

**STAFF REPORT FOR CALENDAR ITEM NO.: 11  
FOR THE MEETING OF: January 12, 2017**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Discussion and potential action regarding potential invitation to a public agency to join the Transbay Joint Powers Authority as a New Member.

**BACKGROUND:**

The Transbay Transit Center Program is managed by the Transbay Joint Powers Authority (“TJPA”). The first phase of the Transbay Program – construction of the Transit Center for bus operations – is expected to be substantially complete in late 2017. The TJPA is actively preparing for the operations of the facility. The second phase of the Transbay Program is development of the downtown extension (DTX) of Caltrain and eventually California High Speed Rail (CHSR) to the Transit Center. Caltrain electrification is expected to be complete by 2021, and High Speed Rail is scheduled to reach the Peninsula by 2025. The TJPA’s preliminary engineering work for the DTX is underway. The DTX received federal and state environmental clearance in 2004; the environmental clearance process for the latest design refinements is nearly complete.

The Transbay Program is at somewhat of a transition point, with the first phase (construction of the Transit Center for bus operations) nearing completion. It would seem appropriate to ensure that the agency has the strategic leadership to develop federal, state, regional, and local consensus support for key aspects of Phase II (DTX construction, and Caltrain and CHSR operations), which may include project delivery methods, budget, funding, financing, and stakeholder/operator requirements for the system.

The TJPA is a joint powers agency established in 2001 by agreement of the City and County of San Francisco (“City”), the Alameda-Contra Costa Transit District (“AC Transit”), and the Peninsula Corridor Joint Powers Board (“Caltrain”), each of which is a Member of the TJPA. A joint powers agency exercises the powers common to the member agencies, or as provided under state law. (Government Code, Sections 6502, 6508).

The Joint Powers Agreement provides that other public entities may be invited to serve as ex-officio Members of the TJPA. (JPA, Section 17). Ex officio Members serve as advisory, non-voting members of the Board and serve at the pleasure of the Board. (Bylaws, Article V). In 2006, the TJPA Board invited Caltrans to serve as an ex-officio Member; Caltrans continues to serve in that capacity today.

The Joint Powers Agreement explains that the TJPA is directed through a Board of Directors initially made up of three directors appointed by the City, one director appointed by AC Transit, and one director appointed by Caltrain. (JPA, Section 8(a); see also Bylaws, Section 7.2).

## **DISCUSSION:**

The Joint Powers Agreement contemplates that New Members may be added to the TJPA. (JPA, Section 16; See also Bylaws, Article IV; See also Bylaws, Section 10.1). Any New Member must be a “public agency” as defined in Section 6500 of the Government Code, which includes the State and any state department or agency.

CHSR is a major stakeholder in the development and operation of Phase II. Inviting CHSR to join the TJPA as a New Member may facilitate the consensus support that is critical to successful completion of DTX.

Key steps should the TJPA Board elect to add a New Member to the TJPA:

- 1) Concurrence of the Existing Members of the TJPA: Concurrence of the existing Members is required to invite a public agency to become a New Member of the TJPA. (JPA, Section 16(a)). The Joint Powers Agreement and Bylaws do not specify how a Member indicates its concurrence with the invitation. It would seem most prudent, however, for each Member’s governing body to take legislative action approving the invitation and authorizing its representative(s) to the TJPA’s Board of Directors to approve an appropriate amendment to the Joint Powers Agreement and Bylaws, and make such other approvals as may be necessary to complete the addition of the New Member to the TJPA.
- 2) Legislative Action by the New Member: Legislative action by the governing body of the public agency that would join the TJPA is required, approving entry into the TJPA, designating a director to the TJPA Board, authorizing the execution of the Joint Powers Agreement, acknowledging the TJPA Bylaws, and making certain findings as contemplated by the Joint Powers Agreement. (Bylaws, Section 10.1).
- 3) Legislative Action by the TJPA: Legislative action by the existing TJPA Board is required, approving an amendment to the Joint Powers Agreement to recognize the New Member, increase the number of total directors, adopting any conditions on membership, and making appropriate amendments to the Bylaws. (JPA, Section 16(a)). Notice of amendment to the Joint Powers Agreement must be provided to the State. (Government Code, Section 6503.5).
- 4) Compliance with Any Conditions to Joining by the New Member: Payment of any fees or expenses set by the TJPA Board as a condition of a New Member’s invitation to the join the TJPA and completion of any other requirements established by the Board. (JPA, Section 16(a) and 16(b); Bylaws, Section 10.1)). Note that the existing Members did not pay any fees or expenses at the time they formed the TJPA, and staff is not aware of any fees or expenses that may be appropriate to impose on a New Member here.

