

## **SPECIAL MEETING AGENDA**

- 1. Welcome**
- 2. Approval of Minutes for May 25, 2023**
- 3. Public Comments\***
- 4. Action Item**
  - A. Request to OCLTA for Provision of a Focused Measure M2 Compliance Audit for Fiscal Year Ending 2023  
Andrew Hamilton, Taxpayer's Oversight Committee Chairman
  - B. Changes to the Audit Subcommittee Charter, Contingent upon Receiving Approvals for Focused Measure M2 Compliance Audit for Fiscal Year Ending 2023  
Andrew Hamilton, Taxpayer's Oversight Committee Chairman
- 5. Adjournment**

*The next TOC Audit Subcommittee meeting is scheduled for October 10, 2023*

\*Public Comments: At this time, members of the public may address the Taxpayer Oversight Committee (TOC) regarding any items within the subject matter jurisdiction of the TOC, provided that no action may be taken on off-agenda items unless authorized by law. Comments shall be limited to three (3) minutes per person, unless different time limits are set by the Chairman, subject to the approval of the TOC.

Any person with a disability who requires a modification or accommodation in order to participate in this meeting should contact the OCTA Clerk of the Board, telephone (714) 560-5676, no less than two business days prior to this meeting to enable OCTA to make reasonable arrangements to assure accessibility to this meeting.

**Measure M Taxpayer Oversight Committee  
Audit Subcommittee  
Orange County Transportation Authority  
550 S. Main Street, Orange, CA  
Teleconference  
May 25, 2023 @ 4:00 p.m.**

**SPECIAL MEETING MINUTES**

**Committee Members Present:**

Andrew Hamilton, Auditor-Controller, County of Orange  
Mark Kizzar, Second District Representative  
Mark W. Eisenberg, Fifth District Representative  
Naresh D. Patel, First District Representative  
Steve Sloan, Second District Representative

**Committee Members Absent:**

No members were absent.

**Orange County Transportation Authority Staff Present:**

Francesca Ching, Measure M Program Manager  
Janet Sutter, Executive Director, Internal Audit  
Kia Mortazavi, Executive Director, Planning  
Sean Murdock, Director, Finance and Administration

**Guests:**

Matt Holder, Executive Assistant, Auditor-Controller's Office, County of Orange,

**Teleconference Participates:**

Jennifer Richards, Partner, Crowe LLP  
Joseph K. Widjaja, Senior Auditor, Crowe LLP

**Recorder:**

Teri Lepe, Executive Assistant, Internal Audit

**1. Welcome**

Mr. Andrew Hamilton called the Orange County Transportation Authority (OCTA) Taxpayer Oversight Committee (TOC) Audit Subcommittee (AS) meeting to order at 4:03 p.m.

**2. Approval of the Minutes for June 14, 2022**

*A motion was made by Mr. Hamilton, seconded by Mr. Mark Kizzar, to approve the February 14, 2023, TOC AS minutes. Motion passed unanimously.*

**3. Public Comments**

No public comments were submitted prior to the meeting. There were no members of the public present at the meeting.

#### 4. Action Items

##### A. External Auditor Communication/OCLTA Measure M2 Agreed-Upon Procedures Reports, Year Ended June 30, 2022 – Crowe LLP

- OCLTA Measure M2 Local Fair Share Agreed-Upon Procedures Report, Year Ended June 30, 2022

Ms. Janet Sutter, Executive Director, Internal Audit Department, introduced Ms. Jennifer Richards, Partner, and Mr. Joseph K. Widjaja, from Crowe LLP (Crowe), who presented the external auditor communication related to agreed-upon procedures applied to cities selected by the TOC AS committee for the fiscal year ended 2022.

Ms. Richards presented an overview of the agreed-upon procedures and summarized the results of the audits for the Orange County Local Transportation Authority (OCLTA) Measure M2 (M2) Local Fair Share (LFS) program for seven selected cities. She referred members to review the summary of the findings for LFS compiled by Ms. Sutter as a starting basis for their information. Ms. Richards explained some of the more typical exceptions that were found in the audit and that are usually corrected by the cities.

