

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 9
FOR THE MEETING OF: June 10, 2010**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute the Memorandum of Understanding between the Transbay Joint Powers Authority and the Federal Railroad Administration regarding the granting of funds under the American Recovery and Reinvestment Act of 2009 (ARRA) to TJPA for the Transit Center Train Box.

SUMMARY:

The Staff has negotiated a Memorandum of Understanding (MOU) between the Transbay Joint Powers Authority and the Federal Railroad Administration regarding the granting of ARRA funds to TJPA for the Transit Center Train Box. The MOU provides the framework for the grant of \$400 million in ARRA funds to TJPA and sets forth key principles regarding the future use of the Transbay Transit Center for high-speed rail service.

REPORT:

Background: Over the past few months, the Transbay Joint Powers Authority (TJPA) has been in detailed discussions with the U.S. Department of Transportation (DOT) and the Federal Railroad Administration (FRA) regarding the \$400 million grant to be provided by FRA for the rail levels (the Train Box) of the Transbay Transit Center. This funding is part of up to \$2.25 billion allocated by the Secretary of Transportation for California high-speed intercity passenger rail from funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

As a key pre-condition to the granting of ARRA funds directly to TJPA, FRA has required that the TJPA and FRA negotiate and agree on a Memorandum of Understanding (MOU). These negotiations have been successfully concluded and the MOU is now ready for execution by the parties. The purposes of the MOU are to establish the foundational facts and legal findings that FRA believes are necessary to provide the \$400 million in ARRA funds directly to TJPA as the grantee, to set forth certain principles regarding the use of the Transbay Transit Center as the terminal in San Francisco for high-speed rail service, and to establish a framework and guidelines for future agreements between TJPA and the California High Speed Rail Authority (CHRSA) regarding the payment of the high speed rail operating costs at the Transbay Transit Center and the allocation of certain shared Transit Center costs. In addition, it is anticipated that FRA will develop and enter into a MOU with CHRSA regarding some of these same issues.

Key Elements of MOU: The MOU begins with a number of introductory Whereas clauses or “recitals”, which are intended to set forth the critical facts and legal principles underlying and supporting the Federal grant to TJPA. These clauses were carefully developed in negotiations with FRA, and include the following items: (1) TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the new Transbay Terminal, (2) TJPA is ready to proceed with construction of the Transbay Transit Center as soon as the FRA adopts the Record of Decision (ROD) for Phase 1 of the Program; (3) funds under ARRA are intended to preserve and create jobs and promote economic recovery and ARRA directs that expenditures and activities commence as quickly as possible consistent with prudent management; (4) CHRSA’s preliminary Alternatives Analysis recommends continued study of the downtown San Francisco high speed rail terminal at the Transbay Transit Center and a site for potential overflow high speed rail traffic at 4th and King, and no further study of other station locations on the grounds that there are no feasible and practicable alternative sites; and (5) engineering

studies jointly prepared by TJPA and CHSRA have shown that the design of the Train Box of the new Transbay Transit Center can fully accommodate high-speed rail with the agreed-upon modifications, in order to ensure that the new Transbay Transit Center can be used for high-speed rail service.

The substantive provisions of the MOU follow these Whereas clauses; the most significant of these provisions are the following:

Recipient Status for TJPA. -- As part of up to \$2.25 billion allocated by the Secretary of Transportation for California high-speed intercity passenger rail from funds made available under ARRA, TJPA will be the recipient of a grant or cooperative agreement of up to \$400 million directly from FRA for construction of the Train Box of the Transbay Transit Center subject to satisfactory completion of environmental reviews and satisfaction of program requirements under ARRA and other relevant Federal statutes and regulations.

Use of Transbay Transit Center for High-Speed Rail. -- TJPA will design and construct the Transbay Transit Center to safely and efficiently accommodate high speed rail service, and will allow CHSRA to use the Transbay Transit Center and the tunnels leading to and from it in perpetuity as its terminus in San Francisco.

