the statutorily or other required local contribution of matching funds (other than State or federal funds), if any is specified within the Program Supplement or any appendices thereto, toward the actual cost of the Project or the amount, if any, specified in any executed SB 2800 (Streets and Highways Code Section 164.53) Agreement for local match fund credit, whichever is greater. Recipient shall contribute not less than its required match amount toward the Project cost in accordance with a schedule of payments as shown in the Project Financial Plan prepared by Recipient and approved by State as part of a Program Supplement.

### **Section 2. Audits and Reports**

A. *Cost Principles*

1. Recipient agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local Government, and Audit Requirements for Federal Awards.

2. Recipient agrees, and will assure that its contractors and subcontractors will be obligated to follow 2 CFR 200 and which shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200.

3. Any Project costs for which Recipient has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by Recipient to State. Should Recipient fail to reimburse moneys due State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, State is authorized to intercept and withhold future payments due to Recipient from State or any third-party source whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller and the CTC.

4. The State may terminate the grant for any reason at any time if it is determined by the State, based on an audit under this section, that there has been a violation of any State or federal law or policy by the Recipient during performance under this or any other grant agreement or contract entered into with the State. If the grant is terminated under this section, the Recipient may be required to fully or partially repay funds.

*B. Record Retention*

1. Recipient 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 Recipient, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Recipient, its contractors and subcontractors connected with Project performance under this Agreement and each Program Supplement shall be maintained for a minimum of three (3) years from the date of final payment to Recipient under a Program Supplement and shall be held open to inspection, copying, and audit by representatives of State, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by Recipient, its contractors, and subcontractors upon receipt of any request made by State or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, State will rely to the maximum extent possible on any prior audit of Recipient pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by Recipient's external and



internal auditors may be relied upon and used by 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 Recipient's contracts with third parties pursuant to Government Code section 8546.7, Recipient, Recipient's contractors and subcontractors, and 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 Agreement and Program Supplement 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 to Recipient under any Program Supplement. State, the California State Auditor, or any duly authorized representative of State or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and Recipient shall furnish copies thereof if requested.

3. Recipient, 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 State, for the purpose of any investigation to ascertain compliance with this Agreement and the Act.

*C. Reporting Requirements*

1. Reporting requirements of Recipient will include whether reported implementation activities are within the scope of the Project Program Supplement and in compliance with State laws, regulations, and administrative requirements.

2. TIRCP Progress Reporting shall be no more frequently than monthly and no less frequently than quarterly at the discretion of the State and shall generally include the following information;

a. Activities and progress made towards implementation of the project during the reporting period and activities anticipated to take place in the next reporting period;

b. Identification of whether the Project is proceeding on schedule and within budget;

c. Identification of whether the Project Deliverables are proceeding on schedule.

d. Identification of changes to the Project funding plan, milestone schedule, or deliverables completion date;

e. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties for either the Project or other State funded projects impacted by the Project's scope of work and the efforts or activities being undertaken to minimize impacts to schedule, cost, or deliverables;

3. CARB Reporting shall be no more frequently than monthly and no less frequently than semiannually at the discretion of CARB and shall include the following information (subject to modification by CARB);

a. Identify metrics and benefits achieved for disadvantaged communities, low income communities, and/or low-income households;

b. continued reporting following project implementation to identify benefits achieved.

c. Any and all other requirements instituted by CARB.

4. Within one year of the Project or reportable Project components becoming operable, the implementing agency must provide a final delivery report including at a minimum:

a. Scope of completed Project as compared to Programmed Project;

b. Performance outcomes derived from the project as compared to outcomes described in the Project application and shall include but not be limited to before and after measurements and estimates for ridership, service levels, greenhouse gas reductions, updated estimated greenhouse gas reductions over the life of the project, benefits to disadvantaged communities, low income communities, and/or low income households, and project co-benefits as well as an explanation of the methodology used to quantify the benefits.

c. Before and after photos documenting the project

d. The final costs as compared to the approved project budget by component and fund type, and an estimate of the TIRCP funds spent to benefit disadvantaged communities, low-income communities, and/or low-income households, and

e. The project duration as compared to the project schedule in the project application.

### **Section 3. Special Requirements**

#### *A. California Transportation Commission Resolutions*

1. Recipient shall adhere to applicable CTC policies on “Timely Use of Funds” as stated in Resolution G-06-04, adopted April 26, 2006, addressing the expenditure and reimbursement of GGRF and SB 1 Funds. These resolutions, and/or successor resolutions in place at the time a Program Supplement is executed, shall be applicable to GGRF and SB 1 funds, respectively.

2. Recipient shall be bound to the terms and conditions of this Agreement, the Project application contained in the Program Supplement (as applicable); and CTC Resolutions G-06-04, G-09-11 and/or their respective successors in place at the time the Program Supplement is signed (as applicable) and all restrictions, rights, duties and obligations established therein on behalf of State and CTC shall accrue to the benefit of the CTC and shall thereafter be subject to any necessary enforcement action by CTC or State. All terms and conditions stated in the aforesaid CTC Resolutions and CTC-approved Guidelines in place at the time the Program Supplement is signed (if applicable) shall also be considered to be binding provisions of this Agreement.

3. Recipient shall conform to any and all permit and mitigation duties associated with Project as well as all environmental obligations established in CTC Resolution G-91-2 and/or its successors in place at the time a Program Supplement is signed, as applicable, at the expense of Recipient and/or the responsible party and without any further financial contributions or obligations on the part of State unless a separate Program Supplement expressly provides funding for the specific purpose of hazardous materials remediation.

