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Tim Deutsch  
General Manager

## ORANGE COUNTY CEMETERY DISTRICT

July 26, 2012

***\*Via Certified Mail, Return Receipt Requested and Facsimile\****

Hon. Thomas J. Borris, Presiding Judge  
Orange County Superior Court  
700 Civic Center Drive West  
Santa Ana, California 92701  
Via Mail Only

Orange County Grand Jury  
700 Civic Center Drive West  
Santa Ana, California 92701  
Facsimile: (714) 834-5555

***Re: Response to Grand Jury Report***

Dear Judge Borris and Grand Jury Members:

This is in response to the 2011-2012 Grand Jury Report entitled "Let There Be Light: Dragging Special Districts From the Shadows" ("Report") issued to the public on April 27, 2012. The Report is addressed to special districts in Orange County ("County"), including the Orange County Cemetery District ("District").<sup>1</sup> Pursuant to Penal Code sections 933 and 933.05, this response has been approved by the District's Board of Trustees.

### **Preliminary Statement**

As expressed in the California Special District Association's ("CSDA") letter, dated May 18, 2012, the District too truly respects the good work of the Grand Jury and certainly does not take issue with there being a review of the District; however, the District, like we are sure many other special districts in the County, does have significant concerns with the substance of the Report. (See CSDA Letter and Associations Response, attached hereto.)

As expressed in the CSDA letter, the District also believes the Report lacks objectivity from the beginning, as indicated in both the title of the Report and set forth throughout the Report. Moreover, the District also concurs with CSDA that the Report is overly broad and relies upon opinions in place of sound analysis, leading the District to believe that some of the Report's conclusions may have been preconceived notions. Deficient of any significant new investigation or thorough evaluation, the Report depends predominantly upon previous reports—some of which are decades old, such as the 1990 Grand Jury Report addressed to the District. It takes a one-sided approach in reviewing those reports by failing to mention any of the positive elements that are also contained within them, and it fails to identify those areas where special

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<sup>1</sup> The District is a special district duly organized and existing under and by virtue of the California Public Cemetery District Law, codified in Health and Safety Code Sections 9000 *et seq.*

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Anaheim Cemetery  
1400 E. Sycamore St.  
Anaheim, CA 92805  
(714) 535-4928

#### CEMETERY LOCATIONS

El Toro Memorial Park  
25751 Trabuco Rd.  
Lake Forest, CA 92630  
(949) 951-8244

Santa Ana Cemetery  
1919 E. Santa Clara Ave.  
Santa Ana, CA 92705  
(714) 953-2959

districts have since remedied or refuted reports' dated concerns. For instance, the Report references that in 2005, the Grand Jury studied the District and notes that the "findings were again related to management and organization." However, the Report fails to note that the District issued a subsequent response that indicated that the District implemented all of the recommendations where warranted. In fact, the 2005 Grand Jury stated, "The jury found the Orange County cemeteries are operating well within their Mission Statement. The jury's overall assessment of the District is that the public is being well served. The grand jury was pleased to observe that the District's employees strive to ensure the cemeteries are well maintained and are an environment of respect to the memories of those interred." Omission of this very crucial "positive" information only creates suspicion that the District ignored the 2005 Grand Jury report.

Another concern with the Grand Jury investigation is related to its lack of any engagement with the District which is the subject the Report's sweeping findings and recommendations. As the Grand Jury is surely aware, Penal Code section 933.05(e) provides that: "During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either of its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental." In the case of the District, there was no engagement whatsoever during the course of the Grand Jury's investigation related to this Report.

While every special district in the County was treated as a subject of the Report, the District, like other special districts that are subject to the Report, was not interviewed regarding this Report. The District believes this is an extremely important piece of the investigation that was missed and would certainly have provided more clarity overall, a better understanding of the true operational environment within the District as well as further data on how the District has achieved significant efficiencies in delivering core local services in the County.

