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Chief Executive Officer

August 10, 2010

The Honorable Kim Dunning  
Presiding Judge of the Superior Court  
700 Civic Center Drive West  
Santa Ana, California 92701

Dear Judge Dunning,

On behalf of the Orange County Transportation Authority (OCTA) Board of Directors (Board) I am pleased to provide a response to a finding and recommendation included in the Grand Jury's May 24, 2010, report entitled "Santa Ana Street Car Project: A Study in Local Transit Planning."

The Santa Ana transit project, which is the focus of this report, is funded in large part by Measure M funds administered by the OCTA. As with all Orange County cities, OCTA and Santa Ana have worked together for many years to successfully deliver numerous transportation projects that have benefited commuters within the city, county, and region.

As way of background, OCTA is providing Measure M funds, Orange County's renewed half-cent sales tax approved by voters in 2006, to fund the city-initiated Go Local transit program. Go Local is a new program that consists of a four-step process to plan and implement city-initiated transit extensions to the Metrolink commuter-rail line in the county. OCTA oversees and monitors this four-step process as follows:

**Step 1**

Provides \$100,000 in grants to cities to study possible extensions or connections to the Metrolink corridor.

**Step 2 (currently the program is at this step)**

Projects were selected for additional study based on 12 factors, some of which include:

- Regional benefits,
- Local funding commitment,
- Cost effectiveness,
- Ease and simplicity of connections,
- Proximity of jobs and population centers,
- Ability to link a Metrolink station with a city's major population centers.

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**Step 3**

Cities compete for Measure M2 funds for construction and implementation of the project.

**Step 4**

Once the Go Local projects are operating, OCTA will perform additional upgrades to Metrolink stations to ensure passengers can connect seamlessly with various transit services.

**FINDING**

***Finding 6: Limited OCTA Oversight: Over 90 percent of funding for the Santa Ana Street Car planning project came from Orange County Transportation Authority-administered sales tax funds (Measures M1 and M2). OCTA provided limited oversight for award of this contract and use of funds. Similar projects funded with State or Federal taxes require aggressive oversight of grant awards.***

**OCTA disagrees wholly with this finding.** OCTA's role is to ensure that all Measure M projects outlined in the Measure M expenditure plan are delivered according to the ordinance and plan approved by the voters. It is incumbent on local jurisdictions that receive Measure M funds to adhere to the requirements of the ordinance and plan. OCTA, with the help of the Measure M Taxpayers Oversight Committee, conducts annual audits to ensure that local jurisdictions comply with all requirements of the ordinance and plan.

All cities receiving Measure M funds must also meet certain criteria in order to be considered an "eligible jurisdiction." This includes appropriate accounting for funds, timely use of funds, and various prerequisites regarding traffic improvement and growth management. Specific to Santa Ana's Go Local project, the OCTA Board has approved a cooperative agreement that outlines the roles and responsibilities of the City of Santa Ana and OCTA. The agreement includes specific milestones for the project that are similar to the federal planning process. The agreement with the city is an additional requirement intended to ensure that Measure M funds are used in accordance with the ordinance and plan. Additionally, the agreement outlines audit and inspection oversight requirements that must be met by the city.

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OCTA believes that strict adherence by Santa Ana to the provisions of the cooperative agreement with OCTA will satisfy the requirements of the Measure M ordinance.

Local jurisdictions are required under state and federal law and their own locally adopted policies and procedures to meet certain requirements with regard to procurement processes. If these laws and/or policies and procedures are not followed, then there are existing legal and policy avenues available to citizens, vendors or other participants to seek remedies.

### **RECOMMENDATION**

***Recommendation 6: OCTA should exercise stronger oversight in awarding planning and engineering contracts involving Measure M1 and M2 funds. Currently, OCTA utilizes 1 percent of Measure M funds for oversight of approved projects. This should be increased to allow for greater oversight of transportation contract awards consistent with State and Federal funding guidelines to ensure that Measure M funds are properly spent.***

**The recommendation will not be implemented because it is not warranted.** OCTA is very proud to have successfully delivered major, high priority transportation projects to Orange County through the Measure M program since 1991. These projects were most often delivered in partnership with other entities such as the California Department of Transportation (Caltrans), Metrolink, and local jurisdictions throughout Orange County. Moreover, approval for the renewal of the Measure M program by nearly 70 percent of Orange County voters in November 2006 can be directly linked to OCTA's track record of successful project delivery. OCTA is confident that project delivery to date and taxpayer safeguards that are built into the Measure M program speak to the integrity of the administration of Measure M funds.

As referenced previously, the Measure M program includes strong oversight safeguards that protect the public's investments in transportation. The following safeguards are examples of this oversight:

- An independent Taxpayers Oversight Committee (TOC), led by the Orange County Auditor-Controller, helps ensure Measure M funds are spent as voters have mandated through the expenditure plan. Members of the TOC are screened by the Orange County Grand Jurors Association and

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then selected by lottery to serve. TOC members are independent. These members are not appointed by and do not serve at the pleasure of the OCTA Board.

- Among its duties, the TOC is charged with contracting with an external accounting firm to conduct annual audits of the Measure M program. This audit is then used as a basis for a compliance finding. In each of Measure M's 19-year history, the TOC has found OCTA in compliance of delivering on the promises and requirements of Measure M.
- Quarterly and annual reports representing the progress of implementation of the Measure M expenditure plan are required to be prepared for the OCTA Board and public review.

It is important to note that the Grand Jury report incorrectly concludes that the 1 percent administrative cap on the use of Measure M funds is strictly for oversight purposes. The 1 percent limitation for salaries and benefits of OCTA administrative staff is part of the authorizing legislation under which Measure M was put on the ballot and is also included in the Measure M ordinance. The limit applies to all the administrative activities of OCTA staff in regard to the sales tax program, including and not limited to oversight and accountability functions. OCTA does not have the discretion to change this limit.

Measure M stipulates specific eligibility requirements for use of funds and complying with applicable state law. However, Measure M does not require eligible jurisdictions to abide by specific guidelines or procedures with respect to procurement activities on projects funded with local sales tax dollars. The Measure M expenditure plan and ordinance never contemplated nor intended to put OCTA in the role of setting standards for and/or overseeing procurement policies and procedures of the cities and the County of Orange. This was a deliberate policy choice consistent with the legislative intent not to create a large bureaucratic structure to administer local sales tax programs and with the requirement that the Measure M expenditure Plan be approved by cities and the county prior to being placed on the ballot.

As noted in our response to Finding F.6 above, there are existing legal and policy procedures in place to set standards and accountability for procurement and contracting activities of cities and the County of Orange.

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Thank you for the opportunity to respond to the Grand Jury's report. OCTA appreciates the role of the Orange County Grand Jury in providing public oversight of Orange County public agencies.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Kempton", with a horizontal line extending to the right.

Will Kempton  
Chief Executive Officer

WL:ds

c: OCTA Board of Directors  
Mr. Dave Ream, Santa Ana City Manager