#### *B. Recipient Resolution*

1. Recipient has executed this Agreement pursuant to the authorizing Recipient resolution, attached as Appendix B to this Agreement, which empowers Recipient to enter into this Agreement and which may also empower Recipient to enter into all subsequent Program Supplements adopting the provisions of this Agreement.

2. If Recipient or State determines that a separate Resolution is needed for each Program Supplement, Recipient will provide information as to who the authorized designee is to act on behalf of the Recipient to bind Recipient with regard to the terms and conditions of any said Program Supplement or

amendment and will provide a copy of that additional Resolution to State with the Program Supplement or any amendment to that document.

c. *Termination*

1. Termination Convenience by State

a. State reserves the right to terminate funding for any Program Supplement, subject to CalSTA approval, upon written notice to Recipient in the event that Recipient fails to proceed with Project work in accordance with the Program Supplement, or otherwise violates the conditions of this Agreement and/or the Program Supplement or the funding allocation such that substantial performance is significantly endangered.

b. No such termination shall become effective if, within thirty (30) days after receipt of a notice of termination, Recipient either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, Recipient proceeds thereafter to complete the cure in a manner and time line acceptable to State. Any such termination shall be accomplished by delivery to Recipient of a notice of termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this Agreement is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, Recipient and State shall meet to attempt to resolve any dispute.

c. Following a fund encumbrance made pursuant to a Program Supplement, if Recipient fails to expend GGRF or SB 1 monies within the time allowed specified in the Program Supplement, those funds may revert, and be deemed withdrawn and will no longer be available to reimburse Project work unless those funds are specifically made available beyond the end of that Fiscal Year through re-appropriation or other equivalent action of the Legislature and written notice of that action is provided to Recipient by State.

d. In the event State terminates a Program Supplement for convenience and not for a default on the part of Recipient as is contemplated in this section, Recipient shall be reimbursed its authorized costs up to State's proportionate and maximum share of allowable Project costs incurred to the date of Recipient's receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by Recipient to effect such termination following receipt of that termination notice.

2. Termination After Recipient's Obligations Fully Performed

Following project completion, and all obligations as defined in the TIRCP Guidelines, CARB Guidelines, and Program Supplement are fully performed, including Project completion of all deliverables and reporting, the Program Supplement shall be terminated. If the Project obligations are not fully performed, as defined under this section, the Recipient may be required to fully or partially repay funds.

D. *Third Party Contracting*

1. Recipient shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this Agreement without the prior written approval of State. Contracts awarded by Recipient, if intended as local match credit, must meet the requirements set forth in this Agreement regarding local match funds.

2. Any subcontract entered into by Recipient as a result of this Agreement shall contain the provisions of ARTICLE III – GENERAL PROVISIONS, Section 2. Audits and Reports and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

3. In addition to the above, the preaward requirements of third-party contractor/consultants with local transit agencies should be consistent with Local Program Procedures (LPP-00-05).

E. *Change in Funds and Terms/Amendments*

This Agreement and the resultant Program Supplements may be modified, altered, or revised only with the joint written consent of Recipient and State.

F. *Project Ownership*

1. Unless expressly provided to the contrary in a Program Supplement, subject to the terms and provisions of this Agreement, Recipient, or a designated subrecipient acceptable to State, as applicable, shall be the sole owner of all improvements and property included in the Project constructed, installed or acquired by Recipient or subrecipient with funding provided to Recipient under this Agreement. Recipient, or subrecipient, as applicable, is obligated to continue operation and maintenance of the physical aspects of the Project dedicated to the public transportation purposes for which Project was initially approved unless Recipient, or subrecipient, as applicable, ceases ownership of such Project property; ceases to utilize the Project property for the intended public transportation purposes; or sells or transfers title to or control over Project

and State is refunded the Credits due State as provided in paragraph (2) herein below.

2. Project right-of-way, Project facilities constructed or reconstructed on the Project site and/or Project property (including vehicles and vessels) purchased by Recipient (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain permanently dedicated to the described public transit use in the same proportion and scope, and to the same extent as mandated in the Program Supplement, unless State agrees otherwise in writing. Vehicles acquired as part of Project, including, but not limited to, buses, vans, rail passenger equipment, shall be dedicated to that public transportation use for their full economic life cycle, which, for the purpose of this Agreement, will be determined in accordance with standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achievable by reconstruction, rehabilitation or enhancements. The exceptions to this section are outlined below:

a. Except as otherwise set forth in this Section, State, or any other State-assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (collectively the Credit), at State's sole option, equivalent to the proportionate Project funding participation received by Recipient from State if Recipient, or a sub-recipient, as applicable, (i) ceases to utilize Project for the original intended public transportation purposes or (ii) sells or transfers title to or control over Project. If federal funds (meaning only those federal funds received directly by Recipient and not federal funds derived through or from the State) have contributed to the Project, Recipient shall notify both State and the original federal source of those funds of the disposition of the Project assets or the intended use of those sale or transfer receipts.

b. State shall also be entitled to an acquisition credit for any future purchase or condemnation of all or portions of Project by State or a designated representative or agent of State.

c. The Credit due State will be determined by the ratio of State's funding when measured against the Recipient's funding participation (the Ratio). For purposes of this Section, the State's funding participation includes federal funds derived through or from State. That Ratio is to be applied to the then present fair market value of Project property acquired or constructed as provided in (d) and (e) below.

d. For Mass Transit vehicles, this Credit [to be deducted from the then remaining equipment value] shall be equivalent to the percentage of the full extendable vehicle economic life cycle remaining, multiplied by the Ratio of

funds provided for that equipment acquisition. For real property, this same funding Ratio shall be applied to the then present fair market value, as determined by State, of the Project property acquired or improved under this Agreement.

