TransLink® Strategic Business Planning Committee Governance Recommendation

TransLink® Management Group
Oakland, CA
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In December 2008, the TMG held a Strategic Planning Workshop to initiate the development of a strategic business plan

- During the workshop, Governance issues were identified
  - Inefficient decision-making
  - Unclear lines of communication
  - Lack of Agency commitment and ownership
  - Dependence on volunteer staff
  - Mistrust
  - Brown Act constraints

- It was agreed that the TransLink® Program focus has changed *from* design and development *to* policy development, regional implementation and performance management. Therefore, Governance needs to be studied for potential change.

A Strategic Business Planning Committee was formed by the TMG to develop a strategic business plan and to study and recommend a new Governance Model

- Committee members include
  - Melanie Crotty, MTC
  - Ali Hudda, SCVTA
  - Dan Lillin, AC Transit
  - Thomas Parker, BART
  - Carter Rohan, SFMTA
  - Jerry Willard, Caltrain/SamTrans
  - Joe Wire, GGBTHD
- Chairs of DRAIC and Finance invited
  - Larry Kozimor, BART
  - Jennifer Mennucci, GGBTHD
- The Strategic Business Plan has been drafted; however, pressing issues and current conditions made the Governance study the Committee's primary focus

Committee's methodology

- Committee members met 8 times since January
- Governance study encompassed
  - Interviewing agency staff, committee members, legal experts
  - Researching industry governance models, legal codes, agreements and organizational structures, gathering peer experience
  - Reviewing financial reports of local JPAs, Seattle's Orca Program and MTC
- Some models were considered, but discarded as not right for TransLink® at this juncture
  - Hong Kong model is designed for supporting commercial ventures and not appropriate for TransLink® at this time
  - Committee also concluded that the existing Governance was not an option. Governance needs to change to support the TransLink® objective and if there is no change from the status quo, MTC is considering withdrawing from the Consortium.

The Committee, with direction from the TMG, narrowed the study to three Governance Models

- *Joint Powers Authority*: Transit Agencies would agree to form a separate and legal entity
  - JPA was considered in 2001, determined not right for TransLink® at that time
- *Modified Consortium*: Transit Agencies would agree to continue with the Consortium with modified IPA to address weaknesses and Contract assignment
- *MTC Management*: MTC would withdraw from the Consortium. Other members would decide if they want to continue their membership. Regardless, MTC would make bilateral agreements with each Agency.

Governance Model basic characteristics

Characteristics	JPA	Modified Consortium	MTC Management	Current
Powers	Power to make/enter contracts, to hire staff, to apply for grants	No legal powers	Power to make/enter contracts, to hire staff, to apply for grants	No legal powers
TransLink® Contract	Assigned to JPA	Assigned to a Member Agency	MTC continues as Contract Manager	MTC is Contract Manager
Governance	Board of Directors: one rep. from each of Charter Agency, plus one rep. of General Members Significant issues decided by JPA Board (1 Step)	TMG: one rep. from each of Charter Agency, plus one rep. of General Members Significant issues approved by TMG, sent to Lead Agency Board for final approval (2 Steps)	MTC Board of Commissioners Significant issues approved by MTC Board (1 Step)	TMG: one rep. from each of Charter Agency, plus one rep. of General Members and MTC Significant issues approved by TMG, sent to MTC Commissioners for final approval (2 Steps)
Risk/Liability	JPA indemnifies, holds harmless Member Agencies. Carries proper insurance coverage. Would need to develop Funding Plan/Strategy to address shortfall	Members indemnify, hold each other harmless. Each shares cost of defense and settlement. Each holds sufficient insurance. Would need to develop Funding Plan/Strategy to address shortfall	Indemnification clauses from the IPA survive the IPA, even if Consortium is dissolved. Would need to develop Funding Plan/Strategy to address shortfall	Members have indemnified, the others. IPA defines funding commitment. Need to develop a funding plan/strategy to address shortfall.
Committees	Executive Committee (subset of the Board) or authorized alternative. Ad hoc committees when necessary. Program Director would guide their efforts.	Executive Committee (subset of the Board) or authorized alternative. Ad hoc committees when necessary Program Director would guide their efforts.	No special committees	TOG, DRAIC, Finance, Schedule, DAWG, Settlement Marketing & Distribution. Subject to Brown Act.

Evaluation Assumptions

- *Funding would not be a decision factor*. No matter what Governance is chosen, a viable funding plan is essential for capital, operating and transition costs. Committee researched order-of-magnitude cost estimates for the purpose of identifying models that fell outside a reasonable range. The estimates were not intended to be the official budgets.

