



ITEM #       E1      

**EXECUTIVE COMMITTEE MEETING  
MINUTES  
AUGUST 3, 2018**

**A. CALL TO ORDER**

The Executive Committee Meeting was called to order by Chairman Ron Dailey at 9:00 a.m., Friday, August 3, 2018 at the Omnitrans Administrative Offices.

**COMMITTEE MEMBERS ATTENDING**

Council Member Ron Dailey, City of Loma Linda – Board Chairman  
Council Member David Avila, City of Yucaipa – Board Vice Chairman  
Council Member Penny Lilburn, City of Highland  
Mayor Pro Tem John Roberts, City of Fontana  
Council Member Sam Spagnolo, City of Rancho Cucamonga

**OTHERS ATTENDING**

Haviva Shane, General Counsel

**OMNITRANS STAFF ATTENDING**

P. Scott Graham, CEO/General Manager  
Trischelle Baysden, Director of Rail Operations  
Julienne Overland-Villegas, Executive Assistant to the CEO/General Manager

**B. ANNOUNCEMENTS/PRESENTATIONS**

Next Committee Meeting:       Friday, September 7, 2018, 9:00 a.m.  
  Omnitrans Metro Facility

**C. COMMUNICATIONS FROM THE PUBLIC**

There were no communications from the public.

**D. POSSIBLE CONFLICT OF INTEREST ISSUES**

There were no Conflict of Interest Issues.

## **E. DISCUSSION ITEMS**

### **1. Approve Executive Committee Minutes – July 6, 2018**

Member Lilburn asked that the minutes be corrected to reflect her designation as Council Member instead of Mayor.

M/S (Spagnolo/Lilburn) that approved the Executive Committee Minutes of July 6, 2018. Roll call vote was taken and the motion was passed unanimously by Members present.

### **2. Recommend the Board of Directors Authorize the CEO/General Manager to Continue to Negotiate and Execute the Three-Party Agreement between Omnitrans, San Bernardino County Transportation Authority (SBCTA), and Southern California Regional Rail Authority (SCRRA) as necessary for the implementation of the Redlands Passenger Rail Service**

Director of Rail, Trischelle Baysden, presented this item. She provided a brief overview of the Redlands Passenger Rail Service alignment and highlighted the roles and responsibilities of the three agencies included in the three-Party Agreement. She introduced Legal Counsel, Haviva Shane to brief the Committee on the insurance portion of the project.

Ms. Shane provided some background information on the development of the Agreement and how it transitioned from being a two-party to a three-party agreement. She reviewed insurance policy issues related to passenger rail service, and concerns with multiple agencies carrying overlapping railroad liability coverage. Ms. Shane explained that to address this issue, a single railroad liability policy will be purchased to cover claims related to Arrow service that involve a Redlands Passenger Rail Train. The policy will be fully funded by SBCTA in the amount of \$350 million, with a \$2 million self-insured retention. Omnitrans will be the policy holder, and SBCTA and Metrolink, and their contractors, will be added as additional insureds. Ms. Shane explained that to accomplish this structure, the three-party Agreement requires Omnitrans to indemnify SBCTA and Metrolink, and their contractors, for such claims, regardless of cause, with the intent that these claims will be covered by the insurance policy. Certain claims are excluded from the indemnification obligation, such as claims based on willful misconduct. Ms. Shane further explained that, under the current draft of the Agreement, the \$2 million self-insured retention will be funded by SBCTA in a lump sum, to be held in a separate account by Omnitrans for use in resolving claims within the retention amount.

Ms. Baysden concluded her presentation by reviewing the project timeline and stated that the service is expected to begin mid to late 2021.

The Committee had some questions regarding the stop locations and service frequency. Ms. Baysden responded to their questions. The Committee recommended that marketing efforts begin early and a robust campaign be implemented as the project start date approaches.

Member Spagnolo requested that periodic updates be provided to the Board so that they may update their Council and community at their respective council meetings.

M/S (Spagnolo/Avila) recommend the Board of Directors Authorize the CEO/General Manager to Continue to Negotiate and Execute the Three-Party Agreement between Omnitrans, San Bernardino County Transportation Authority (SBCTA), and Southern California Regional Rail Authority (SCRRA) as necessary for the implementation of the Redlands Passenger Rail Service *contingent upon no substantive changes being made following the Board's action*. Roll call vote was taken and the motion was passed unanimously by Members present.

3. Receive and File, Update on Recent California Department of Industrial Relations, Division of Occupational Safety Health Administration (CalOSHA) Inspection and Violations.

CEO/General Manager, P. Scott Graham, provided a brief overview on the CalOSHA Inspection conducted at the West Valley facility on November 17, 2017. He reviewed the citations and informed the committee that due to the corrective efforts made by the Agency, CalOSHA reduced the penalties by 30% for five penalties and the fines were removed for the two remaining penalties. Mr. Graham also informed the Committee that the Agency has taken additional measures to ensure Omnitrans is in compliance with all routine safety inspections and noted that this item will be added to the Annual Audit Plan. Mr. Graham concluded his report by stating that the Agency was granted a Non-Admission Clause by the reviewing Administrative Law Judge. Committee members commended Omnitrans staff for the prompt attention and swift corrective actions taken.

The Committee received and filed this item.

4. CEO/General Manager's Report

CEO/General Manager, P. Scott Graham reviewed his CEO report.

## **F. BOARD BUSINESS**

There was no Closed Session.

## **G. REMARKS AND ANNOUNCEMENTS**

There were no remarks and announcements.

## **H. ADJOURNMENT**

The Committee adjourned at 10:15 a.m. The next Executive Committee Meeting is scheduled Friday, September 7, 2018, at 9:00 a.m., with location posted on the Omnitrans website and at the Omnitrans San Bernardino Metro Facility.

Prepared by:

---

Araceli Barajas, Executive Staff Assistant

ITEM # E2

**DATE:** September 7, 2018

**TO:** Board Chair Ron Dailey and Members of the Executive Committee

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: OMNITRANS SYSTEM COMMERCIAL ADVERTISING POLICY AND  
CONTENT GUIDELINES**

### **FORM MOTION**

Recommend the Board of Directors approve the proposed Omnitrans System Commercial Advertising Policy and Content Guidelines for Agency assets with an effective date of January 1, 2019.

### **BACKGROUND**

On November 1, 2017, the Board approved Contract MKP18-02 (the “Agreement”) with Lamar Transit, LLC (“Lamar”) for the provision of Advertising Sales and Services – Transit Vehicles, Shelters and Stations for a period of five (5) years beginning January 1, 2018, with five one-year option terms.