e. Such Credit due State as a refund shall not be required if Recipient dedicates the proceeds of such sale or transfer exclusively to a new or replacement State approved public transit purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due State should that replacement project or those replacement vehicles cease to be used for that intended described pre-approved public transit purpose.

i. In determining the present fair market value of property for purposes of calculating State's Credit under this Agreement, any real property portions of the Project site contributed by Recipient shall not be included. In determining State's proportionate funding participation, State's contributions to third parties (other than Recipient) shall be included if those contributions are incorporated into the Project.

ii. Once State has received the Credit as provided for above because Recipient, or a sub-recipient, as applicable, has (a) ceased to utilize the Project for the described intended public transportation purpose(s) for which State funding was provided and State has not consented to that cessation of services or (b) sold or transferred title to or control over Project to another party (absent State approval for the continued transit operation of the Project by that successor party under an assignment of Recipient's duties and obligations), neither Recipient, subrecipient, nor any party to whom Recipient or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this Agreement to continue operation of Project and/or Project facilities for those described public transportation purposes, but may then use Project and/or any of its facilities for any lawful purpose.

iii. To the extent that Recipient operates and maintains Intermodal Transfer Stations as any integral part of Project, Recipient shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of State, Recipient shall also authorize State-funded bus services to use those stations and appurtenances without any charge to State or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).

## G. *Disputes*

Parties shall develop a mutually agreed upon issue resolution process, as described below, and issues between the Parties are to be resolved in a timely manner. The Parties agree to the following:

1. If the Parties are unable to reach agreement on any particular issue relating to either Parties' obligations pursuant to this Agreement, the Parties agree to promptly follow the issue resolution process as outlined below:

a. The Department's project manager and the Recipient's equivalent may initiate the process of informal dispute resolution by providing the other Party with written notice of a dispute. The written notice shall provide a clear statement of the dispute and shall refer to the specific provisions of this Agreement or Program Supplement that pertain to the dispute. The Department's project manager and the Recipient's equivalent shall meet and attempt to resolve the dispute within five days from the written notice. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

b. If the dispute is not resolved by the fifth day from the written notice, the Department's senior project manager and the Recipient's equivalent shall meet and review the dispute within five days. The Department's senior project manager and the Recipient's equivalent manager shall attempt to resolve the dispute within ten days of their initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

c. If the dispute is not resolved by the tenth day, the Department's Director or his designee and the Recipient's equivalent manager shall meet and review the dispute within five days. The Department's Director or his designee and the Recipient's equivalent manager shall attempt to resolve the dispute within ten days of the initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties. If the dispute is not resolved by the tenth day by the Department's Director or his designee and the Recipient's equivalent manager, the Parties shall submit the matter to the Secretary of CalSTA for a final administrative determination.

## H. *Hold Harmless and Indemnification*

1. Neither State nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Recipient, its agents and contractors under or in connection with any



work, authority, or jurisdiction delegated to Recipient under this Agreement or any Program Supplement or as respects environmental clean-up obligations or duties of Recipient relative to Project. It is also understood and agreed that, Recipient shall fully defend, indemnify and hold the CTC and State and their officers and employees harmless from any liability imposed for injury and damages or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by Recipient under or in connection with any work, authority, or jurisdiction delegated to Recipient under this Agreement and all Program Supplements.

2. Recipient shall indemnify, defend and hold harmless State, the CTC and the State Treasurer relative to any misuse by Recipient of State funds, Project property, Project generated income or other fiscal acts or omissions of Recipient.

I. *Labor Code Compliance*

Recipient shall include in all subcontracts awarded using Project funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of Contract award by the Recipient.

J. *Non-Discrimination Clause*

1. In the performance of work under this Agreement, Recipient, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and disability leave. Recipient, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Recipient, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of Recipient's contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

2. Each of the Recipient's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements. The Recipient shall include the non-discrimination and compliance provisions hereof in all contracts and subcontracts to perform work under this Agreement.

3. Should federal funds be constituted as part of Project funding or compensation received by Recipient under a separate Contract during the performance of this Agreement, Recipient shall comply with this Agreement and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.

4. Recipient shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

5. The Recipient shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes—Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term "Contractor" appears therein, it shall mean the Recipient.

6. The Recipient shall permit, and shall require that its contractors, subcontractors, and subrecipients will permit, access to all records of employment, employment advertisements, 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 Department to investigate compliance with this Section J.

K. *State Fire Marshal Building Standards Code*

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, Recipient shall request that the State Fire Marshal review Project PS&E to ensure Project consistency with State fire protection standards.

L. *Americans with Disabilities Act*

By signing this Master Agreement, Recipient assures State that Recipient shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits

discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).

M. *Access for Persons with Disabilities*

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. Recipient will award no construction contract unless Recipient's plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

N. *Disabled Veterans Program Requirements*

1. Should Military and Veterans Code sections 999 et seq. be applicable to Recipient, Recipient will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or Recipient's applicable higher goals) in the award of every contract for Project work to be performed under these this Agreement.

2. Recipient shall have the sole duty and authority under this Agreement and each Program Supplement to determine whether these referenced code sections are applicable to Recipient and, if so, whether good faith efforts asserted by those contractors of Recipient were sufficient as outlined in Military and Veterans Code sections 999 et seq.

O. *Environmental Process*

Completion of the Project environmental process ("clearance") by Recipient (and/or State if it affects a State facility within the meaning of the applicable statutes) is required prior to requesting Project funds for right-of-way purchase or construction. No State agency may request funds nor shall any State agency, board or commission authorize expenditures of funds for any Project effort, except for feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied with all appropriate documentation of compliance with or exemption from the California Environmental Quality Act (CEQA) (including, if as appropriate, an environmental impact report, negative declaration, or notice of exemption) under California Public Resources Code section 21080(b) (10), (11), and (12) provides an exemption for a passenger rail project that institutes or increases passenger or commuter services on rail or highway rights-of-way already in use.

