

JOINT POWERS AGREEMENT
creating the
TRANSBAY JOINT POWERS AUTHORITY

The City and County of San Francisco, a municipal corporation and charter city and county duly organized and existing under its Charter and the Constitution of the State of California (the "City") and the Alameda-Contra Costa Transit District, a transit district duly organized and created in accordance with the Public Utilities Code of the State of California (commencing with Section 24501) (the "District") and the Peninsula Corridor Joint Powers Board-Caltrain, a joint exercise of powers agency comprised of the City and County of San Francisco, San Mateo County Transit District, and Santa Clara Valley Transportation Authority, duly created and organized in accordance with the Government Code of the State of California (commencing with Section 6500) (the "JPB") all of which entities shall be referred to herein collectively as the "Members," hereby enter into this Joint Powers Agreement (this "Agreement") creating the Transbay Joint Powers Authority (the "Authority"). All Members are public entities organized and operating under the laws of the State of California and each is a public agency as defined in Section 6500 of the Government Code of the State of California.

Recitals

- A. The State of California Department of Transportation currently operates and manages a bus transportation terminal in the City commonly known as the Transbay Terminal (the "Old Transbay Terminal") located on the site described in Exhibit A (the "Site").
- B. The Members recognize that the Old Transbay Terminal is underutilized and blighted, and can be developed to provide for regional, seamless, intermodal transit connections.
- C. Pursuant to Chapter 5, Division 7, Title 1 of the Government Code of the State of California the Members may jointly exercise any power common to them.
- D. The Members desire to jointly participate in the construction, development and operation of a new regional transit hub and related structures and ramps which will provide expanded bus and rail service and direct access to transit located in a new terminal building on the Site and/or property adjacent to the Site including bus storage/staging facilities in the vicinity of the Site, together with all necessary and essential ramps for access to and from the San Francisco-Oakland Bay Bridge from the new terminal building and to and from the bus storage/staging facilities, as well as a temporary bus facility with access to and from the San Francisco-Oakland Bay Bridge, all of which is more efficient and convenient for buses, trains, and the passengers using those systems.
- E. The Members intend to develop and construct a new transportation terminal on the Site, direct access ramps, links to regional transportation systems which includes the downtown extension of Caltrain from 4th and Townsend Streets to the new transportation terminal, a temporary terminal for use during construction of the new terminal, bus storage, and other facilities needed to develop the Site and/or property adjacent to the Site to its highest and best use.
- F. The Members intend to operate and manage the new transit terminal and related facilities (including but not limited to necessary bus storage/staging facilities and connecting ramps)

upon their completion.

- G. The governing board of each Member has determined that it is in such Member's best interest and in the public interest that this Agreement be executed and that it participate as a Member of the Authority.

Agreement

1. Formation of the Authority. Pursuant to Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) (as amended from time to time, the "Law"), the Members hereby create a separate joint exercise of powers agency which is named the Transbay Joint Powers Authority.
2. Parties to Agreement. Each Member certifies that it intends to, and does, contract with every Member that is a signatory to this Agreement and, in addition, with such other entities as may later be added as Members pursuant to Section 16 of this Agreement. Each Member also certifies that the deletion of any Member from this Agreement does not affect this Agreement nor each remaining Member's intent to contract with the other Members then remaining.
3. Purpose. Subject to compliance with all relevant environmental review and regulations, including the California Environmental Quality Act ("CEQA") and, if applicable, the National Environmental Policy Act ("NEPA"), the Authority will develop, design, construct, renovate, rehabilitate, improve, operate, manage and maintain a new regional transit terminal, which shall include the removal of existing structures, which will provide expanded bus and rail service (including the design and construction of the downtown extension of Caltrain from 4th and Townsend Streets to the new regional transit terminal), and direct access to transit on the Site and/or property adjacent to the Site.
4. Limitation. Except as otherwise authorized or permitted by the Law and for purposes of, and to the extent required by Section 6509 of the Government Code of the State of California, the Authority is subject to the restrictions upon the manner of exercising the powers of the City as specified in the Bylaws.
5. Powers. The Authority is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement including, but not limited to, each of the following:
 - (a) Make and enter into contracts;
 - (b) Incur debts, liabilities and obligations; provided that no debt, liability or obligation of the Authority is a debt, liability or obligation of any Member except as separately agreed to by a Member;
 - (c) Acquire, hold, construct, manage, maintain, sell or otherwise dispose of real and personal property by appropriate means;
 - (d) Receive contributions and donations of property, funds, services and other forms of assistance from any source;
 - (e) Apply for, accept, receive and disburse grants, loans and other aids from any agency of the United States of America or the State of California;
 - (f) Sue and be sued in its own name;
 - (g) Employ agents and employees;