The Agreement includes restrictions on advertising that conform with the standard type of advertising restrictions imposed by public transportation entities in California that utilize public property for revenue generating purposes. Such restrictions seek to maintain government neutrality, avoid any discrimination or offensive content in advertising that impacts riders of the Omnitrans system, respect First Amendment rights in accordance with established law, and maximize advertising revenues.

Omnitrans is funded by a combination of Federal, State and Local funds, as well as fare box revenue. It is in the public interest to implement an advertising policy to protect the interests and assets of Omnitrans while maximizing revenues received from advertisers. The fundamental objective of Omnitrans in selling advertising space, consistent with this policy, is to maximize and generate revenues to supplement fares and cover unfunded operating costs. Omnitrans’ sale and display of advertising is not intended to provide a general public forum for expressive activities or public discourse and debate. Consistent with the proprietary function to operate as a provider of public transportation provided under California law, Omnitrans reserves its strict control over the nature of the advertisements accepted for display in its transit facilities and maintains its advertising space as a limited public forum.

On July 11, 2018, the Board asked staff to develop a policy to govern advertising on Agency assets. Previously, restrictions on advertising and other terms and conditions were included in the vendor Agreement, but not contained in a policy adopted by the Board.

In developing the solicitation for the Advertising Sales and Services contract and the subsequent draft policy (Attachment A), Omnitrans staff and legal counsel reviewed the advertising policies and guidelines utilized by numerous other transit agencies, including those listed below.

- Greater Dayton Regional Transit Authority
- Livermore Amador Valley Transit Authority
- Los Angeles Metropolitan Transportation Authority
- Orange County Transportation Authority
- Sacramento Regional Transit District
- San Diego Metropolitan Transit System
- San Francisco Bay Area Rapid Transit District
- San Francisco Municipal Transportation Agency
- San Mateo County Transit District
- Santa Monica Big Blue Bus
- Sunline Transit Agency

## **ANALYSIS**

Omnitrans permits advertising on Agency assets such as vehicles, shelters and stations to generate revenue for the agency. Additionally, under its vendor Agreement, the Agency is able to utilize a portion of the advertising space for self-promotion, co-promotion and trade purposes. Omnitrans seeks to ensure any and all advertising is in accordance with all applicable laws and regulations, including regulations governing funding Omnitrans receives from State and federal sources. Omnitrans is also cognizant of needing to balance First Amendment considerations with any advertising restrictions. Transit agency property is not considered a public forum for speech, unless the government opens the forum to speech. By allowing commercial advertising on transit property, with limitations as set forth in the regulations, Omnitrans creates what is known as a limited public forum for purposes of speech. This means Omnitrans may regulate any advertising in a reasonable and viewpoint neutral manner.

Transit agencies have been sued for refusing to accept advertising they considered controversial; however, the courts have upheld agency actions in conformance with an adopted policy restricting non-commercial speech and imposing reasonable content guidelines, where applied in a viewpoint neutral manner. Thus, numerous other transportation agencies in California and the nation have adopted similar advertising policies in order to minimize risk for the Agency.

Following a review of advertising policies adopted by other transportation agencies, staff has prepared the enclosed advertising policy for consideration by the Board. The enclosed policy generally conforms to the guidelines previously included in the vendor Agreement and includes, among other things, restrictions on political advertisements, religious advertisements, advertisements that promote tobacco, alcohol or marijuana, and advertisements that promote illegal activities.

**CONCLUSION**

Staff and legal counsel seek a recommendation from the Executive Committee to approve the Omnitrans System Commercial Advertising Policy and Content Guidelines for Agency assets.

PSG:WW

Attachment: A: Omnitrans System Commercial Advertising Policy and Content Guidelines



Draft 08/16/18

## OMNITRANS SYSTEM COMMERCIAL ADVERTISING POLICY AND CONTENT GUIDELINES

*Adopted by the Omnitrans Board of Directors*

*Date: **October 3, 2018***

### I. POLICY STATEMENT

Omnitrans' purpose in adopting this Commercial Advertising Policy and Content Guidelines ("Policy") is to promote transit ridership in a safe environment for its riders. With any advertising, Omnitrans seeks to maintain government neutrality, avoid any discrimination or offensive content in advertising that impacts its riders, respect First Amendment rights in accordance with established law, and maximize advertising revenues.

Omnitrans allows for advertising on its transit vehicles, shelters and stations to generate revenue for the agency in consideration of applicable laws and regulations. Omnitrans' assets with opportunities for revenue advertising include, but are not limited to, bus, paratransit and rail vehicles, shelters and stations, and the San Bernardino Transit Center.

Omnitrans may utilize a contractor to handle the sales and administration of Omnitrans' transit vehicle, shelter and stations advertising program. Any contractor is selected through a competitive procurement process and responsibilities may include soliciting, placing, administering and managing advertisements on Omnitrans' assets in accordance with applicable laws, regulations and Omnitrans policies and procedures.

Non-commercial advertisements will not be accepted unless such advertisements are considered informational material and are in compliance with the guidelines below. Omnitrans expressly reserves its proprietary right to display notices and advertisements relating to its transit operations, and transit operations of related public entities.

### II. GUIDELINES

Generally, Omnitrans requires that any contractor adhere to the following guidelines:

1. Advertisements shall be of a reputable character, shall conform to recognized business standards and shall not conflict with the laws of the United States, or any state or political subdivision thereof having jurisdiction over Omnitrans or the rules and regulations of any arm, branch or agency of any such governmental bodies.
2. Advertisements objectionable to Omnitrans shall, at the request of the Project Manager, be expeditiously removed by the contractor, or if warranted be immediately removed by Omnitrans, and, after removal by Omnitrans' staff, written notice of removal shall be conveyed to contractor.
3. Contractor shall remove expired or obsolete ads within twenty-one (21) days of expiration or ten (10) days of notification by Omnitrans and at contractor's sole expense and liability.