P. *Force Majeure*

Each party will be excused from performance of its obligations where such non-performance is caused by any extraordinary event beyond its reasonable control, such as any non-appealable order, rule or regulation of any federal or state governmental body, fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, pandemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a *force majeure* event occur which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the existing Master Agreement or Supplemental Agreement to deal with such event and to seek additional sources of funding to continue the operation of the Service.

## **ARTICLE IV – MISCELLANEOUS PROVISIONS**

### **Section 1. Miscellaneous Provisions**

A. *Successor Acts*

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

B. *Successor and Assigns to the Parties*

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party; provided, that unless otherwise expressly required herein, a party shall not be obligated to obtain the written consent of the other party with respect to any contract related to the Service for the provision of goods and/or services to the contracting party in the ordinary course of business.

C. *Notice*

Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to

such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to the Department:

State of California

Department of Transportation

Division of Rail and Mass Transportation

P.O. Box 942874

Sacramento, CA 994274-0001

Attention: Division of Rail and Mass Transit TIRCP Contract Manager, Mail Stop 39

with a copy to:

California State Transportation Agency

915 Capitol Mall Suite 350 B

Sacramento, CA 95814

If given to the Recipient:

San Francisco Bay Area Transportation Authority

3331 North First Street

San Jose, CA 95134

Attention: Mr. Seamus Murphy

D. *Amendment*

This Agreement may not be changed, modified, or amended except in writing, signed by the parties hereto, and approved in advance in writing by the Secretary, and any attempt at oral modification of this Agreement shall be void and of no effect.

E. *Representation and Warranties of the Parties*

1. Recipient hereby represents and warrants to the Department that:

a. Recipient is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Agreement.

b. Recipient has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which Recipient is a party; (ii) violate any write, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

2. The Department does hereby represent and warrant with respect to each provision of this Agreement to the Recipient that:

a. It validly exists with all requisite power and authority to carry on the activities proposed to be conducted pursuant to this Agreement.

b. It has the requisite power and authority to execute and deliver this Agreement and to carry out its obligations thereunder. The execution and delivery of this Agreement, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings are necessary to authorize this Agreement or to consummate the transactions contemplated thereby. The agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and other forms of equitable relief, and may be subject to

equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which the Recipient is a party; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

F. *Construction, Number, Gender and Captions*

The Agreements have been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used therein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

G. *Complete Agreement*

This Agreement, including Appendices, constitutes the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement. All attached Appendices A and B are hereby incorporated and made an integral part of this Agreement by this reference.

H. *Partial Invalidity*

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

I. *Conflicts*

To the extent that any provision of or requirement of this Agreement may conflict with a provision or requirement of any other agreement between the parties hereto, or between a party hereto and any other party, which is attached to this Agreement as an appendix, the priority of agreements shall be employed to resolve such conflict. In the event of a conflict, the Master Agreement controls the Program Supplement and any further Amendments.

J. *Counterparts*

This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

K. *Governing Law*

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**BY:** \_\_\_\_\_  
W.Kyle Gradinger  
Chief, Division of Rail and Mass  
Transportation

**DATE:** \_\_\_\_\_

**SAN FRANCISCO BAY FERRY / WATER  
EMERGENCY TRANSPORTATION  
AUTHORITY**

**BY:** \_\_\_\_\_  
Seamus Murphy  
Executive Director

**DATE:** \_\_\_\_\_

APPROVED AS TO FORM AND PROCEDURE

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**BY:** \_\_\_\_\_  
Deputy Attorney

**DATE:** \_\_\_\_\_



**APPENDIX A**  
**TIRCP PROGRAM GUIDELINES AND DEPARTMENT DELEGATION**

**(INSERT GUIDELINES AND DEPARTMENT DELEGATION)**

**APPENDIX B**  
**RECIPIENT'S RESOLUTION**  
**(INSERT AGENCY BOARD RESOLUTION)**

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**

**RESOLUTION NO. 2021-29**

**AUTHORIZE THE EXECUTIVE DIRECTOR TO SUBMIT AND EXECUTE ANY AND ALL GRANT APPLICATIONS, AGREEMENTS, CERTIFICATIONS AND ASSURANCES, AND ANY OTHER DOCUMENTS NECESSARY TO OBTAIN FINANCIAL ASSISTANCE PROVIDED BY THE CALIFORNIA STATE TRANSPORTATION AGENCY UNDER THE CAP AND TRADE PROGRAM**

**WHEREAS**, the California State Transportation Agency administers the Transit and Intercity Rail Capital Program and Low Carbon Transit Operations Program to eligible grantees for transportation improvements and greenhouse gas reduction projects; and

**WHEREAS**, WETA is an eligible grantee for funding from the Transit and Intercity Rail Capital Program; and

**WHEREAS**, in order to secure funding, WETA must agree to a Master Agreement, as well as additional supplemental documents and agreements relating to the grant; now, therefore be it

**RESOLVED**, that the Board of Directors authorizes the Executive Director or his designee to file and execute grant applications, grant agreements, certifications, assurances and other documents as may be necessary for obtaining financial assistance provided by the California State Transportation Agency.

**CERTIFICATION**

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on November 4, 2021.

YEA:

NAY:

ABSTAIN:

ABSENT:

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/s/ Board Secretary

2021-29

\*\*\*END\*\*\*

MEMORANDUM

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**TO:** Board Members

**FROM:** Seamus Murphy, Executive Director  
Erin McGrath, Chief Financial Officer

**SUBJECT:** Authorize Submission of State Transit Assistance Claim

**Recommendation**

Authorize the Executive Director and/or the Chief Financial Officer to execute all documents related to the drawdown of State Transit Assistance funds. Following approval, WETA staff will complete the documents necessary to receive \$5,289,400 in STA funds, which WETA will use to match \$21,157,300 in federal funds to implement the vessel replacement for the MV *Intintoli*.