As noted above, the Report is addressed to all special districts in the County, but it requires responses from the District regarding only certain specified findings and recommendations. Although the District responds to all of the Report's findings and recommendations directed specifically toward the District, the District believes that many of the findings and recommendations are wholly inapplicable to the District.

### **Responses**

As requested by the Grand Jury, the District responds to the following Findings and Recommendations as follows:

#### **Finding 1:**

"Most Orange County special districts, with or without the assistance of the Local Agency Formation Commission (LAFCO), have been incapable or unwilling to consolidate, absorb, or eliminate these outmoded and/or redundant agencies. LAFCO typically addresses larger issues such as merging of cities and

elimination of islands within the county. The special districts themselves have not worked seriously toward their consolidation or demise. In this regard, the enterprise special districts and the non-enterprise special districts require independent evaluation and handling."

**Response to Finding 1:**

The District respectfully disagrees wholly with this finding since the District has already been consolidated to cover essentially the entire County and there is no other public agency that provides public cemetery services in the County.

Prior to the formation of the District, there were three separate cemetery districts: Orange County Cemetery District No. 1, Orange County Cemetery District No. 2 and Magnolia Memorial Park Cemetery District. The former cemetery districts were created in 1926 to operate and maintain certain neglected private cemeteries as public cemeteries.

In 1984-1985, through a reorganization approved by the County Local Agency Formation Commission, the three former cemetery districts were consolidated as one district -- as the "Orange County Cemetery District." The reorganization also included coverage of the entire geographic area of the County which includes all of the unincorporated areas of the County along with all of the territorial areas of every city situated within County.

As currently organized and structured, the District believes that it provides the most effective and appropriate method of providing public cemetery services to the general public of the County and of all of the cities situated therein.

**Finding 2:**

"Special districts have made very little progress in complying with the recommendations made by various governmental agencies. To ensure recommendations are followed, more coordination and cooperation is needed from the city and county agencies."

**Response to Finding 2:**

The District respectfully disagrees wholly with this finding.

It is unclear what recommendations this finding references. However, as previously stated, the District implemented all of the recommendations where warranted in response to the 2005 Grand Jury recommendations

**Finding 3:**

"Most non-enterprise special districts in Orange County have outlived their purpose and usefulness.

Services that they [sic] once only available through the special district are now being provided by the surrounding cities and the expanding county.”

**Response to Finding 3:**

The District respectfully disagrees wholly with this finding since public cemetery services are not provided by the County or any city or other public agency within the County.

Prior to the formation of the District, there were three separate cemetery districts: Orange County Cemetery District No. 1, Orange County Cemetery District No. 2 and Magnolia Memorial Park Cemetery District.

In 1984-1985, through a reorganization approved by the County Local Agency Formation Commission, the three former cemetery districts were consolidated as one district -- as the “Orange County Cemetery District.” The reorganization also included coverage of essentially the entire geographic area of the County.

As currently organized and structured, there is no need for another governmental entity within the County to provide public cemetery services to the general public of County and of the cities situated within the County. To do so, would only result in a duplication of services which may end up costing the taxpayers in certain cities and unincorporated areas within the County to have to pay more in property taxes for such services.

In light of the foregoing, the District respectfully submits that the District provides the most effective, appropriate and least expensive method of providing public cemetery services to the general public of the County and of all of the cities situated therein.

**Finding 4:**

“The eleven non-enterprise special districts of Orange County founded before 1965 have not reflected the growth of the cities and county. The services that were unavailable from cities or the county have long since been made available as both the cities and county grew. Some of those special districts could be removed from the county tax rolls, and their services funded and absorbed by the county, surrounding cities or homeowners associations wherein they abide.”

**Response to Finding 4:**

The District respectfully disagrees wholly with this finding since the District was formed 20 years after 1965 and there are no other public agencies, including the cities and the County, which provide public cemetery services to the general public.