### **A. Permitted Advertising Content**

The following classes of advertising are authorized on Omnitrans assets subject to final authorization by Omnitrans or a designated contractor:

1. Commercial and Promotional Advertising. Advertisements that promote or solicit the lawful sale, rental, distribution or availability of goods, services, food, entertainment, events, programs, transactions, donations, products or property (real or personal) for lawful commercial or noncommercial purposes or more generally promotes an entity that lawfully engages in such activities.
2. Governmental Advertising. Notices or messages from government entities, meaning public entities specifically created by government action and recognized as public agencies under California law, that advance specific government purposes.
3. Public Service Announcements. Announcements which are sponsored by either a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which are directed to the general public or a significant segment of the public and relate to:
  - a. Prevention or treatment of illnesses;
  - b. Promotion of safety or personal well-being;
  - c. Education or training;
  - d. Art or culture;
  - e. Provision of children and family services;
  - f. Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
  - g. Provision of services and programs that provide support to low income citizens, senior citizens and people with disabilities.

### **B. Prohibited Advertising Content:**

The following classes of advertising are prohibited on Omnitrans assets:

1. False, Misleading, or Deceptive Commercial Speech. The advertisement proposes a commercial transaction, and the advertisement or information contained in the advertisement is false, misleading, or deceptive.
2. Libelous Speech, Copyright Infringement, etc. The advertisement, or any material contained in it, is libelous or an infringement of copyright, or is otherwise unlawful or illegal or likely to subject Omnitrans to litigation.
3. Unlawful Goods or Services. The advertisement or material contained in it, promotes unlawful or illegal goods, services, or activities.
4. Endorsement. The advertisement or any material contained in it, implies or declares an endorsement by Omnitrans, its Directors, management, or employees of any service, product, or point of view without prior written authorization from Omnitrans.
5. Prurient Interest. The advertisement contains material that describes, depicts, or represents sexual activities, or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults. For purposes of these guidelines, the term “minor” shall have the meaning contained in California Penal Code Section 313.
6. “Adult” – Oriented Goods or Services. The advertisement promotes or encourages or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or

other materials which are identifiable with, films rated “X” or “NC – 17,” adult book stores, adult video telephone services, adult internet sides, and escort services.

7. Obscenity or Nudity. The advertisement contains obscene materials or images of nudity. For purposes of these Guidelines, the term “obscene matter” shall have the meaning set forth in the California Penal Code Section 311.
8. Unlawful and Detrimental Conduct. The advertisement, or any material contained in it, promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities, and promotes behavior or activities which are detrimental to the maintenance and safe operations of Omnitrans.
9. Demeaning or Disparaging. The advertisement contains images or information that demeans or disparages an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age disability or sexual orientation.
10. Personal Attack. The advertising contains images, copy or concepts that appear to make a personal attack on any individual or upon any company, product, or institution; or falsely disparages any service or product or is defamatory in any respect.
11. Violence. The advertisement either (a) contains images or descriptions of graphic violence, including, but not limited to, the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal; or (b) the advertisement, or any material contained in it, incites or encourages, or appears to incite or encourage violence or violent behavior.
12. Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual, or (b) contains image(s) of firearms that occupy 15% or more of the overall advertisement.
13. Profanity. The advertisement contains words recognized by the community as vulgar indecent or profane for display in a public setting that includes minors.
14. Alcohol/Tobacco/Smoking/Marijuana. The advertisement promotes the use of alcohol, tobacco, smoking and/or marijuana, or related products.
15. Graffiti. The advertisement contains graphics or language that promotes, resembles, or otherwise encourages graffiti or vandalism.
16. Inappropriate Graphics. The advertisement contains graphics recognized by the community as inappropriate, offensive and not promoting government neutrality and the safe enjoyment of public transit.
17. Political Information. The advertisement contains political information including candidates running for elected office or local or national controversial subject or subjects not in accordance with the statutes, ordinances, and court decisions pertaining to the Omnitrans service area. This includes messages that are political in nature, including messages of political advocacy, that support or oppose any candidate or referendum, or that feature any current political office holder or candidate for public office, or take positions on issues of public debate.
18. Religious Information. The advertisement contains direct or indirect reference to religion, or to any religion, or to any deity or deities, or which includes the existence, nonexistence or other characteristics of any deity or deities, or to any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion. This prohibition shall include the depiction of text, symbols, or images commonly associated with any religion or with any deity or deities, or any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion.

### **C. Omnitrans' Rights**

The Omnitrans Board reserves the right to amend this Policy and at any time. Further, Omnitrans may review any advertising content to determine conformance with these guidelines. Omnitrans reserves the right to reject any advertising content submitted for display on its properties, and/or to order the removal of any advertising posted on its properties for failure to comply with this Policy. Decisions regarding the rejection or removal of advertising are made by the Director of Marketing or his or her designee based upon the criteria in this Policy.

DRAFT

ITEM # E3

**DATE:** September 7, 2018

**TO:** Board Chair Ron Dailey and Members of the Executive Committee

**FROM:** P. Scott Graham, CEO/General Manager

**SUBJECT: REVIEW OF DRAFT SPECIAL LEGISLATION TO CHANGE OMNITRANS FROM A JOINT POWERS AUTHORITY TO A STATUTORILY CREATED SPECIAL TRANSIT DISTRICT AND RELATED MEMORANDUM OF UNDERSTANDING WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

### **FORM MOTION**

Review and comment on updated draft legislation, and related Memorandum of Understanding (MOU) with San Bernardino County Transportation Authority (SBCTA).

### **BACKGROUND**

#### ***Recent Background on Omnitrans Transit District Legislation***

On April 6, 2018, the Executive Committee directed legal counsel to work on updating and finalizing a new draft of the legislation to create Omnitrans as a special transit district under Division 10 of the Public Utilities Code.

Legal counsel reviewed prior versions of the draft legislation originally considered by the Board of Directors (Board) on March 1, 2017, and made revisions and changes consistent with legislation for other similar agencies.

On June 1, 2018, the Executive Committee reviewed and provided comments on the updated draft of the legislation. The draft was also provided to SBCTA for review and comment. On June 6, 2018 the Omnitrans Board reviewed and commented on the draft legislation.

- A Board Member requested a change to the legislation regarding the distribution of assets upon any dissolution of the district. The legislation has been revised to more closely track the language in the Omnitrans Joint Powers Agreement regarding distribution of assets upon dissolution.
  - A new subparagraph (b) has been added to Section 108400, of Chapter 10, Dissolution to address the concern raised by the Board Member.