**Background**

State Transit Assistance (STA) funds are derived from the statewide sales tax on diesel fuel and appropriated by the Legislature to the State Controller's Office. The State Controller then allocates the tax revenue, by formula, to planning agencies (such as the Metropolitan Transportation Commission (MTC)) and other selected agencies. The statute requires that 50 percent of STA funds be allocated according to population to the State's Regional Transportation Planning Agencies (RTPA), and 50 percent be allocated to public transit operators according to operator revenues from the prior fiscal year. Senate Bill 1 (Chapter 5, Statutes of 2017) augmented funding for the STA Program through a 3.5 percent increase in the diesel sales tax rate. The total amount of funding to be apportioned to transit operators in Fiscal Year (FY) 2021-22 is projected to be \$179 million; WETA's allocation is a projected \$2.3 million.

WETA will have in its account at the end of the fiscal year, \$16.1 million in STA funds accumulated since FY 2013-14. These funds have been set aside for capital projects such as the *Replacement Vessel – MV Intintoli* project. The MV *Intintoli* is reaching the end of its useful life and the FY 2021-22 budget assumed kickoff of this replacement project. The budget included \$500,000 for the project, which is in the early stages of procurement. Today's action will allow WETA staff to complete the documents necessary to request \$5,289,400 in STA funds through MTC, which are anticipated to be approved at MTC's December meeting. The STA funds will match \$21,157,300 in federal funds to implement the \$26.4 million *Replacement Vessel – MV Intintoli* project. The federal funding allocation decision was approved by the Board at its March 2021 meeting and is consistent with WETA's FY 2019/20 to FY 2028/29 Short Range Transit Plan.

**Fiscal Impact**

Approval of this item will allow staff to request programming of \$5,289,400 in STA revenue funds from MTC for the *Replacement Vessel – MV Intintoli* project and move forward with the execution of the funding agreement and supplemental forms required by MTC.

\*\*\*END\*\*\*

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**

**RESOLUTION NO. 2021-30**

**AUTHORIZING THE SUBMITTAL OF A CLAIM FOR STATE TRANSIT ASSISTANCE FUNDS AND DESIGNATION OF THE EXECUTIVE DIRECTOR AND/OR CHIEF FINANCIAL OFFICER AS AUTHORIZED AGENTS**

**WHEREAS**, WETA is an eligible project sponsor and may receive funding from the State Transit Assistance (STA) Revenue Program described in Public Utilities Code Section 99314; and

**WHEREAS**, the Metropolitan Transportation Commission (MTC) is the regional agency responsible for disbursement of STA Revenue Funds apportioned by the State Controller's Office; and

**WHEREAS**, MTC has developed guidelines for the purpose of administering and distributing STA funds to eligible project sponsors, described in MTC's Annual Fund Application Manual; and

**WHEREAS**, WETA wishes to use STA funds as matching funds for federal funds already allocated to implement *Replacement Vessel – MV Intintoli* project beginning this fiscal year; and

**WHEREAS**, WETA wishes to delegate authorization to submit and execute all required STA claim documents and any amendments thereto to the Executive Director and/or Chief Financial Officer, in accordance with MTC guidelines; now therefore, be it

**RESOLVED** that the Board of Directors hereby

1. Authorizes the submittal of the WETA claim for State Transit Assistance Revenue Funds to support the *Replacement Vessel – MV Intintoli* project to MTC; and
2. Agrees to comply with all conditions and requirements set forth in the MTC's Annual Fund Application Manual and applicable statutes, regulations and guidelines for all STA funded transit projects; and
3. Designates WETA's Executive Director and/or Chief Financial Officer to be authorized to execute all required documents of the STA program and any amendments thereto with MTC which may be necessary for the completion of the aforementioned project.

**CERTIFICATION**

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on November 4, 2021.

YEA:

NAY:

ABSTAIN:

ABSENT:

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/s/ Board Secretary

2021-30

\*\*\*END\*\*\*

MEMORANDUM

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**TO:** Board Members

**FROM:** Seamus Murphy, Executive Director  
Kevin Connolly, Manager, Planning & Development  
Tim Hanners, Manager, Operations  
Michael Gougherty, Principal Planner  
Arthi Krubanandh, Transportation Planner

**SUBJECT:** Authorize Release of a Request for Proposals for an Integrated Fare Ticketing System

**Recommendation**

Authorize release of a Request for Proposal (RFP) for an Integrated Fare Ticketing System.

**Background/Discussion**

The recent development and implementation of electronic fare payment technologies have enabled transit operators like WETA to improve their customer experience and streamline back-of-the office functions. At WETA, over 70 percent of riders pay fares using the Clipper system, which provides a single payment means for use on all Bay Area transit system and can be automatically replenished with value. At present, using Clipper is not a viable option for some WETA riders, who must rely upon non-Clipper fare payments options, including the WETA mobile ticketing platform, on-board paper ticketing system, and ticket reservation system for special event services. While the Clipper system continues to improve and evolve as a viable payment option for more riders, it remains likely that WETA will need to continue offering its non-Clipper payment options in the foreseeable future.

The non-Clipper payment systems currently in use by WETA are comprised of four different platforms offered by three different companies. For mobile ticketing, WETA awarded a contract to Hopthru in 2018 to develop, host, and maintain a mobile ticketing platform. Hopthru was acquired this year by Bytemark, which has rebranded the application to Passage and intends to transition to a new underlying technology in the near-term future. For on-board paper ticket sales, WETA currently uses both the Revel and Galaxy fare ticketing platforms for paper ticket purchases. These systems were procured and designed by Blue & Gold Fleet for use on its own services and are made available for use onboard WETA vessels. Lastly, WETA also uses the Galaxy system to offer an online reservation platform for riders to reserve and purchase tickets in advance for special event services.