Notwithstanding the above, prior to the formation of the District, there were three separate cemetery districts: Orange County Cemetery District No. 1, Orange County Cemetery District No. 2 and Magnolia Memorial Park Cemetery District. The former cemetery districts were created in 1926 to operate and maintain certain neglected private cemeteries as public cemeteries, and the original boundaries of the three former districts covered only three-fourths of the County.

In 1984-1985, through a reorganization approved by the County Local Agency Formation Commission, the three former cemetery districts were consolidated as one district -- as the "Orange County Cemetery District." The reorganization also included coverage of essentially the entire geographic area of the County which includes all of the unincorporated areas of the County along with all of the territorial areas of every city situated within County.

As currently organized and structured, there is no need for another governmental entity to provide public cemetery services to the general public of County and of the cities situated within the County. If any of the cities were to assume the responsibility of providing public cemetery services to its residents, that would result in a duplication of services since the cities would not be required to cover adjacent unincorporated areas as well. Also, the cities would all have to retain their own staff or independent contractors and/or consultants to advise each city on the complexities of public cemetery district law and the regulations regarding interments. In other words, to pass on the responsibility of providing public cemetery services to the cities and/or the County would be inefficient under the circumstances since such services are currently provided by the District with its current staff for all of the cities and unincorporated areas within the County.

Moreover, neither the County nor any of the cities have any experience or requisite expertise in providing public cemetery services.

As for private homeowner associations assuming the responsibility of providing public cemetery services, they not only lack the experience and expertise, but State law would have to be drastically changed to permit them to establish and operate a public cemetery on privately owned property in perpetuity.

In light of the foregoing, the District respectfully submits that the District provides the most effective, appropriate and least expensive method of providing public cemetery services to the general public of the County and of all of the cities situated therein.

**Finding 7:**

"The unrestricted reserves of the special districts are available to the governing board to spend as they please. Local citizens are not openly informed of this wealth when agencies ask for fee increases, special assessments, or bond measures. Most of the special districts do not appear to have specific criteria for amassing these reserves nor do they have published long-range plans for their constructive use."

**Response to Finding 7:**

The District disagrees wholly with this finding as it applies to the District.

Since the District's formation there have been no new or increased special assessments and no bond measures presented to the voters of the District.

As a point of clarification, contrary to the Report, the District has in fact implemented reporting provisions of GASB Statement No. 54 ("GASB 54") which provides that "[t]he committed fund balance classification include amounts that can be used only for the specific purposes determined by formal action of the government's highest level of decision-making authority."<sup>2</sup> GASB 54 was implemented by the Board on June 7, 2011, through its formal approval of the District's "Fund Balance Policy." GASB is widely recognized by state and local government agencies throughout California as the official source of generally accepted accounting principles for state and local governments.

With respect to of "unrestricted reserves," the District identifies this category as "unassigned" funds. Unassigned funds are accounted for in the District's annual financial audit, and annual fiscal year budget which are reviewed, considered and acted upon at noticed public meetings of the Board in open session. As required by the Ralph M. Brown Act, the public is invited to comment on the financial audit and proposed fiscal year budget during such Board meetings. The District's annual financial audit and fiscal year budget are also placed on the District's website for public inspection at any time and hard copies are available for public inspection at the District's offices during normal business hours. The District also provides copies of the financial audit and proposed fiscal year budget at the request of any member of the public. With respect to these unassigned funds (unrestricted reserves), these are appropriately made available for responding to emergencies, maintaining affordable rates for the public, maintaining existing infrastructure and funding necessary public works projects to better serve the public.

The District's "unrestricted reserves" were erroneously reported in the Report to be \$9,744,658 when in fact they were \$5,382,973 at the time of the issuance of the Report. This amount was further reduced to \$2,882,973, on June 5, 2012, when the Board duly adopted a resolution committing \$2,500,000 of the General Fund for the purposes of land acquisition and cemetery development. The District respectfully submits that the \$2,882,973 amount is reasonable since these funds are appropriately made available for responding to emergencies, maintaining affordable rates for the public, maintaining existing infrastructure and funding necessary public works projects to better serve the public.