Costs and Expenses. -- FRA will require that CHSRA pay for the operation of its station functions in Transbay Transit Center, to cover matters and activities typically provided by a railway operator, and also pay its share of common area expenses and charges for the operation and maintenance of the Transbay Transit Center and the tunnels leading to and from it (i.e., electricity, water, HVAC, cleaning, maintenance, security, etc.). CHSRA will not be responsible for any other costs or charges except as it otherwise agrees.

Improvements. -- CHSRA and TJPA will agree upon the design of the high-speed intercity rail passenger elements of the Transbay Transit Center and the tunnels leading to and from it.

Allocation of Responsibilities. -- TJPA will negotiate in good faith with CHSRA regarding a fair and equitable allocation between the parties of responsibility for matters such as high-speed rail station construction and outfitting, insurance, the obligation to rebuild after a catastrophic event, liability, and use of loading docks, etc. The intent of this provision is to set a framework for future negotiations, but not to prejudice the substantive results of those negotiations. The agreement on these matters (and the other agreements contemplated by the MOU) will be developed in accordance with the process established in the March 2009 Memorandum of Agreement between TJPA and CHSRA.

RECOMMENDATION:

The Staff recommends that the Board authorize the Executive Director to execute the Memorandum of Understanding between the Transbay Joint Powers Authority and the Federal Railroad Administration attached to this report.

ENCLOSURES:

1. Memorandum of Understanding Between the Transbay Joint Powers Authority and the Federal Railroad Administration
2. Resolution
3. March 2009 Memorandum of Agreement between TJPA and CHSRA

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, As part of the Transbay Program, the Transbay Joint Powers Authority (TJPA) will design, build, own, and operate a new Transbay Transit Center at First and Mission Streets (Transit Center) and the Downtown Extension (DTX) to accommodate Caltrain commuter rail and high-speed rail; and

WHEREAS, The TJPA has a grant from the U.S. Department of Transportation (DOT) and the Federal Railroad Administration (FRA) under the American Recovery and Reinvestment Act of 2009 (ARRA) to assist in the design and construction of the Transbay Transit Center; and

WHEREAS, After detailed review by DOT and FRA and extensive discussions between the parties, DOT and FRA have indicated their intention to provide up to \$400 million to TJPA for the Train Box of the Transbay Transit Center as part of up to \$2.25 billion allocated by the Secretary of Transportation for California high-speed intercity passenger rail from funds made available under ARRA; and

WHEREAS, The FRA is requiring, as a pre-condition to the granting of ARRA funds directly to TJPA, that the TJPA and FRA enter into a Memorandum of Understanding setting forth key foundational facts and legal principles underlying and supporting the direct grant of ARRA funds to the TJPA; and

WHEREAS, The FRA has published a notice of its intention to adopt the April 2004 Environmental Impact Statement (EIS) prepared by the Federal Transit Administration, in accordance with the procedures set forth in the regulations of the Council on Environmental Quality (CEQ), as the means for satisfying the National Environmental Policy Act (NEPA) requirements applicable to the ARRA grant; and

WHEREAS, TJPA is ready to proceed with construction of the Transbay Transit Center as soon as the FRA adopts the Record of Decision (ROD) for Phase 1 of the Transbay Program; and

WHEREAS, The Preliminary Alternatives Analysis prepared by the California High Speed Rail Authority (CHRSA), based on significant study of the relevant factors, recommends continued study of the downtown San Francisco high speed rail terminal at the Transbay Transit Center and a site for potential overflow high speed rail traffic at 4th and King, and no further study of other station locations on the grounds that there are no feasible and practicable alternative sites; and

WHEREAS, Engineering studies jointly prepared by TJPA and CHSRA have shown that the design of the Train Box of the new Transbay Transit Center can fully accommodate high-speed rail with the agreed-upon modifications, in order to ensure that the new Transbay Transit Center can be used for high-speed rail service; and