Staff is requesting that the Board authorize release of an RFP for an Integrated Fare Ticketing System. An integrated ticketing system would potentially consolidate the four non-Clipper fare payment options in use by WETA, potentially offering several benefits and efficiencies relating to customer experience, customer service, cost, reporting, operations, and fare enforcement. The RFP will evaluate options for awarding contracts to a single proposer or multiple proposers to deliver all necessary components of an integrated fare payment system. Pending Board authorization, staff anticipates releasing an RFP for an Integrated Fare Ticketing System in November and returning to the Board as early as March 2022 with a recommendation for contract award.

**Fiscal Impact**

There is no fiscal impact associated with the release of this RFP.

\*\*\*END\*\*\*

**MEMORANDUM**

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**TO: Board Members**

**FROM: Seamus Murphy, Executive Director**

**SUBJECT: Approve Revisions to the Administrative Code to Address the FTA's Findings in the Fiscal Year 2021 Triennial Review Final Report**

**Recommendation**

Approve Resolution No. 2021-31, approving revisions to the Administrative Code to address the Federal Transit Administration's findings in the Fiscal Year 2021 Triennial Review Final Report.

**Background/Discussion**

The Triennial Review is one of the Federal Transit Administration's (FTA) management tools for examining recipient performance and adherence to current FTA requirements and policies. The Triennial Review process includes a pre-review assessment, a desk review and scoping meeting, and a virtual site visit. On February 13, 2021, WETA received notice that a review would be conducted during Fiscal Year (FY) 2021. The desk review and scoping meeting were conducted on July 29, 2021. The virtual site visit took place on August 10 through August 12, 2021. WETA received the FY 2021 Triennial Review Final Report (Final Report) on September 28, 2021.

The Final Report documents the FTA's assessment of WETA's compliance with federal requirements by examining a sample of award management and program implementation practices. The Triennial Review focused on WETA's compliance in 21 areas, including legal, financial management and capacity, technical capacity—award management, technical capacity—program management and subrecipient oversight, technical capacity—project management, transit asset management, satisfactory continuing control, maintenance, procurement, Disadvantaged Business Enterprise (DBE), Title VI, Americans with Disabilities Act (ADA)—General, ADA—Complementary Paratransit, Equal Employment Opportunity, School Bus, Charter Bus, Drug Free Workplace Act, Drug and Alcohol Program, Section 5307 Program Requirements, Section 5310 Program Requirements, and Section 5311 Program Requirements.

WETA had no repeat deficiencies from the 2018 Triennial Review. Of the 21 areas of audit, the FTA found no deficiencies in 14 areas and 6 areas were not applicable to WETA. The FTA made 5 findings in the area of procurement. Four of the five address technical issues that WETA will comply with through small modifications to the Procurement Checklist WETA staff uses to ensure compliance with FTA requirements. One audit finding requires a modification to WETA's Administrative Code. The FTA audit finding indicates that WETA's Administrative Code should explicitly require written procedures for procurement transactions to ensure that all procurements incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, as required in 2 Code of Federal Regulations (CFR) Section 200.319.

In compliance with the audit, Chapter 5 of the Administrative Code has been revised to include in Section 502.8 procurement transaction procedures reflecting 2 CFR Section 200.319. There is also one minor revision to Section 501.1 to update a citation that is out of date. A copy of the revised sections of the Administrative Code is attached to this report.

Going forward, staff may use this compliance exercise as an opportunity to consider additional updates to the Administration Code to ensure that it reflects WETA's current processes and procedures, and that it conforms to best practices.

**Fiscal Impact**

There is no fiscal impact associated with this item.

\*\*\*END\*\*\*



**CHAPTER 5**  
**CONTRACT POLICIES AND PROCEDURES**

**Article I Introduction**

501.1 Purpose.

(A) This Chapter 5 sets forth the policies and procedures of the Authority for procurement, award and administration of contracts. The policies and procedures contained herein are advisory, not mandatory, and deviation therefrom shall not render any contract of the Authority void or voidable. Any deviation from the policies and procedures herein shall be authorized by the Executive Director.

(B) These policies and procedures apply to procurements undertaken in support of capital projects completely accomplished without Federal Transit Administration (FTA) funds and to those operating and planning contracts to the extent that the Authority does not receive FTA operating and planning assistance.

(C) Anything to the contrary herein notwithstanding, any procurement involving contracts with third parties under FTA assistance programs or to the extent that the Authority receives FTA formula funds for capital projects or operating assistance shall comply with the Code of Federal Regulations Title 249, Subtitle A, Chapter II, Part 200+8 and all applicable FTA procurement requirements, including but not limited to those contained or referenced in FTA Circular C 4220.1F ("Third Party Contracting Requirements") and the FTA's Best Practices Procurement Manual. FTA procurement requirements, where applicable, shall not be waived or otherwise deviated from. If there is no local or State law on a particular aspect of procurement, ~~the Federal~~ the Federal contract law principles apply.

**Article II**  
**Basic Requirements and Exceptions**

502.1 Fair and Open Competition Requirement.

The underlying premise of the Authority's Contract Policies and Procedures is to foster fair and open competition and to obtain needed goods and services on a timely basis and in a cost-effective manner. The Authority should follow sound business and public policy principles in the procurement of goods and services so that these actions are performed efficiently and in a manner that serves the best interest of the Authority and the public.