- (h) Lease real or personal property as lessee and as lessor;
- (i) Receive, collect, invest and disburse moneys;
- (j) Execute and deliver certificates of participation, issue revenue bonds and issue other forms and evidences of indebtedness, as provided by law;
- (k) Carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;
- (l) Assign, delegate or contract with a Member or third party to perform any of the duties of the Board, including, but not limited to, acting as administrator for the Authority;
- (m) Charge and apportion to local agencies (with the exception of the Members) that benefit from its services the administrative costs and expenses incurred in the exercise of the powers authorized in this Agreement; and
- (n) Exercise all other powers necessary and proper to carry out the provisions of this Agreement.
- (o) Enter into and approve agreements and leases with the District to ensure that the design, construction and operation of a new transportation terminal meet specific performance criteria designed to maximize the usefulness of the facility for transit operations and pedestrian circulation without increases in facility rental costs.

These powers will be exercised in the manner provided by applicable law and as expressly set forth in this Agreement.

6. Appointment of an Administrator.

- (a) The City and County of San Francisco is hereby appointed by the Members as the administrator (the "Administrator") to execute the provisions of this Agreement and implement programs undertaken by the Authority. The Members acknowledge that this designation may cause potential conflicts of interest to arise and waive any liability on the part of the City and County of San Francisco arising out of any such conflict of interest.
- (b) Subject to Section 7 of this Agreement, the Authority will compensate the City and County of San Francisco for services rendered.
- (c) If the City and County of San Francisco ceases to serve as the Administrator, the Board may appoint a successor entity, agency, person, firm or corporation, including a nonprofit corporation, to serve as the Administrator to execute the provisions of this Agreement and implement programs undertaken by the Authority.

7. Capitalization of the Authority. Capitalization of the Authority which shall include but not be limited to all costs incurred and associated with the design, planning, construction, operation and maintenance of a new regional transit terminal and related facilities and structures (including the design and construction of the downtown extension of Caltrain from 4th and Townsend Streets to the new regional transit terminal) pursuant to this Agreement shall be derived exclusively from external funding sources. The Authority shall receive an initial aggregate amount of \$9.375 million from federal funding sources; thereafter, the Authority shall receive such other funding as it becomes available. The

Members of the Authority shall not be responsible for any costs incurred by the Authority in fulfillment of its purposes pursuant to this Agreement and/or the Bylaws.

8. Board of Directors.

- (a) Directors and Alternates. The City shall initially appoint three (3) directors, and the District and the JPB shall each appoint one (1) director to serve on the Board. The JPB shall not appoint the City and County of San Francisco to serve as its director or alternate on the Board. Each Member may in a director's absence appoint an alternate director for said director. The City and any new member added after the formation of the Authority may appoint additional directors and alternate directors in accordance with Section 16 of this Agreement.
- (b) Compensation. Directors and alternate directors are not entitled to compensation. The Board may authorize reimbursement of expenses incurred by directors or alternate directors.
- (c) Delegation of Powers. The Board may, pursuant to Section 9, delegate certain powers to committees but may not delegate the power to dismiss the Administrator, or amend the Bylaws.

9. Committees. The Board may create committees as set forth in the Bylaws. All directors are eligible for appointment to one or more committees.