WHEREAS, The TJPA and FRA have negotiated and reached agreement on mutually acceptable terms and conditions for the parties' MOU; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute the Memorandum of Understanding between the Transbay Joint Powers Authority and the Federal Railroad Administration regarding the \$400 million grant to be provided by the FRA for the Train Box of the Transbay Terminal from funds made available under the American Recovery and Reinvestment Act of 2009, which provides, *inter alia*, that (a) TJPA will be the recipient of a grant or cooperative agreement of up to \$400 million directly from FRA for construction of the Train Box of the Transbay Transit Center subject to satisfactory completion of environmental reviews and satisfaction of program requirements under ARRA and other relevant Federal statutes and regulations; (b) TJPA will design and construct the Transbay Transit Center to safely and efficiently accommodate high speed rail service, and will allow CHSRA to use the Transbay Transit Center and the tunnels leading to and from it in perpetuity as its terminus in San Francisco; (c) FRA will require that CHSRA pay for the operation of its station functions in Transbay Transit Center, to cover matters and activities typically provided by a railway operator, and also pay its share of common area expenses and charges for the operation and maintenance of the Transbay Transit Center and the tunnels leading to and from it, but CHSRA will not be responsible for any other costs or charges except as it otherwise agrees; (d) CHSRA and TJPA will agree upon the design of the high-speed intercity rail passenger elements of the Transbay Transit Center and the tunnels leading to and from it; and (e) TJPA will negotiate in good faith with CHSRA regarding a fair and equitable allocation between the parties of responsibility for matters such as high-speed rail station construction and outfitting, insurance, the obligation to rebuild after a catastrophic event, liability, use of loading docks, and related matters, pursuant to the process established in the March 2009 Memorandum of Agreement between TJPA and CHSRA.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 10, 2010.

Secretary, Transbay Joint Powers Authority

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) between the Transbay Joint Powers Authority (TJPA) and the Federal Railroad Administration (FRA) expresses the mutual intentions of the parties regarding up to \$400 million in financial assistance to be provided by FRA for the rail levels (the Train Box) of the Transbay Terminal as part of up to \$2.25 billion allocated by the Secretary of Transportation for California high-speed intercity passenger rail from funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

WHEREAS the new Transbay Transit Center on the site of the Transbay Terminal at First and Mission Streets in San Francisco, California, adjacent to San Francisco's financial district, is designed to be an intermodal terminal providing the space, passenger circulation, signage, security, safety, and service levels needed for public and private bus (Alameda-Contra Costa Transit, San Francisco Municipal Transit (Muni), Golden Gate Transit, San Mateo County Transit (SamTrans), Western Contra Costa County Transit (WestCAT), and Greyhound), paratransit, Caltrain commuter rail, and intercity high-speed rail;

WHEREAS section 5027.1 of the California Public Resources Code provides that TJPA shall have primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the new Transbay Terminal;

WHEREAS the California Legislature declared in the California high-speed rail bond measure, Proposition 1A, that "It is the intent of the Legislature ... and of the people of California ... to initiate construction of a high-speed train system that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim." (Cal. Sts. & High. Code §2704.04(a));

WHEREAS the California High-Speed Rail Authority (CHSRA) is the state entity charged with planning, designing, building, and operating California's high-speed rail system;

WHEREAS a combined environmental impact statement/environmental impact report (EIS/EIR) for the Transbay Program, including the Transbay Transit Center, was prepared pursuant to the National Environmental Policy Act and the California Environmental Quality Act, the EIS/EIR was certified and the Program approved by TJPA in April 2004, and a Record of Decision was issued by the Federal Transit Administration in 2005 and FRA is proposing to adopt that EIS;

WHEREAS TJPA is ready to proceed with construction of the Transbay Transit Center as soon as the FRA issues the Record of Decision (ROD) for Phase 1 of the Program, and CHSRA is not yet ready to build the segment of the high-speed rail system that will serve San Francisco; and funds are provided under ARRA to preserve and create jobs and promote economic recovery and ARRA directs that expenditures and activities commence as quickly as possible consistent with prudent management;