- Two changes were requested by SBCTA staff. The first change is to Chapter 5, Article 3, Section 108073, Transit Facilities and Services; Consolidated Transportation Agency. The concern expressed is that the language may be too broad, and may create overlapping planning responsibilities between Omnitrans and SBCTA.
  - An addition to this section of a new subparagraph (b) was proposed by SBCTA staff.
  - Omnitrans staff and legal counsel reviewed the proposed addition from SBCTA staff, but considered it too restrictive on Omnitrans' rights. A revised version of the proposed addition is included in the attached draft.
- The second change from SBCTA staff is to Chapter 5, Article 4, Section 108080, Taxation; Other Fees and Indebtedness. This change would require Omnitrans to obtain SBCTA Board approval prior to initiating its own tax measure, and is related to the MOU referenced below. The language as requested by SBCTA has not been included in the current draft legislation as the purpose and intent of that language is captured in the MOU.

In addition to the above, some further redline changes and additions have been made to the draft legislation by General Counsel's office for consideration by the Executive Committee.

#### ***Draft MOU regarding Taxation Authority***

At the March 1, 2017 Board meeting, during the Board's consideration of the draft legislation, SBCTA Executive Director, Mr. Ray Wolfe raised concerns with Omnitrans' proposed taxation authority under the draft legislation. Mr. Wolfe voiced concerns about potentially competing tax measures that could be brought forward by SBCTA and Omnitrans, and stated his position that SBCTA, as the regional transportation planning agency, should be the regional entity that brings forward taxation measures related to transportation within San Bernardino County.

At that time, the concept of an MOU under which Omnitrans would agree not to exercise taxing authority provided that SBCTA would take into account Omnitrans' interests in any SBCTA tax measure was discussed as a means to address the Board's concern with maintaining the current rights of Omnitrans under its Joint Powers Agreement, while also addressing concerns raised by Mr. Wolfe. The attached draft MOU has been prepared and provided to SBCTA for review and comment.

#### ***Earlier Background (2017)***

On February 3, 2017, at the regular meeting of the Omnitrans Executive Committee, the Committee conducted a review of the Omnitrans governance structure and risk mitigation options related to Omnitrans' new role as manager of the contract that will provide for the operations and maintenance of the Redlands Passenger Rail Project (RPRP) rail service; the "Arrow".

Following this review, the Executive Committee determined that changing the structure of Omnitrans from a joint powers authority to a statutorily created entity would be the most effective means of eliminating potential tort liability to member entities of the Omnitrans joint powers authority. The Executive Committee determined that it would be in the best interest of the member

entities of Omnitrans to move forward with the process of creating Omnitrans as a special transit district under Division 10 of the Public Utilities Code. It should be noted that there is no intention to change the number of entities; the composition of the Board will remain the same.

Based on the timing of the discussions in the 2017-2018 legislative cycle, it was determined that there was still sufficient time to obtain a spot bill by the February 17, 2017 deadline, and the Executive Committee directed staff and legal counsel to obtain a bill number. A spot bill and a bill author were successfully obtained. At the March 1, 2017 Board meeting, Omnitrans General Counsel Haviva Shane presented this item to the full Board seeking direction as to whether or not to proceed with developing statutory legislation to create a transit district.

A concern was raised by SBCTA Executive Director, Ray Wolfe, regarding Omnitrans retaining taxing authority, which is included as part of the JPA. The Board engaged in a discussion and there was concern expressed from several Members regarding Omnitrans relinquishing a power held under the JPA. The consensus was to move forward with the recommendation to direct Legal Counsel to pursue legislation to form Omnitrans Transit District, with the added direction that an MOU be presented to both SBCTA and Omnitrans Board of Directors stating that both agencies will work together and Omnitrans will not compete for a special tax.

This item was brought back to the Board at the April 5, 2017 meeting. Omnitrans General Counsel, Haviva Shane, presented proposed legislation (AB 548) to create Omnitrans Transit District and asked for further direction from the Board. After a lengthy discussion, the Board decided to suspend the process until the issues were resolved and there was consensus and clear direction moving forward.

### ***Arrow Three Party Agreement***

Omnitrans staff is currently working with SBCTA and Metrolink staff on a developing a three party agreement that defines the roles and responsibilities of each agency as it relates to the Redlands Passenger Rail Project (RPRP) the “Arrow” service. In addition, the Chairman of the Board formed a Rail Ad Hoc Committee to review this agreement and other matters related to the RPRP. As part of the discussions regarding liability, insurance and indemnification in the context of the three party agreement, staff and legal counsel began revisiting the issue of protecting the JPA members from potential liability. As part of the discussions regarding liability, the issue of protecting JPA members from unfunded pension liability was also raised. In response, staff is bringing back the discussion regarding formation of Omnitrans as a legislatively created transit district for renewed consideration.

### **CONCLUSION**

Staff and legal counsel are seeking additional input on the draft legislation and the proposed MOU between Omnitrans and SBCTA from the Executive Committee. The intent is to circulate the draft legislation to all Omnitrans member cities following the Executive Committee meeting.

PSG

Attachment A: Draft Special Transit District Legislation

Attachment B: Memorandum of Understanding Regarding Omnitrans Transit District Legislation

*August 2018 Update*

*The People of the State of California do enact as follows:*

SECTION 1. Part 19 (commencing with Section 108000) is added to Division 10 of the Public Utilities Code, to read:

Part 19  
Omnitrans Transit District

Chapter 1  
General Provisions

§ 108000.

This part shall be known and may be cited as the Omnitrans Transit District Act.

§ 108001.

It is the intent of the Legislature in enacting this part to provide for a unified, comprehensive institutional structure for the ownership and governance of a transit system within the County of San Bernardino to develop, provide, operate, and administer public transportation. It is further the intent of the Legislature that the district established by this act shall succeed to the powers, duties, obligations, liabilities, immunities, and exemptions of Omnitrans, a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code), upon its dissolution. Because there is no general law under which such a district could be formed, the adoption of a special act and the formation of a special district is required.

Chapter 2  
Definitions

§ 108010.

- (a) Unless the context otherwise requires, the provisions of this chapter govern the construction of this part.
- (b) “District” means the Omnitrans Transit District.
- (c) “Transit” and “transit service” means the transportation of passengers and their incidental baggage and parcels by any means.