With the implementation of GASB 54 by the District and the Health and Safety Code's restrictions on how the District may expend funds, it is clear that the District is absolutely prohibited from spending any

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<sup>2</sup> The Grand Jury apparently pulled the 2010 audit information from the District's website, which has since been updated to include District's 2011 audit information.

public funds in any manner “as they please.”

**Finding 8:**

“The twenty-seven special districts in Orange County have amassed unrestricted reserves of over \$866,000,000. That is enough money to fund all of these special districts for more than [a] year without taxes, fees, interest, or other sources of revenue. The boards of directors have the sole discretion to spend these unrestricted reserves.”

**Response to Finding 8:**

The District partially agrees with this finding as it applies to the District in that the Board has the discretion, subject to all applicable laws and regulations, to decide how to allocate the expenditure of unrestricted reserves.

The District has implemented the reporting provisions of GASB Statement No. 54 (“GASB 54”) which provides that “[t]he committed fund balance classification include amounts that can be used only for the specific purposes determined by formal action of the government’s highest level of decision-making authority.”<sup>3</sup> GASB 54 was implemented by the Board on June 7, 2011, through its formal approval of the District’s “Fund Balance Policy.” GASB is widely recognized by state and local government agencies throughout California as the official source of generally accepted accounting principles for state and local governments.

The District’s “unrestricted reserves” were erroneously reported in the Report to be \$9,744,658 when in fact they were \$5,382,973 at the time of the issuance of the Report. This amount was further reduced to \$2,882,973, on June 5, 2012, when the Board duly adopted a resolution committing \$2,500,000 of the General Fund for the purposes of land acquisition and cemetery development. The District respectfully submits that the \$2,882,973 amount is reasonable since these funds are appropriately made available for responding to emergencies, maintaining affordable rates for the public, maintaining existing infrastructure and funding necessary public works projects to better serve the public.

**Recommendation 1:**

“All special districts (except the Vector Control District and the County Cemetery District) should be eliminated from the county tax rolls and should rely solely on fees or the services of surrounding governments.”

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<sup>3</sup> The Grand Jury apparently pulled the 2010 audit information from the District's website, which has since been updated to include District’s 2011 audit information.

**Response to Recommendation 1:**

As this recommendation expressly excludes the Orange County Cemetery District, a response from the District appears to have been required in error. As such, the recommendation will not be implemented because it does not apply to the District.

**Recommendation 6:**

“Special districts should adopt “board of director’s practices” for all their reserves, restricted and unrestricted. All reserves should be classified in their 2013-2014 budgets according to GASB Standard No. 54. LAFCO should work with the special districts to prepare standard criteria for accumulating reserves according to the new classifications by December 15, 2012. These standards should be used in preparing the 2013-2014 budgets.”

**Response to Recommendation 6:**

This recommendation will not be implemented because it is not warranted.

The Board of Trustees adopted the Fund Balance Policy on June 7, 2011, to address the classification of fund balance pursuant to GASB 54. All reserves have been classified in the District’s 2012-2013 fiscal year budgets pursuant to GASB 54. The Board will annually review the fund balances during the fiscal year budget review to determine any classification changes to all of the District’s funds.

Moreover, the District is a member of CSDA which formed a task force in 2001 to identify both the essential elements of a reserve policy and the issues to be discussed during policy development in order to assist districts in fulfilling their commitment to provide cost-effective and efficient public services for the communities they serve. These guidelines, which the District operates under, are available at [www.csda.net](http://www.csda.net). CSDA is also working with all of its members, including the District, to continue promoting best practices in this important areas identified by the Report. In light of the foregoing, the District believes it is more appropriate to continue to work with CSDA and operate under its reserve policies and guidelines rather than LAFCO, particularly since this issue is beyond the statutory duties of LAFCO.