WHEREAS CHSRA's Preliminary Alternatives Analysis, based on significant study of the relevant factors, recommends continued study of the downtown San Francisco high speed rail terminal at the Transbay Transit Center and a site for potential overflow high speed rail traffic at 4th and King, and no further study of other station locations on the grounds that there are no feasible and practicable alternative sites;

WHEREAS engineering studies jointly prepared by TJPA and CHSRA have shown that the design of the Train Box of the new Transbay Transit Center can fully accommodate high-speed rail with the agreed-upon modifications, in order to ensure that the new Transbay Transit Center can be used for high-speed rail service;

WHEREAS constructing the below-grade Train Box of the Transbay Transit Center now is estimated to save \$100 million in overall Transbay Center construction costs; and

WHEREAS the parties want to minimize the amount of federal financial assistance that is spent for administrative and overhead costs in order to maximize the amount of high-speed rail improvements actually built;

NOW, THEREFORE, the parties agree that:

Section 1. Recipient. As part of up to \$2.25 billion allocated by the Secretary of Transportation for California high-speed intercity passenger rail from funds made available under ARRA, TJPA will be the recipient of a grant or cooperative agreement of up to \$400 million directly from FRA for construction of the Train Box of the Transbay Transit Center subject to satisfactory completion of environmental reviews and satisfaction of program requirements under ARRA and other relevant Federal statutes and regulations, and all programmatic milestones and conditions imposed by FRA. A direct grant or cooperative agreement to TJPA is the most effective administrative process, consistent with ARRA and California law, for construction of the Train Box of the Transbay Transit Center. It is the understanding of the parties that CHSRA will not assert any claim to the funds reserved for the Transbay Transit Center.

Section 2. Use of Transbay Transit Center for High-Speed Rail. In order to ensure that the benefits of providing up to \$400 million for construction of the Train Box of the Transbay Transit Center from the FRA are realized, TJPA will design and construct the Transbay Transit Center to safely and efficiently accommodate high speed rail service, and will provide that CHSRA may use the Transbay Transit Center and the tunnels leading to and from it in perpetuity as its terminus in San Francisco. FRA will require that CHSRA be responsible for the costs of high speed rail operations and certain shared costs at the Transbay Transit Center, as provided in Sections 3, 4, and 6 of this MOU, but CHSRA will not be responsible for any other costs or charges except as otherwise agreed by CHSRA. TJPA will provide that CHSRA will share occupancy of the Train Box of the Transbay Transit Center with Caltrain.

Section 3. Shared expenses. FRA will require that CHSRA pay for the operation of its station functions in Transbay Transit Center, to cover matters and activities typically provided by a railway operator (such as ticketing, baggage, and high speed rail passenger services), and also

pay its share of common area expenses and charges for the operation and maintenance of the Transbay Transit Center and the tunnels leading to and from it. These common area costs and expenses will include, but will not be limited to, the cost of electricity, water, HVAC, cleaning, maintenance, security, trash removal, and repairs. FRA will require that CHRSA's share of these costs be a percentage proportional to CHSRA's occupancy of, or passenger volume using, the Transbay Transit Center, unless TJPA and CHRSA otherwise agree.

Section 4. Improvements. The parties contemplate that CHSRA and TJPA will agree upon the design of the high-speed intercity rail passenger elements of the Transbay Transit Center and the tunnels leading to and from it, including signage, passenger access including access for the disabled, ticketing, baggage, office space, the catenaries, electrical service and transformers, platforms, and other elements necessary and proper to a first class high-speed passenger rail station.

Section 5. Hours of Operation. Transbay Transit Center will remain open at all times that CHSRA is providing high-speed intercity passenger service into or out of the station.

Section 6. Allocation of Responsibilities. TJPA will negotiate in good faith with CHRSA regarding a fair and equitable allocation between the parties of responsibility for matters such as high-speed rail station construction and outfitting, insurance, the obligation to rebuild after a catastrophic event, liability, use of loading docks, non-disturbance, repairs and maintenance, liens, quiet enjoyment, and remedies, among other things.