10. Officers and Employees.

- (a) The officers of the Authority are the Chair, Vice-Chair, Executive Director, Chief Financial Officer, Secretary and Legal Counsel.
- (b) The Chair and Vice-Chair are directors elected by the Board at its first meeting. The initial term of the Chair and Vice-Chair shall run from the date of their election to office until June 30, 2002. Thereafter, the term of office for the Chair and Vice-Chair is one (1) year. The Executive Director, Secretary, Chief Financial Officer and Legal Counsel serve as set forth in the Bylaws. The duties of the officers are described in the Bylaws. The Chair and Vice Chair assume their office upon election. The Executive Director, Chief Financial Officer, Secretary and Legal Counsel assume the duties of their offices upon appointment by the Board. If either the Chair or Vice-Chair ceases to be a director, the resulting vacancy will be filled at the next meeting of the Board.
- (c) The Chair and Vice-Chair are not entitled to compensation. The Board may authorize reimbursement of expenses incurred by officers.
- (d) The Board may create such other offices and appoint individuals to such offices as it considers either necessary or convenient to carry out the purposes of this Agreement.

11. Limitation on Liability of Members for Debts and Obligations of the Authority. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority do not constitute the debts, liabilities, or obligations of any party to this Agreement. A Member may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. Notwithstanding any other provision of this Agreement, no fee, assessment or charge may be levied against a current Member without express consent of the Member.

12. Fiscal Year. The first fiscal year of the Authority is the period from the date of this Agreement through June 30, 2001. Each subsequent fiscal year of the Authority begins on July 1 and ends on June 30.
13. Budget. The Board may adopt, at its sole discretion, an annual or multi-year budget before the beginning of a fiscal year.
14. Annual Audits and Audit Reports. The Chief Financial Officer will cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions and entries into the books. A report of the financial audit will be filed as a public record with each Member. The audit will be filed no later than required by State law. The Authority will pay the cost of the financial audit in the same manner as other administrative costs.
15. Establishment and Administration of Funds.
 - (a) The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the Government Code of the State of California.
 - (b) The funds will be accounted for on a full accrual basis.
 - (c) The Chief Financial Officer will receive, invest, and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law. The Chief Financial Officer will procure a fidelity bond in accordance with the Bylaws.
16. New Members. For the purpose of this Section only, all Members admitted after the formation of the Authority are New Members.
 - (a) A public entity may be admitted as a New Member only upon concurrence of the Members evidenced by an amendment to this Agreement and upon complying with all other requirements established by the Board and the Bylaws.
 - (b) Each applicant for membership as a New Member must pay all fees and expenses, if any, set by the Board.
 - (c) For each New Member admitted, the City shall appoint one (1) additional director and one (1) additional alternate director to serve on the Board of the Authority.
17. Ex-Officio Members. Public entities may be invited to serve as ex-officio Members of the Authority as provided in the Bylaws.
18. Withdrawal. Members may withdraw in accordance with conditions set forth in the Bylaws provided that no Member may withdraw if such withdrawal would adversely affect any bonds, liabilities or other forms of indebtedness issued by the Authority.
19. Indemnification. The Authority shall acquire such insurance protection as it deems necessary to protect the interests of the Authority, the Members to this Agreement and the public. The Authority shall assume the defense of and indemnify and save harmless each party to this Agreement and its respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the Authority undertaken

pursuant to this Agreement.