- *The existing Governance is not an option.* If Governance is not changed or agencies cannot agree, MTC would consider withdrawing from the Consortium and assume unilateral control of the Program. IPA requires members to give notice as of Nov. 1, 2009 for an effective date of July 1, 2010.

- *Committee members would evaluate the Models with the best interest of TransLink® in mind, not special interests.*

- *The TransLink® Contract would be assigned as is.*

Process for identifying the recommended Governance Model

- Each Governance Model option was evaluated against six Selection Principles
  - Enables effective and efficient administration of the Program
  - Supports the best interest of TransLink®
  - Provides the foundation for funding sustainability
  - Encourages Transit Agency involvement and sets clear accountability for actions and decisions
  - Protects participating Agencies from risk and liability as well as protects the Governing Authority
  - Leads the development of commercial opportunities
- Each member scored the options using a point system 1 – 5 with 5 the highest score. Scores were totaled and averaged to identify the recommended option.

JPA received the highest score by Committee Members for the following reasons:

- A JPA has the power to make and enter contracts; therefore, the Contract can be assigned to "a central body" versus a single agency and two-step approval (TMG and MTC)
- There would be no competing priorities for the JPA whose mission would be to make TransLink® the best it can be. Given this, the JPA, dedicated to the Program, would
  - Serve the best interest of TransLink®
  - Actively encourage/seek Agency involvement and feedback, and
  - Be a dedicated advocate for funding
- A JPA would most likely be perceived as objective on Regional and Agency concerns
- A JPA provides some protection from Risk and Liability
- A JPA has the power to apply for grants. Helpful for funding innovative opportunities

MTC Management placed 2nd; Modified Consortium, 3rd

The Committee considered various organization structures for the TransLink® JPA and selected three to consider

GOVERNANCE ORGANIZATIONS STUDIED	DESCRIPTION
JPA with Managing Agency - PCJPB: Caltrain, managed by SamTrans - CCJPA: Capitol Corridor, managed by BART	JPA delegates responsibility of managing TransLink® to a Member Agency. Agency provides Program Director, staff, office, equipment and supplies. JPA reimburses Agency for salaries, benefits, and overhead.
JPA with Hired Staff - Transbay JPA	The JPA sets up its own office and hires Program Director and staff to manage TransLink®. Three different options for hiring w/o Human Resources, payroll services or workers' compensation insurance.
JPA with Outsourced Management - RTA managed by Veolia	JPA outsources management of the Program. The hired firm provides the Program Director, staff and office. The JPA hires oversight staff to monitor contractor's performance.

Process for identifying the recommended Governance Organization

- Members evaluated and scored in the same manner as Governance Model. ***Hired Staff received the highest score*** with Outsourced Management, 2nd; Managing Agency, 3rd***.***

- Reasons
  - Staff of the JPA would most likely be perceived as unbiased with the best interest of TransLink® in mind
  - Costs are transparent and more controllable
  - No competing priorities
  - More accessible
  - JPA, with Hired Staff, would be less vulnerable to risk and liability than with Managing Agency or Outsourced Management
  - More positives than other two options

What would the TransLink® JPA with Hired Staff look like?

- *Board of Directors*: Recommend GMs of Charter Members and a GM representing General Members with special powers (i.e. make and enter contracts, hire staff)
- *Program Director*: Fully dedicated to the Program, reporting directly to the Board
- *Staffing*: Contracted through various channels
- *Quarterly Board Meetings*: Executive Committee (subset of Board) or another authorized process would have delegated authority for making timely decisions in between Board Meetings
- *Ad Hoc committees:* Short-term committees initiated by Board Chair and Program Director to address pressing policy and business matters to present to Board. Report directly to the Program Director.
- *Single point of Agency Contact*: Program Director would communicate directly with high level executive from each Agency
- *Contract and Contracting Rules*: TransLink® assigned to JPA. Contracting rules would be adopted from a Member Agency
- *Risk and Liability*: JPA would indemnify Member Agencies and carry proper insurance coverage

How would the new Governance solve the current issues?

Characteristics	*Benefits*
Legal, separate entity with Board of Directors with special powers	Contract decisions would be a one-step process versus now (TMG approves, MTC Board approves). Contract assigned JPA
Program Director	Dedicated, focused leadership. No competing Agency priorities.
Executive Committee	Would improve timeliness of decision-making for urgent matters
Bylaws	Would clearly define rules of engagement; clarify expectations for agency staff contributions
Ad hoc committees	Would focus on the most pressing matters and report directly to the Program Director. Reduce the number of volunteers. Not subject to Brown Act.
Single points of Agency contact (high level)	Would improve communications and streamline decision-making
Risk and Liability	Determined the best protection for Agencies compared to Modified Consortium

What would it take to transition to the new Governance?