- (d) “Transit works” or “transit facilities” means any or all real and personal property, equipment, rights, facilities, title, or interests owned, or to be acquired, by the district for transit service or purposes for the operation thereof.
- (e) “Board of directors,” “board,” and “directors,” means the board of directors of the district.
- (f) “City” means, individually, the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland and Yucaipa, and any other city within the County of San Bernardino that joins as a member of the district as set forth in this part.
- (g) “County” means, individually, the County of San Bernardino, and any other county which is annexed, in whole or in part, to the district as provided in this part.
- (h) “Board of supervisors” means the County of San Bernardino board of supervisors.
- (i) “Public agency” includes the State of California, and any county, city, district or other political subdivision or public entity of, or organized under the laws of, this state, or any department, instrumentality, or agency thereof.
- (j) “System” means all transit works and transit facilities owned or held, or to be owned or held, by the district for transit purposes.
- (k) “Revenues”, unless otherwise defined herein, means all rates, fares, tolls, rentals, fees, charges or other income and revenue actually received or receivable by, or for the account of, the district from the operation of the system, including, without limiting the generality of the foregoing, interest allowed on any moneys or securities any profits derived from the sale of any securities, any consideration in any way derived from any properties owned, operated, or at any time maintained by the district, and all local, State, federal grants and taxes received by the district.
- (l) “Person” includes any individual, firm, partnership, association, corporation, limited liability company, trust, business trust, or the receiver or trustee or conservator for any thereof, but does not include a public agency, as defined in (i) above.
- (m) “Establish” includes establish, construct, complete, acquire, extend, or reroute. It does not, however, include the maintenance and operation of any existing system acquired by the district.
- (n) “Voter” means any elector who is registered under the Elections Code.
- (o) “Omnitrans JPA” means the joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the

Government Code) through that certain joint powers agreement titled “Amended and Restated Joint Powers Agreement between the County of San Bernardino and the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, and Yucaipa Creating a County Wide Transportation Authority to be Known as ‘Omnitrans’”, dated July 1, 2016.

“Indebtedness” means bonds, notes or other evidences of indebtedness, and all other obligations, instruments and agreements which are issued or incurred by or on behalf of the District pursuant to any other provision of law to finance the lease, acquisition, construction or improvement of a public improvement or working capital needs.

### Chapter 3 Formation of District

#### § 108030.

There is hereby created the Omnitrans Transit District, comprising the territory lying within the boundaries of the Cities of Chino, Chino Hills, Colton, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Rancho Cucamonga, Redlands, Rialto, San Bernardino, Upland, Yucaipa, the unincorporated areas of San Bernardino County lying within census tracts: **\*\*\*INSERT TRACT NOS.\*\*\***, as set forth in the 201\_\_ decennial census maps for the State of California on file with the Bureau of the Census, Department of Commerce, Washington, D.C., and other cities that subsequently qualify as members pursuant to the requirements set forth in Section 108032.

#### § 108031.

Through compliance with the provisions for annexation, and subject to Chapter 9 of this part, the territory of all or part of any other contiguous city or county may be included within the district.

#### § 108032.

Any city within the County of San Bernardino, other than a city specifically listed in Section 108030 that is already included in the district at its formation, may join as a member of the district upon approval by its city council of a resolution approving the city’s joining as a member and a resolution of the district’s board approving the joining of the new member.

#### § 108033.

(a) On and after January 1, 2020, Omnitrans JPA shall be dissolved and without the necessity of any further action, the district shall succeed to any or all obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of Omnitrans JPA and its board of directors.

(b) Upon the dissolution of Omnitrans JPA and without the necessity of any further action, the district shall assume the rights and obligations of Omnitrans JPA under any contract to which Omnitrans JPA is a party and which is to be performed, in whole or in part, on or after the date of dissolution of Omnitrans JPA.

(c) Upon the dissolution of Omnitrans JPA and without the necessity of any further action, all real and personal property owned by Omnitrans JPA shall be transferred to the district.

(d) On and after the date of dissolution of Omnitrans JPA, any reference in any provision of law or regulation to Omnitrans JPA shall be deemed to refer to the district.

#### Chapter 4 Government of District

§ 108040.

The district shall be governed by a board of directors. All powers, privileges, and duties vested in or imposed upon the district shall be exercised and performed by and through the board of directors provided, however, that the exercise of all executive, administrative, and ministerial power may be delegated and re-delegated by the board of directors to any of the offices, officers, or committees created pursuant to this chapter or created by the board of directors acting pursuant to this chapter.

§ 108041.

The board of directors shall consist of twenty (20) members.

(a) The board shall be composed of one primary representative selected by the governing body of each city that is a member of the district in the county and four (4) members of the San Bernardino County Board of Supervisors to serve until recalled by the governing body of the city or county. Each director shall be a mayor, councilperson, or supervisor of the governing body which selected him or her. Vacancies shall be filled in the same manner as originally selected.

(b) Each city and the county shall also select in the same manner as the primary or secondary representative, if applicable, one alternate to serve on the board when the primary representative is not available. Whenever the alternate director serves on the board, the alternate director shall have all the powers of a regular director.

(c) The board may allow for the appointment of advisory representatives to sit with the board but in no event shall said representatives be allowed a vote.

(d) The board may increase the number of board members, or change the method of selection of board members, by resolution, to accommodate new member cities that join the district pursuant to Section 108032.

§ 108042.

The board, at its first meeting, and biannually thereafter at the first meeting in June, shall elect a chairperson who shall preside at all meetings, and a vice-chairperson who shall preside in his/her absence. The chairperson and the vice-chairperson shall serve two-year terms. Notwithstanding the foregoing, the vice-chairperson shall become chairperson for the subsequent two-year term in the absence of a vote by the board of directors to the contrary. In the event of their absence or inability to act, the member present, by an order entered in the minutes, shall select one of their members to act as chairperson *pro tem*, who, while so acting, shall have all the authority of the chairperson.

§ 108043.

The officers of the board shall consist of the members of the board of directors, the chairperson and vice chairperson of the board, a secretary, a general manager, a general counsel, and any other officers that the board deems necessary and provides for in its bylaws, or by ordinance or resolution.

§ 108044.

The board shall appoint and fix the salary of a general manager who shall have full charge of the acquisition, construction, maintenance, and operation of the facilities of the district, and of the administration of the business affairs of the district.

§ 108045.

The board of directors shall do all of the following:

- (a) Adopt bylaws for its procedures consistent with the laws of the state.
- (b) Adopt an annual budget.
- (c) Adopt a conflict-of-interest code.
- (d) Adopt priorities reflecting the district's goals.
- (e) Establish the amount of compensation that each member of the board shall receive.
- (f) Do any and all things necessary to carry out the purposes of this part.

§ 108046.

A majority of the board or of a standing committee entitled to vote constitutes a quorum for the transaction of business. All official acts of the board or a standing subcommittee of the board require the affirmative vote of a majority of the board or committee members present.