**Recommendation 7:**

“Excessive unrestricted reserves should be used to reduce existing debts. Future revenues should be reduced to avoid the accumulation of unallocated revenue that does not meet the adopted new standards.”

**Response to Recommendation 7:**

This recommendation will not be implemented because it is not warranted with respect to the



District.

The District's "unrestricted reserves" were erroneously reported in the Report to be \$9,744,658 when in fact they were \$5,382,973 at the time of the issuance of the Report. This amount was further reduced to \$2,882,973, on June 5, 2012, when the Board duly adopted a resolution committing \$2,500,000 of the General Fund for the purposes of land acquisition and cemetery development. The District respectfully submits that the \$2,882,973 amount is reasonable since these funds are appropriately made available for responding to emergencies, maintaining affordable rates for the public, maintaining existing infrastructure and funding necessary public works projects to better serve the public.

**Recommendation 8:**

"Each special district should have an independent performance audit at least every three years. The executive summary of the performance audit should be distributed to all the taxpayers of each special district. Each of the special districts that have not had a performance audit within the last five years should contract with an independent outside consultant to conduct such an audit during 2012. These audits should be repeated at least every three years."

**Response to Recommendation 8:**

This recommendation will not be implemented since it is not warranted.

The 2005 Grand Jury reported that: "The jury found the Orange County cemeteries are operating well within their Mission Statement. The jury's overall assessment of the District is that the public is being well served. The grand jury was pleased to observe that the District's employees strive to ensure the cemeteries are well maintained and are an environment of respect to the memories of those interred."

Notwithstanding the 2005 Grand Jury findings, LAFCO, which is an independent agency, conducts every five (5) years municipal services reviews ("MSRs") of all agencies, including special districts, under its purview, which includes the District. Pursuant to Government Code section 56430, MSRs are required to address seven (7) specific determinations which include growth and population projections, location and characteristics of any disadvantage communities, present and planned capacity of facilities and services, financial ability of the agencies to provide services, accountability for community service needs including governmental structure and operational efficiencies and any other matter related to effective or efficient service delivery. LAFCO conducted a MSR for the District in 2005, which was updated as recently as 2010. These MSRs are basically de facto performance audits which are made available for public review and inspection on LAFCO's website at [www.oclafcco.org](http://www.oclafcco.org). To require another performance audit would be duplicative, nonproductive and a waste of public tax dollars.

**Recommendation 9:**

"Each special district should contribute 1% of its unrestricted reserve fund to LAFCO to help finance

preparing and directing the consolidation, absorption, or elimination, and the setting of standards for reserves for the special districts. These funds should be included in LAFCO's future programs and budgets until the consolidation, absorption or elimination of each special district is achieved. With these additional funds, LAFCO should begin meeting with each special district before the 2014 fiscal year is budgeted for consolidation, absorption and/or elimination of these districts."

**Response to Recommendation 9:**

This recommendation will not be implemented because it is not warranted or legal with respect to the District.

As with many of the Report's findings and recommendations, the District's response may be somewhat unique because its territory already encompasses the entire County. The District's mission is "[t]o manage and maintain Orange County's public cemeteries in a manner that preserves their beauty, dignity, historical and cultural values, and offers affordable interment services for county residents." Therefore, there is no other appropriate agency within the County with which consolidation is appropriate. There is no other public agency within Orange County with any experience whatsoever in operating a public cemetery. Absorption or elimination would be detrimental to the District's mission. In 1985, there were three separate public cemetery districts that were consolidated to the current Orange County Cemetery District, so future consolidation is not an option. For these reasons, contribution of additional funds to LAFCO is unwarranted.

Regards,



Vivien Owen, Chair  
Board of Trustees  
Orange County Cemetery District

cc: Tim Deutsch, General Manager  
Steven B. Quintanilla, General Counsel

Attachments:

- CSDA Letter, dated May 18, 2012
- Associations Response, dated May 18, 2012