- Current Governance and IPA would remain standing through transition or until July 1
- Thoroughly analyzing costs, preparing budget
- Defining a funding plan and strategy
- Securing Cubic's approval of the assignment (which may not be unreasonably withheld)
- Setting up the JPA
  - Contracting rules
  - JPA agreement, articles, bylaws
  - Agency Board approval
  - Staffing plan and processes
  - Facility, equipment, supplies
  - Hiring, training

Proposed Timeline

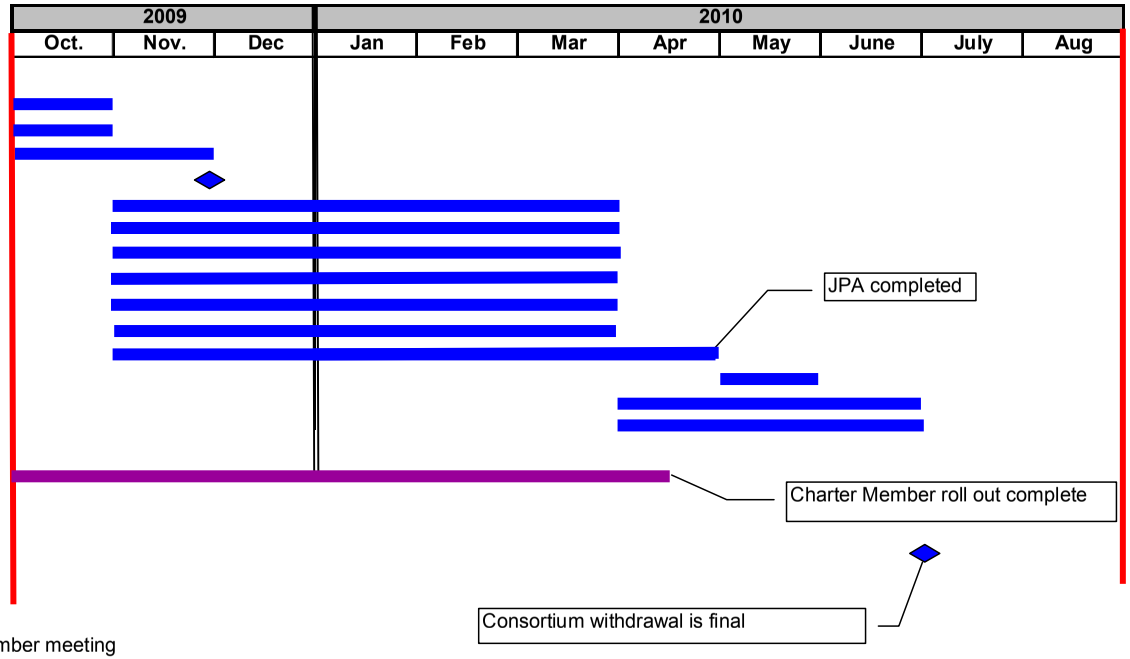
STEPS FOR JPA WITH HIRED STAFF

1 Define scope-of-work
2 Analyze costs, prepare official budget plan
3 Define funding plan and policy
4 Receive final Governance approval from TMG
5 Modify IPA and include JPA specific articles
6 Develop contracting rules
7 Prepare staffing plan with job descriptions/qualifications
8 Prepare operating procedures
9 Prepare bylaws
10 Process assignment of TL contract to JPA
11 Present information to Agency Boards for information and approvals
12 File Articles with the Secretary of State
13 Lease office, set up facility
14 Execute staffing contracts, transition completed

TransLink Roll Out

IPA Deadline for Withdrawal

Effective July 1, 2010



Assumptions:

a Governance option, contingent on funding plan, will be approved by TMG at September meeting
b Funding plan will be due to TMG within 90 days of Governance approval with contingency
c Resources will be available to facilitate and complete items 1-10
d TL Contract will be assigned 'as is'

Committee's recommendation

- The Committee recommends that the TMG approve a new TransLink® Governance strategy of a ***Joint Powers Authority with Hired Staff***, ***with the condition that a funding plan and strategy is submitted within the next 60 days*** for its consideration and approval

- The Committee further recommends that TMG ***authorize the SBPC to develop the funding plan and strategy*** and ***authorize and appoint staff to a Transition Committee*** tasked with the following:
  - Defining an approach to work with the TransLink® Contractor to seek its concurrence on assignment
  - Defining all other necessary transition steps, how they would be completed, who would complete them, schedule, and budget