§ 108047.

The acts of the board of directors shall be expressed by motion, resolution or ordinance.

§ 108048.

All meetings of the board of directors shall be conducted in the manner prescribed by the Ralph M. Brown Act (Chapter 9 (commencing with § 54950), Part 1, Division 2, Title 5, of the Government Code).

Chapter 5  
Powers and Functions of District  
Article 1  
Corporate and General Powers of District

§ 108050.

The district shall have the power to own, operate, manage, and maintain a public transit system and associated facilities, and, in the exercise of the power under this part, the district is authorized in its own name to exercise all rights and powers, expressed or implied, that are necessary to carry out the purposes and intent of this part, including, but not limited to, the power to do all of the following:

- (a) Sue and be sued.
- (b) Employ agents and employees, and contract for services, and to define the qualifications and duties for agents, employees and contractors.
- (c) To enter into and perform all necessary contracts.
- (d) To adopt a seal and alter it at the district's pleasure.
- (e) To enter joint powers arrangements with other entities.
- (f) Appoint such advisory, standing, or ad hoc committees as it deems necessary.
- (g) Enact ordinances, resolutions, policies, and guidelines.
- (h) Acquire, convey, construct, manage, maintain, and operate buildings and improvements, equipment, and assets of the district.

(i) Acquire, convey, and dispose of real and personal property, easements, and licenses.

(j) Adopt a conflict-of-interest code.

(k) To acquire (by the exercise of the power of eminent domain or otherwise), hold, lease, sublease, sell or otherwise dispose of any real or personal property, tangible or intangible~~Lease and sublease real and personal property,~~ equipment, and facilities.

(l) Create and administer funds and the distribution of those funds.

(m) Create and enact taxes, fees, fares, and penalties, as permitted by law.

(n) Advocate on behalf of the district.

(o) Develop and pursue ballot measures.

(p) Enforce criminally or civilly, as applicable, any and all ordinances, resolutions, and policies as permitted by law.

(q) Issue, incur and encumber ~~debts, obligations, and liabilities, including, but not limited to, bonds, notes, warrants, and other forms of i~~ndebtedness. However, the debts, obligations, and liabilities incurred by the district shall not be, nor shall they be deemed to be, debts, encumbrances, obligations, or liabilities of any member.

(r) Invest money in the district treasury that is not needed for immediate necessities, as the board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the Government Code.

(s) Pursue collection of obligations owed to the district.

(t) Exercise the right and power of eminent domain to take any property necessary or convenient to the exercise of the powers granted in this part.

(u) Subject to applicable law, provide transportation services or facilities outside the district's jurisdictional boundaries provided a finding is made by the board that those services or facilities benefit the citizens or users of the transportation service or facilities.

(v) Implement safety and training measures for district transportation service drivers and operators including, but not limited to, random review of driver/operator video feed at any time and without limitation for training purposes.

(w) Do and undertake any and all other acts reasonable and necessary to carry out the purposes of this part.

§ 108051.

All claims for money or damages against the district are governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, except as provided herein, or by other statutes or regulations expressly applicable thereto.

Article 2  
Contracts

§ 108060.

The district may make contracts and enter into stipulations of any nature whatsoever, employ labor, and do all acts necessary and convenient for the full exercise of the powers granted in this part.

§ 108061.

The district may contract with any department or agency of the United States of America, with any public agency or with any person upon such terms and conditions as determined to be in the best interest of the district.

§ 108062.

The Legislature finds and declares that there is a compelling interest in ensuring that all federal, state, local, and private funds available to the district are captured and used in a timely manner. In order to maximize the use of federal, state, local, and private funds and to maintain a competitive posture in seeking supplemental federal funds, the district shall have the authority to establish and use a flexible contracting process to maximize efficient use of public funds.

§ 108063.

The district may insure against any accident or destruction of the system or any part thereof. The district may insure against loss of revenues from any cause whatsoever. It may provide, in the proceedings authorizing the issuance of any bonds, for the carrying of insurance in such amount and of such character as may be specified, and for the payment of the premiums thereon. The district may also provide insurance as provided in Part 6 (commencing with Section 989), Division 3.6, Title 1 of the Government Code.

Article 3  
Transit Facilities and Services; Consolidated Transportation Agency

§ 108070.

The district may provide transit service for the transportation of passengers and their incidental baggage by any means including, but not limited to, through the operation of buses, specialized transit vehicles, and passenger rail service.

§ 108071.

The district may lease or contract for the use of its transit facilities, or any portion thereof, to any operator, and may provide for subleases by the operator upon any terms and conditions it deems in the public interest. As used in this section, “operator” means any public agency or any person.

§ 108072.

The district may contract with any public agency or person to provide transit facilities and services for the district.

§ 108073.

(a) The district may construct and operate or acquire and operate transit works and facilities in, under, upon, over, across, or along any state or public street or highway or any stream, bay or water course, or over any of the lands which are the property of the state, to the same extent that such rights and privileges appertaining thereto are granted to municipalities within the state.

(b) Prior to constructing or acquiring transit works and facilities under subsection (a) of Section 108073, district planning staff shall meet and confer with planning staff of the San Bernardino County Transportation Authority regarding such proposed transit works or facilities to avoid duplication of efforts, and to maximize resources for transit planning and implementation.

§ 108074.

The district may enter into agreements for the joint use of any property and rights by the district and any public agency or public utility operating transit facilities; may enter into agreements with any public agency or public utility operating any transit facilities, and wholly or partially within or without the district, for the joint use of any property of the district or of the public agency or public utility, or the establishment of through routes, joint fares, transfer of passengers or pooling arrangements.

§ 108075.

Additionally, the district is deemed to be, with all of the powers and duties attendant thereto, the consolidated transportation services agency for the San Bernardino Valley region.



Article 4  
Taxation; Other Fees and ~~Indebtedness Bonds~~

§ 108080.

(a) The district may levy a retail transactions and use tax applicable in the incorporated and unincorporated territory of the county in accordance with this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code. The ordinance shall only become effective if adopted by a two-thirds vote of the board and subsequently approved by the electors voting on the measure at a special election called for the purpose by the board of supervisors or at any regular election.

(b) The tax ordinance shall take effect at the close of the polls on the day of election at which the proposition is adopted. The initial collection of the transactions and use tax shall take place in accordance with (f) below.