502.2 Use of Non-Competitive and Emergency Procedures.

Procurement of goods and services without competition is authorized under limited conditions. Procurement of contracts may be made by non-competitive negotiation under the following circumstances:

- (A) In the case of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety or protection of Authority property;
- (B) Where the Authority has advertised the contract as required by this Code and has undertaken reasonable efforts to solicit potential contractors and has obtained one bid or proposal or has otherwise determined that competition is inadequate;
- (C) When the goods or services are to be provided by a government or other public entity;
- (D) Where the Authority wishes to renew or extend the term of the contract and compensation provided pursuant to an existing contract under substantially the same terms and conditions, or the amendment of an existing contract that does not materially alter the terms and conditions of the contract (other than term and compensation), provided that such renewal, extension or amendment is authorized or permitted by the contract;
- (E) Where, after reasonable investigation, the Authority determines that there is only a single source of supply available, or only one contractor is qualified to provide the service or product;
- (F) Where the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts;
- (G) Where the item to be purchased is a capital maintenance item that is available only from the original manufacturer or supplier;
- (H) Where the contract is for employment services;
- (I) Where the contract is one for which only per diem and travel expenses are paid and there is no payment for services rendered;

(J) Where the procurement is a Micro-Purchase involving the purchase of office supplies and materials and the amount is less than \$3,000.

(K) Where the purchase is pursuant to a joint purchase or similar arrangement whereby another public agency procures goods or services on a bulk basis pursuant to procurement policies and procedures applicable to that agency; and

(L) When the Board otherwise determines that award of a contract pursuant to competitive procedures identified in this Chapter 5 is either infeasible or would not produce an advantage, which determination shall be supported by written justification.

#### 502.3 Non-Discrimination in Procurement.

Contracts entered into by the Authority shall contain clauses as required by applicable law prohibiting discrimination against any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the performance of the contract.

#### 502.4 Types of Procurement Methods

(A) Micro-Purchases. This method, requiring only one quote, may be used for any purchase of supplies or services that does not exceed \$3,000.

(B) Small Purchases (Up to \$100,000). This informal procurement method involves obtaining price or rate quotations from an adequate number of qualified sources (generally 3) in order to determine a fair and reasonable price and make a contract award.

(C) Sealed Bids. A formal competitive sealed bid process involves procurement through an Invitation for Bid (IFB) process. Generally, formal bid documents are prepared and advertised and an award is made to the lowest responsive and responsible bidder. This method and related procedures are described in more detail in Article IV of Chapter 5.

(D) Competitive Proposals. This competitively negotiated procurement method may be used for purchase of non-professional services (through a Request for Proposal (RFP) process) or professional services (generally through a Request for Qualifications (RFQ) process). This method and related procedures are described in more detail in Article V of Chapter 5.

(E) Alternative Methods of Procurement. Alternative methods of procurement for design-build contracts, construction management at-risk contracts and public private partnerships may be utilized by the Authority in cases where it may be efficient or advantageous for the Authority to enter into contracts that include responsibility for construction services as well as other services that are not appropriate for sealed bidding and or which the Authority does not wish to use a competitive negotiation procurement process. This method of procurement and related procedures are described in more detail in Article VI of Chapter 5.

(F) Non-Competitive Purchases. These are used for the purchase of

approved sole source procurements, emergency procurements, intergovernmental agreements, and other procurements as may be approved by the Executive Director or Board of Directors in light of special circumstances that justify this method of procurement as further described and discussed in Section 502.2.

#### 502.5 Purchasing Agent Designation.

The Authority's Executive Director or his or her designee shall act as purchasing agent for and on behalf of the Authority. It is the responsibility of the purchasing agent to ensure all procurements are carried out in accordance to the policies and procedures set forth in this Chapter. When the procurement involves formal solicitation, such as IFB, RFP or RFQ, the Third Party Contracting Checklist must be used to ensure all required steps are followed.

#### 502.6 Authority to Issue Requests for Proposals, Requests for Qualifications and Invitations for Bids; Exception for RFP, RFQ or IFB Consistent with Approved Budget.

Requests for Proposals (RFP), Requests for Qualification (RFQ) and Invitations for Bids (IFB) shall be prepared by or under the supervision of Staff and shall not be released until approved and authorized for release by the Board. The foregoing notwithstanding, an Invitation for Bids, Request for Proposals or Request for Qualifications may be released without Board approval if the total cost of the goods or services to be procured is estimated by Staff or the consultant preparing the IFB, RFQ or RFP to be not in excess of \$250,000, and is consistent with and not in excess of the amount allocated in an approved and current budget of the Authority.

#### 502.7 Existing Contracts.

The policies and procedures contained herein shall not apply to any contract awarded by the Authority prior to the adoption of this Chapter 5. Any amendments to this Chapter 5 are only applicable to contracts entered into after approval of the amendments.

#### 502.8 General Requirements Applicable to All Solicitations

All solicitations issued by the Authority must comply with the following general requirements—if a solicitation is federally assisted, all requirements of 2 CFR part 200 will be followed, including the following:

(A) Include a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description may include the qualitative nature of the material, product, or service to be procured. If necessary, the description must describe essential minimum characteristics and standards. However, the description may not contain features unduly restrictive of competition, including unnecessary detailed product specifications. A "brand name or equivalent" description of the material, product, or service may be used in a solicitation only if it is impractical or uneconomical to clearly and accurately describe the technical requirements for the material, product, or service to be procured. If a "brand name or equivalent" description is used, the description must clearly identify the specific required features of the named brand.

(B) Identify all requirements bidders or proposers must fulfill.

(C) If the Authority will evaluate bids or proposals based on evaluation factors, identify all factors the Authority will use in evaluating bids or proposals and the points or percentage weight allocated to each evaluation factor.