Section 7. Documentation. The parties contemplate that TJPA and CHSRA will enter into appropriate documents reflecting sections 2 through 6 of this MOU that will preserve the benefits for high-speed rail covered herein and paid for through the grant or cooperative agreement between the parties. TJPA and CHRSA will negotiate and develop the agreements contemplated under this MOU through the working groups established under the March 2009 Memorandum of Agreement (MOA) between TJPA and CHSRA.

Section 8. Environmental Clearances. TJPA and FRA will work cooperatively together and with CHSRA to bring all environmental, historic preservation, and related kinds of review or proceedings, both State and Federal, including without limitation the National Environmental Policy Act, the California Environmental Quality Act, Section 106 of the National Historic Preservation Act, section 4(f) of the Department of Transportation Act, and permits from the Army Corps of Engineers or others, related to Phases 1 and 2 of the Transbay Transit Center or California high-speed rail serving San Francisco, or both, to a successful conclusion as rapidly as possible.

This document expresses the unequivocal intentions of the parties as a basis for going forward, but does not create any legally binding obligations.

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Maria Ayerdi-Kaplan, Executive Director

FEDERAL RAILROAD ADMINISTRATION

By: _____
Joseph C. Szabo, Administrator

DATE:

June __, 2010

MEMORANDUM OF AGREEMENT
Between the
THE TRANSBAY JOINT POWERS AUTHORITY
And
THE CALIFORNIA HIGH-SPEED RAIL AUTHORITY
Regarding
DESIGN OF THE TRANSBAY TRANSIT CENTER
AND THE CALTRAIN DOWNTOWN EXTENSION

The Parties to this agreement (“parties”) are the Transbay Joint Powers Authority (“TJPA”) and the California High-Speed Rail Authority (“CHSRA”). The TJPA is a joint powers agency responsible for the planning, design, construction, operation and management of the Transbay Transit Center Program ("Transbay Program") in San Francisco, including a new Transbay Transit Center and an underground rail connection providing access to the new Transbay Transit Center from the existing Caltrain 4th/King northern terminus ("DTX"); The CHSRA is the state entity responsible for planning, constructing and operating a high-speed train system serving California's major metropolitan areas.

On November 4, 2008 the voters of California approved Proposition 1A, a state general obligation bond measure to provide a portion of the costs of construction of a high-speed train system that connects the State's major population centers consistent with the CHSRA's certified program environmental documents and stating that the legislative intent is to initiate construction of a high-speed train project that connects the San Francisco Transbay Terminal to Los Angeles Union Station and Anaheim.

The CHSRA's Program EIR/EIS for the Bay Area to Central Valley portion of the high-speed rail system, certified on July 9, 2008, identifies the Transbay Transit Center as the preferred San Francisco terminus for the high-speed rail system. The CHSRA has commenced preparation of a project engineering design and EIR/EIS for the San Francisco to San Jose section of the high-speed rail system.

The TJPA is actively engaged in Preliminary Engineering Design for the DTX and the Transbay Transit Center.

The parties recognize that cooperation respecting the project of each party is desirable and appropriate. The parties, therefore, agree as follows:

1. The parties will establish a mutually beneficial and productive working relationship to help these agencies meet the problems of establishing the Transbay Transit Center as a terminus station of the high-speed rail system, and to develop a process and mechanisms that will encourage and facilitate communications and collaboration between them and allow them efficiently to address short-term, medium-term, and long-term problems in an effective manner.

2. The parties will establish several working groups to assist the agencies in doing so, including those described below, recognizing that, as planning, design and environmental work progress, additional issues may become the subjects of collaboration.