Key practical effects related to the Board of Directors, should the TJPA Board elect to add a New Member to the TJPA:

- 1) Total Number of Directors: Currently there are five voting directors on the TJPA Board. The Joint Powers Agreement provides that for each New Member admitted to the TJPA, the City shall appoint one additional director to serve on the Board. (JPA, Section 16(c)). Thus, adding a New Member to the TJPA would result in an increase in the total number of directors from five to seven -- one new director appointed by the New Member and one new director appointed by the City.
  
- 2) Quorum: Seventy percent of the total number of authorized directors constitutes a quorum for the transaction of business by the TJPA Board. (Bylaws, Section 7.5). Currently, a quorum of the TJPA Board is four out of five directors. If the number of directors is increased to seven, five directors would be required to constitute a quorum. This is described in the table below.
  
- 3) Majority Vote: Except for specific acts that require a 2/3 vote under the Bylaws or the Joint Powers Agreement, a majority vote of the directors present at a meeting are required to take action. (Bylaws, Section 7.5). Currently, a majority vote of the TJPA Board is three votes whether four or five directors are present, and a supermajority is 4 directors. If the number of directors is increased to seven, a majority vote would be three if five members are present and four if either six or seven members are present, and a supermajority would be five members. This is described in the table below.

	Total # of directors	Total # of directors to meet quorum	# of votes that represents a simple majority	# of votes that represent a 2/3 majority
Current make up of TJPA Board	5	4	3 (if 4 are present)	4
			3 (if 5 are present)	
If New Member added to TJPA Board	7	5	3 (if 5 are present)	5
			4 (if 6 are present)	
			4 (if 7 are present)	

Potential schedule of actions to accomplish the addition of a New Member to the TJPA with all due speed:

- 1) TJPA Board action (a) agreeing that the TJPA Directors will work with their respective Member agencies to put forth for approval legislation concurring with the addition of a New Member to the TJPA, and (b) directing the Executive Director to invite the potential New Member to join the TJPA conditioned on concurrence of Member agencies, amendment to the JPA and Bylaws, and other requirements of law. [est. January 2017]
  
- 2) AC Transit, City and County of San Francisco, and PCJPB action adopting legislation concurring with a New Member joining the TJPA. [est. January/February 2017]
  
- 3) New Member legislative action accepting invitation to join the TJPA. [est. March 2017]

- 4) TJPA Board approval of amendments to the JPA and Bylaws to add the New Member, and New Member's appointed director joins the TJPA Board. [est. April 2017]

**RECOMMENDATION:**

Staff recommends that the TJPA Board agree that the Directors will work with their respective Member agencies to put forth for approval legislation concurring with the addition of a New Member to the TJPA, and direct the Executive Director to invite the potential New Member to join the TJPA conditioned on concurrence of the Member agencies, amendment to the JPA and Bylaws, and all other requirements of law.

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California to design, build and operate the Transbay Transit Center Program (Transbay Program); and

WHEREAS, The Transbay Program is being developed in two phases, with the first phase being the construction of the Transit Center for bus operations, and the second phase being the development of the downtown extension (DTX) of Caltrain and eventually California High Speed Rail (CHSR) to the Transit Center; and

WHEREAS, The Transbay Program is at somewhat of a transition point, with the first phase nearing completion. The TJPA desires to ensure that the agency has the strategic leadership to develop federal, state, regional, and local consensus support for key aspects of phase two, which may include project delivery methods, budget, funding, financing, and stakeholder/operator requirements for the system; and

WHEREAS, The TJPA is a joint powers agency established in 2001 by a Joint Powers Agreement of the City and County of San Francisco (“City”), the Alameda-Contra Costa Transit District (“AC Transit”), and the Peninsula Corridor Joint Powers Board (“Caltrain”), each of which is a Member of the TJPA; and

WHEREAS, The Joint Powers Agreement at Section 16 and the TJPA Bylaws at Article IV contemplate that New Members may be added to the TJPA. The concurrence of the existing Members of the TJPA is required to invite a public agency to become a New Member of the TJPA; and

WHEREAS, CHSR is a major stakeholder in the development and operation of phase two of the Transbay Program, and inviting CHSR to join the TJPA as a New Member may facilitate the consensus support that is critical to successful completion of phase two; now, therefore, be it

RESOLVED, That the TJPA Board of Directors (1) agrees that the Directors will work with their respective Member agencies to put forth for approval legislation concurring with the addition of CHSR to the TJPA, and (2) directs the Executive Director to invite CHSR to join the TJPA conditioned on concurrence of the Member agencies, amendment to the JPA and Bylaws by the TJPA Board, and all other requirements of law.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of January 12, 2017.

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Secretary, Transbay Joint Powers Authority