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(C) If the Authority will evaluate bids or proposals based on evaluation factors, identify all factors the Authority will use in evaluating bids or proposals and the points or percentage weight allocated to each evaluation factor.

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**

**RESOLUTION NO. 2021-31**

**APPROVE REVISIONS TO THE ADMINISTRATIVE CODE TO ADDRESS  
THE FEDERAL TRANSIT ADMINISTRATION'S FINDINGS  
IN THE FISCAL YEAR 2021 TRIENNIAL REVIEW FINAL REPORT**

**WHEREAS**, the Federal Transit Administration (FTA) conducted a Triennial Review to assess WETA's compliance with federal requirements by examining a sample of award management and program implementation practices; and

**WHEREAS**, the Triennial Review focused on WETA's compliance in 21 areas, and the FTA found no deficiencies in fourteen areas, six areas were not applicable to WETA, and WETA had no repeat deficiencies from the 2018 Triennial Review; and

**WHEREAS**, the FTA made five findings in the area of procurement, one of which requires a technical update to Chapter 5 of WETA's Administrative Code to include written procedures for procurement transactions to ensure that all procurements incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, as required by 2 CFR Section 200.319; and

**WHEREAS**, the Executive Director recommends that the Board of Directors approve revisions to Chapter 5 of its Administrative Code to include procurement transaction procedures reflecting 2 CFR Section 200.319 as well as a minor revision to update a citation; now, therefore, be it

**RESOLVED**, that the WETA Board of Directors approves the revisions to Chapter 5 of WETA's Administrative Code indicated in the attachment to the report accompanying this Resolution, to include procurement transaction procedures reflecting 2 CFR Section 200.319, as required by the FTA.

**CERTIFICATION**

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on November 4, 2021.

YEA:

NAY:

ABSTAIN:

ABSENT:

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/s/ Board Secretary

2021-31

\*\*\*END\*\*\*

**MEMORANDUM**

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**TO: Board Members**

**FROM: Seamus Murphy, Executive Director**  
**Timothy Hanners, Operations & Maintenance Manager**  
**Jeffery Powell, Engineering and Maintenance Administrator**  
**Lauren Gularte, Government & Regulatory Affairs Manager**

**SUBJECT: Authorize Release of a Request for Proposal for Construction Management Services for the Replacement Vessel – MV *Intintoli* Project**

**Recommendation**

Authorize release of a Request for Proposal (RFP) for Construction Management Services for the *Replacement Vessel – MV Intintoli* project (Project), pending FTA approval of WETA's proposed Disadvantaged Business Enterprise (DBE) project goal.

**Background**

The MV *Intintoli* is reaching its replacement age of 25 years, qualifying it for Federal Transit Administration (FTA) replacement funds available through the Metropolitan Transportation Commission (MTC) in accordance with its Transit Capital Priorities process. Staff has worked to secure both FTA and local match funds to support this Project, which is included in the FY 2021/22 Capital Budget.

**Discussion**

The MV *Intintoli* is a 350-passenger vessel that operates predominantly on the Vallejo to San Francisco service as it has a service speed to meet this demanding route. The high speed, high-capacity vessels currently under construction will be able to travel this route; a replacement for the MV *Intintoli* therefore could be designed to initiate WETA's addition of zero-emissions vessels to its fleet.

This RFP will be coordinate to align with the findings and recommendations from the ongoing WETA Zero-Emission Study to ensure that the system can support the addition of a zero-emissions vessel to its fleet. The scope of services for the RFP is to assist with the development of vessel specification, initial design concept, bid preparation, and construction management services. Once the most qualified proposer is identified, staff will return to the Board with a recommendation for contract award for this work and will at that time identify a timeline for moving forward with an RFP for vessel construction.

WETA is required to receive FTA approval of a project specific DBE goal that applies to all contracts included in the vessel replacement project, including the construction management contract. WETA has developed a proposed project goal for this vessel replacement project and submitted a DBE project goal methodology report to FTA on October 25, 2021. The report proposes a 1.71% DBE project goal for this project. Per FTA guidance, a project goal is implemented as an overall goal, meaning that there is no requirement mandating that the goal

be achieved on each individual contract, but rather the grantee tries to achieve a cumulative goal through all of the contracts included in the overall project.

Even though WETA is at the early stages of the project, extensive outreach was conducted in order to develop a realistic project goal. Development of the project goal included identifying potential contracting and subcontracting opportunities and analyzing the number of DBE and non-DBE firms available to perform all work that is part of the project.

Another important component of the goal development is the opportunity to provide meaningful outreach and consultation. WETA hosted a webinar on October 13, 2021 to assist interested shipyards with attaining DBE participation, to provide information on WETA's upcoming project, to provide an opportunity to network in advance of the project, and to provide comments on WETA's proposed DBE project goal and information on how to find DBEs. WETA posted ads in Workboat Magazine, Passenger Vessel Association, and The Small Business Exchange; posted a notice on WETA's website; sent invitations to 2,016 individuals on our procurement opportunities email list and to 1,354 DBE firms in the state of California and Washington. The webinar was attended by 42 individuals representing 31 different firms. WETA will continue its outreach when it prepares the RFP for vessel construction later in 2022.

A response from the FTA to WETA's DBE project goal methodology report is expected in November. If the Board approves this item, the RFP for this contract will not be released until the FTA has approved the project goal.

**Fiscal Impact**

There is no fiscal impact associated with the release of this Request for Qualifications. The *Replacement Vessel - MV Intintoli* project is included in the FY 2021/22 Capital Budget with a total project budget of \$26,446,700, funded with a combination of Federal Transit Administration (80 percent) and State Transit Assistance (20 percent) grant funds.

\*\*\*END\*\*\*