3. The parties will establish a technical working group through which technical information will be exchanged by the parties. This group shall also serve the following purposes:

a. As a means by which each party will be kept informed of progress being made by the other party in development of technical information, including information developed in the environmental review process.

b. As a means by which each party will have the opportunity to make suggestions regarding the scope of on-going and future technical work and studies.

c. As a means by which each party will be able to comment on or to seek clarification of information provided by the other party. This provision does not alter, replace, or otherwise affect provisions of law, such as those in the California Environmental Quality Act, providing for comment during the environmental review process.

4. Each agency understands that documents provided by one party to the other may be subject to disclosure by the other party pursuant to the Public Records Act or the San Francisco Sunshine Ordinance. In the event one party ("first party") wishes to share documents or information with the other party ("second party") that the first party considers to be confidential or not subject to public disclosure, the first party will first notify the second party of that fact, thus giving the second party an opportunity to determine if it is in a position to receive the documents or information in confidence and to assert that they are not subject to disclosure. In the event either party receives a request for public records pertaining to documents it has received from the other party, it will immediately notify the other party of the request and refrain from responding to the request until the other party has had an opportunity to assert its position concerning whether the requested documents are subject to disclosure. Such provision does not require any party to delay a response to a request for public records beyond the time provided in applicable law, which shall control. Furthermore, this memorandum does not require one party to provide to the other party any documents or information which it deems confidential.

5. The parties will establish a working group to examine issues surrounding potential rights and interests, including ownership interests in the facilities to be used for high-speed rail purposes at and near the Transit Center and the proposed right of way between the Transbay Transit Center and the current terminus of the Caltrain line at Fourth and King Streets in San Francisco.

6. The working group shall also examine issues pertaining to funding for construction and operation of facilities at and near the Transit Center, including the proposed right of way between the Transbay Transit Center and the current terminus of the Caltrain line at Fourth and King Streets, to be used by or for the high-speed rail system.

7. The parties recognize that under state and federal law, any party preparing an environmental document has certain obligations and responsibilities with respect to the preparation of that document, and with respect to intermediate decisions which must be made in the course of preparation of the document. The parties further recognize that there are obligations and responsibilities which cannot be delegated or assigned by the preparing party to someone else or to another agency. Nothing in this agreement is intended to affect those obligations and responsibilities or the decision-making responsibilities of any party to this agreement in any way contrary to law. Each party is responsible for making its own determination as to the usefulness or propriety of its use of, or reliance upon, the work product of the other party. It is not intended by this agreement that either party represents or warrants that its work product is sufficient for the purposes to which another party may wish to apply that work product. This MOA does not reduce, expand, transfer, or alter in any way any statutory or regulatory authority or responsibility of either of the parties.

8. The structure of the relationship between the TJPA and the CHSRA as described in this MOA is not intended to remain unchanged, but may evolve in the future and as the parties confront various problems. All or portions of this memorandum may be modified to accommodate the needs of the parties as planning work progresses, either through direct amendment of this memorandum or through supplemental memoranda, as deemed appropriate by the parties.

9. The needs of the Peninsula Corridor Joint Powers Board ("Caltrain") must be considered in all planning activities pertaining to extending Caltrain services to downtown San Francisco and to the use of the Transit Center as a rail station. CHSRA can consult directly with Caltrain.

10. The parties will attempt to cooperate in the presentation of information to the media concerning the rail component of the Transbay Program and California High-Speed Rail.

11. This agreement is effective upon execution by both parties and shall continue in effect until and unless terminated by both parties through mutual agreement or upon 30 days' written notice delivered by the party seeking to terminate the agreement to the other party.

12. Nothing in this agreement is to be construed as acceptance of the imposition of any surcharge on high-speed train passengers. Any such surcharge would require the approval of the board of each party to this agreement.

TRANSBAY JOINT POWERS AUTHORITY



Executive Director

AUTHORIZED BY:
TJPA BOARD OF DIRECTORS

Resolution No.:

09-005

CALIFORNIA HIGH-SPEED RAIL AUTHORITY



Acting Executive Director

AUTHORIZED BY:
CHSRA BOARD OF DIRECTORS

Resolution No.:

HSRA 09-005