(c) If, at any time, the voters do not approve the imposition of the transactions and use tax, this chapter remains in full force and effect. The board may, at any time thereafter, submit the same, or a different, measure to the voters in accordance with this chapter.

(d) The ordinance shall state the nature of the tax to be imposed, the tax rate or the maximum tax rate, the purposes for which the revenue derived from the tax will be used, and may set a term during which the tax will be imposed. Tax revenues shall be used only for public transit purposes of the district, including administration of this division and legal actions related thereto. The ordinance shall contain an expenditure plan that shall include an allocation of revenues.

(e) As used in this section, "public transit purposes" includes the public transit responsibilities under the jurisdiction of the district as well as any repair, redesign, or ongoing maintenance of a district facility, any right-of-way upon which transit is intended to travel, or any bikeway, bicycle path, sidewalk, trail, pedestrian access, or pedestrian access way, and all costs and expenses related thereto.

(f) Any transactions and use tax ordinance adopted pursuant to this article shall be operative on the first day of the first calendar quarter commencing more than 150 days after adoption of the ordinance.

(g) Prior to the operative date of the ordinance, the district shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of the ordinance. The costs to be covered by the contract may also include services of the types described in Section 7272 of the Revenue and Taxation Code for preparatory work up to the operative date of the ordinance. Any disputes as to the amount of the costs shall be resolved in the same manner as provided in that section.

(h) The district, subject to the approval of the voters, may impose a maximum tax rate of one-half of 1 percent under this article and Part 1.6 (commencing with Section 7251) of Division 2 of

the Revenue and Taxation Code. The district shall not levy the tax at a rate other than one-half or one-fourth of 1 percent unless specifically authorized by the Legislature.

§ 108081.

If approved as required by law, the district may impose and administer fees and other funding sources secured for transportation system operation, maintenance, and improvement.

§ 108082.

The board may set fares for public transit service by resolution.

§ 108083.

As an alternative procedure for the raising of funds, the district may issue bonds, payable from revenues of any facility or enterprise to be acquired or constructed by the district, in the manner provided by the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), all of the provisions of which are applicable to the district.

§ 108084.

The district is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code). The term "enterprise" as used in the Revenue Bond Law of 1941 shall, for all purposes of this part, include transit facilities and any and all parts thereof and all additions, extensions, and improvements thereto and all other facilities authorized acquired, constructed, or completed by the district. The district may issue revenue bonds under the Revenue Bond Law of 1941, for any one or more facilities or enterprises authorized to be acquired, constructed, or completed by the district, or, in the alternative, may issue revenue bonds under the Revenue Bond Law of 1941, for the acquisition, construction, and completion of any one of those facilities. Nothing in this part shall prevent the district from availing itself of, or making use of, any procedure provided in this part for the issuance of Indebtedness bonds of any type or character for any of the facilities or works authorized under this part, and all proceedings may be carried out simultaneously or, in the alternative, as the directors may determine.

§ 108085.

The district may advocate on and act on behalf of all members with their concurrence to further the district's transit interests, funding, projects, and priorities.

§ 108086.

The district may promulgate a plan for funding transit projects or operations within its jurisdiction or as permitted in subdivision (t) of Section 107015.

## Chapter 6 Rights of Employees of Omnitrans

§ 108090.

When the district acquires existing facilities, rights and obligations of Omnitrans JPA, all of the employees of Omnitrans JPA shall be appointed to comparable positions by the district. These employees shall be given sick leave, seniority, vacation credits, retirement benefits and all other rights and obligations which they have with Omnitrans JPA, upon the transfer of Omnitrans JPA to district.

§ 108091

The district shall provide employee retirement benefits under the program administered by the California Public Employees' Retirement System or other system permitted by law.

## Chapter 7 Liability of members

§ 108100.

The members, whether individually or collectively, shall not be liable for any act or omission of the district, including, but not limited to, any of the following:

- (a) Performing any and all things necessary to carry out the purposes of this part.
- (b) Any act of the district, or for any act of the district's agents or employees.
- (c) The payment of wages, benefits, or other compensation to officers, agents, or employees of the district.
- (d) The payment of workers' compensation or indemnity to agents or employees of the district for injury, illness, or death.

Chapter 8  
Changes of Organization or Reorganization

§ 108200.

(a) Territory within the district may be detached from the district by a supermajority vote of the directors, which shall be at least 80 percent of the nonweighted vote of the existing board provided that all pending legal and financial obligations have been satisfied.

(b) The detachment of territory from the district shall become effective upon giving of the notice required in Section 57204 of the Government Code, provided that the detached territory shall not be relieved from liability for taxation for the payment of any bonded indebtedness existing at the time of detachment.

(c) Notice of the detachment of territory from the district shall be given to each assessor whose roll is used for a tax levy made pursuant to this part and with the State Board of Equalization pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code.

Chapter 9

Application of the Cortes-Knox-Hertzberg Local Government Reorganization Act of 2000

§ 108300.

(a) The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Part 1 (commencing with Section 56000) Division 3 of Title 5 of the Government Code), shall not apply to the formation or dissolution of the district.

(b) For annexations, any territory annexed into of a member city that is annexed into such city, shall automatically be annexed into the district. For annexation of territory in the unincorporated county into the district, such annexation shall require approval of the board.

(c) New cities may join the district as set forth in Section 108032.

Dissolution

§ 108400.

(a) The district may be dissolved upon a supermajority vote of the directors which shall be at least 80 percent of the nonweighted vote of the board. However, the winding up of the district shall be conducted by the board and the general manager. The district shall not be fully dissolved and terminated until all debts, financial obligations, and liabilities are paid in full and any and all remaining assets after payment of all debts, financial obligations, and liabilities are distributed to the members.

**Commented [A1]:** Reivsed. To be sent to LAFCO Executive Officer for review.

(b) Distribution to each member shall be made in the same proportion as that reflected in the accumulated capital contribution accounts from the records of the Omnitrans JPA, as shown and maintained by the district's finance director in the district's books of accounts. Cash may be distributed in lieu of property or equipment.

~~(c)~~ (1) If the directors cannot agree as to the valuation of the property or to the manner of asset distribution, the question shall be submitted to arbitration, as set forth below, and the directors shall make the distribution or valuation as directed by arbitrators.

(2) Three arbitrators shall be appointed by the board.

(3) The arbitration shall be binding and shall be conducted pursuant to Title 9 (commencing with Section 1280) of the Code of Civil Procedure. Any hearings shall be held within the county. All notices, including notices under Section 1290.4 of the Code of Civil Procedure shall be given to the governing body of each member.