20. Expulsion/Suspension. The Authority may expel or suspend a Member by a two-thirds (2/3) vote of the Board for an event of default of this Agreement or the Bylaws as determined by the Board. The procedures for hearing and notice of expulsion and suspension of a Member are as provided in the Bylaws.
21. Termination and Distribution.
- (a) This Agreement shall continue until terminated. However, it may not be terminated until such time as all principal of and interest on any bonds, liabilities or other forms of indebtedness of the Authority are paid in full. Thereafter, this Agreement may be terminated by the written consent of two-thirds (2/3) of the Members; provided, however, that this Agreement and the Authority continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of the Authority.
- (b) After completion of the Authority's purposes, any surplus money on deposit in any fund or account of the Authority will be disbursed as provided in the Bylaws. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority.
22. Adoption of City and County of San Francisco Contracting Provisions. The Authority hereby adopts the provisions of the Municipal Code of the City and County of San Francisco Chapters 12B, 12C and 12D of the San Francisco Administrative Code, as amended, and as set forth below.
- (a) Public Contracting Provisions. The Authority shall comply with all restrictions and requirements prohibiting discrimination of any kind in employment and contracting under the San Francisco Administrative Code, Chapters 12B, 12C and 12D, as amended from time to time, which is hereby incorporated by reference as if fully set forth herein. The Authority shall be only responsible for the administration of such requirements. Unless otherwise provided by a resolution of the Board of the Authority, prevailing wages shall be paid for the construction and operation of the transit terminal and related facilities.
23. Notices. Notice to each Member under this Agreement is sufficient if mailed to the Member and separately to the Member's director to their respective addresses as follows:

City:

City and County of San Francisco
Mayor's Office of Economic Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Director

District:

Alameda-Contra Costa Transit District
1600 Franklin Street
Oakland, CA 94612
Attn: General Manager

JPB:

Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Executive Director

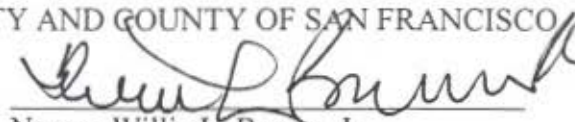
24. Prohibition Against Assignment. No Member may assign a right, claim, or interest it may have under this Agreement. No creditor, assignee or third party beneficiary of a Member has a right, claim or title to any part, share, interest, fund or asset of the Authority. However, nothing in this Section prevents the Authority from assigning any interest or right it may have under this Agreement to a third party.
25. Amendments. This Agreement may be amended at any time by the written agreement of the Members.
26. Severability. If any portion, term, condition or provision of this Agreement is determined by a court to be illegal or in conflict with a law of the State of California, or is otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions is not affected.
27. Liability of the Authority. Subject to limitations thereon contained in any trust agreement or other documents pursuant to which financing of the Authority are implemented, funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, any Member, any director or alternate, and any employee or officer of the Authority for their actions taken within the scope of their duties while acting on behalf of the Authority.
28. Environmental Compliance. Execution of this Agreement does not substitute for any required review process nor guarantee approval of a new transportation terminal, ramps, landscape and other related facilities. Design and development of a transportation terminal, ramps, landscape and other related facilities will be considered through the local land use permitting process, which requires environmental review in accordance with CEQA and, if applicable, NEPA.
29. Ralph M. Brown Act. All meetings of the Board of the Authority, including, without limitation, regular, adjourned regular, special and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California).
30. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California.
31. Counterparts. This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes but one and the same instrument.
32. Effective Date. This Agreement becomes effective and the Authority exists as a separate public entity upon its execution by the Members.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

Date: April 4, 2001

CITY AND COUNTY OF SAN FRANCISCO

By:



Name: Willie L. Brown, Jr.

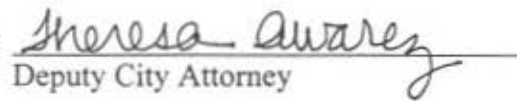
Title: Mayor

APPROVED AS TO FORM:

LOUISE H. RENNE

City Attorney

By:

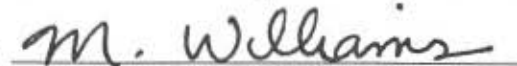


Deputy City Attorney

Date: April 4, 2001

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

By:



Name: Matthew Williams

Title: President

APPROVED AS TO FORM:

By:



Kenneth C. Scheidig

General Counsel

Date: April 4, 2001

PENINSULA CORRIDOR JOINT POWERS BOARD--CALTRAIN

By:



Name: Michael Burns

Title: Chair

APPROVED AS TO FORM:

By:



Name: David Miller

Title: General Counsel

EXHIBIT A

SITE

The land referred to herein is situated in the State of California, in the City and County of San Francisco and is described as follows:

Block 3721, Lot 006; Block 3720, Lot 001; Block 3719, Lot 003.