§ 108401.

The board shall wind up the affairs of the district.

MEMORANDUM OF UNDERSTANDING  
REGARDING OMNITRANS TRANSIT DISTRICT LEGISLATION

This MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between the San Bernardino County Transportation Authority (“SBCTA”), established by the San Bernardino County Transportation Authority Consolidation Act of 2017, Ch. 7 (commencing with § 130800) of Div. 12 of the Public Utilities Code and Omnitrans, a Joint Powers Authority (“Omnitrans”) established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, and any successor statutory entity succeeding to the rights, duties and obligations of Omnitrans. SBCTA are sometimes referred to herein, individually, as “Party” and collectively as the “Parties,” with reference to the following facts:

**RECITALS**

WHEREAS, SBCTA is the San Bernardino County Transportation Commission responsible for short and long range transportation planning within San Bernardino County (“County”), including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.

WHEREAS, SBCTA is responsible for administration of Measure I, the half-cent transportation transactions and use tax approved by County voters in 2004 dedicated for transportation purposes as defined in SBCTA Ordinance 04-01 which is in effect until 2040.

WHEREAS, Measure I supports transit services by providing funding for Express Bus/Bus Rapid Transit Service, Metrolink/Rail Service, and Senior and Disabled Transit Services.

WHEREAS, SBCTA provides local, state and federal funds to Omnitrans for transit services, including Measure I funds.

WHEREAS, Omnitrans is the public transit agency serving the San Bernardino Valley area of San Bernardino County, operating local and express bus routes, sbX rapid bus transit service, OmniGo hometown shuttle service, Access paratransit service, and is preparing to operate the Arrow Hybrid Rail Service between San Bernardino and Redlands.

WHEREAS, the Omnitrans Board of Directors has directed Omnitrans staff to proceed with efforts to change the structure of Omnitrans from a Joint Powers Authority to a statutory transit district.

WHEREAS, as part of this effort, Omnitrans staff has presented draft legislation to the Omnitrans Board of Directors to create Omnitrans Transit District.

WHEREAS, as part of its authorities, and consistent with its rights under the Omnitrans Joint Powers Agreement, the draft legislation provides taxing authority to Omnitrans.

WHEREAS, SBCTA is concerned with the potential negative implications of multiple transportation related taxing entities within the same jurisdiction.

WHEREAS, and the Parties have agreed to enter into this MOU to express the intent of the Parties that Omnitrans: (1) will obtain SBCTA Board approval before adopting a transit district tax ordinance; and (2) will be given an opportunity to provide input into the development of future transportation tax measures as it relates to transit services in San Bernardino Valley.

WHEREAS, the SBCTA and Omnitrans Board of Directors possess full authority to enter into this MOU.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

## **TERMS**

1. **Incorporation of Recitals.** The recitals set forth above are true and correct and are incorporated into this MOU by reference as though fully set forth herein.
2. **Agreement of Omnitrans.**
  - a. If Omnitrans is formed as a statutory transit district with taxation authority, Omnitrans agrees to obtain the approval by resolution of the Board of the San Bernardino County Transportation Authority before adopting a transit district tax (Omnitrans Tax) ordinance. Omnitrans agrees to provide SBCTA six (6) months' notice of Omnitrans' intent to request SBCTA Board approval of an Omnitrans Tax.
3. **Agreement of SBCTA.**
  - a. SBCTA agrees that the SBCTA Board will consider an Omnitrans Board request for an SBCTA Board resolution approving an Omnitrans Tax within sixty (60) days of receipt of such request.
  - b. Notwithstanding Omnitrans' request for SBCTA Board approval of an Omnitrans Tax, SBCTA shall consider, in good faith and in accordance with the procedures set forth below, inclusion of dedicated funding for transit services in concurrent or future SBCTA transportation tax ordinances.
4. **Procedures for Concurrent or Future SBCTA Transportation Tax Ordinances.**
  - a. SBCTA shall notify Omnitrans of any upcoming concurrent or future SBCTA tax measure. Notification shall be provided in a timely manner so as to allow sufficient time for completion of the actions set forth in the paragraphs below.



b. Following such notification, SBCTA and Omnitrans staff shall meet and confer to review and evaluate any request by Omnitrans for dedicated transit funding under the proposed SBCTA transportation tax ordinance.

c. Any request by Omnitrans for dedicated transit funding shall be formally transmitted to SBCTA staff and shall include the following information, to the extent applicable:

- i. Specific purpose of the requested transit funding;
- ii. Estimated capital cost for each component requested;
- iii. Estimated annual operations cost for each component requested that identifies the estimated funding needed for each fiscal year for the life of the proposed ordinance; and
- iv. Any potential impact on other fund sources currently allocated to Omnitrans.

d. The Parties shall convene an ad-hoc committee comprised of Omnitrans and SBCTA staff and Board members to evaluate and discuss the request for transit funding. The ad-hoc committee will make a recommendation to the Omnitrans and SBCTA Boards of Directors regarding such request.

5. Term. This MOU shall remain in full force and effect from the effective date until terminated by mutual agreement of the parties.

6. Effective Date. This MOU is effective on the last date executed by the parties.

7. Notice. Any notice, request or demand made between the parties pursuant to this MOU shall be directed as follows:

SBCTA

1170 W. 3rd Street, 2nd Floor  
San Bernardino, CA 92410  
Attn: Executive Director

OMNITRANS

1700 West 5<sup>th</sup> Street  
San Bernardino, CA 92411  
Attn: CEO/General Manager

8. Severability. If any clause or provision of this MOU is found to be illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the Parties that the remainder of this MOU shall not be affected but shall remain in full force and effect.
9. Entire Agreement. This MOU contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This MOU may only be supplemented, amended, or modified by a writing signed by both Parties.
10. Governing Law. This MOU shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.
11. Counterparts. This MOU may be signed in counterparts, each of which shall constitute an original.

**[Signatures on following page]**

MEMORANDUM OF UNDERSTANDING  
REGARDING OMNITRANS TRANSIT DISTRICT LEGISLATION

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

**OMNITRANS**

By: \_\_\_\_\_  
Raymond W. Wolfe  
Executive Director

By: \_\_\_\_\_  
P. Scott Graham  
CEO/General Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eileen Monaghan Teichert  
General Counsel

By: \_\_\_\_\_  
Haviva Shane  
Omnitrans General Counsel