Ms. Richards called out the testing of maintenance of effort (MOE) by cities as one of the important measures looked at because failure to meet the minimum MOE benchmark is grounds for becoming ineligible to receive M2 funds. While a few cities included unsupported indirect costs as MOE, all but one remained in compliance with their MOE minimum. The City of Cypress (Cypress), after removing unsupported direct costs, no longer met their minimum MOE benchmark.

##### Committee Member Comments:

A committee member asked that if Cypress had passed the audit two prior times, was this an indictment of the prior audits. Ms. Sutter responded that looking at this city historically, you would see a sharp increase in the level of indirect charges they have been allocating to MOE. There are three prior audits still on the books: in the first one there is no indirect charges to MOE; the second audit showed a small amount of indirect charges and testing found no exceptions; the third audit shows a larger number of charges and in testing a portion of those, the audit found no exceptions. This means the city provided documentation of the methodology that the auditor was satisfied with. Ms. Sutter continued that two things have happened; the city is charging a lot more to the MOE from indirect charges without providing any documentation and they are charging it based on budget levels which is not representative of actual costs incurred and not allowed.

A committee member asked if this was just merely accounting errors, sloppiness, or an effort to perpetrate fraud. Ms. Sutter responded no, it is not unusual for cities to lack understanding of the type of documentation and the extent of documentation that is appropriate to support indirect charges despite frequent communications from OCTA. The exact same issue was seen with the cities of Santa Ana and Stanton as a result of the 2018 audit. Extensive communication to the cities has included letters from OCTA's Chief Executive Officer to the city managers, annual M2 finance meetings where Ms. Sutter presents common audit findings, what they were, what is and is not allowable, what they need. All of the MOE rules are tied to gas tax guidelines and a link is provided to those written guidelines. An email address and phone number to the state controller's office is also provided in those guidelines for any additional questions.

A committee member asked if Mr. Matt Burton, Director of Finance & Administration Services, Director/City Treasurer, City of Cypress, had attended the M2 finance meeting. Ms. Sutter responded they had looked to see if Cypress had attended, and they had attended meetings prior to the virtually held meetings during the coronavirus (COVID-19) pandemic. There were no lists for those meetings. However, they did not attend the very last meeting. Cypress contacted OCTA's finance group and said they could not attend. The entire package was then sent to Cypress, and OCTA is always available.

Ms. Sutter said the finance director and assistant finance director at Cypress have been there for several years. Cities may have turnover, which can be an issue, as individuals that have been educated in the process have left.

A committee member commented that indirect costs can vary from zero to north of forty percent, and asked what the reasonableness test is. Ms. Sutter responded the reasonableness test is whether documentation exists that represents a reasonable allocation of costs and is not aged beyond five years.

A committee member asked whether the cost allocation plan should be prepared by a consultant or developed internally. Ms. Sutter responded it could be developed internally.

A committee member commented that the shortfall of \$1.4 million for Cypress is a substantial amount. Ms. Sutter responded that because of this, the OCTA Board of Directors (Board) has found this city ineligible to receive M2 funds until such time as they can re-establish eligibility. To do that they need to spend their minimum MOE next year, plus the shortfall, and their minimum MOE the next year. Cypress communicated it would be a stretch for them to make the minimum MOE and the entire shortfall in the first year. Ms. Sutter said an external auditor would be commissioned to audit Cypress for two years and calculate whether or not they have met their minimum MOE plus the shortfall. At that time, staff would return to the Board to have them deemed eligible again. In the interim, M2 funds will not be forwarded to them, and they cannot compete for M2 funds.

A committee member asked if disbursements would be retroactive if they are able to meet the minimum MOE plus the shortfall. Ms. Sutter responded if they can accomplish that within two years, funds that have been held for those two years will be released.

A committee member asked that if a city spends more money on MOE, does OCTA give them more money. Ms. Sutter responded that OCTA does not give them more money if they spend more on their MOE.

A committee member asked how the \$1.4 million MOE shortfall at Cypress was calculated; was it monies received that upon audit it was discovered they should not have received those funds? Ms. Sutter responded that the MOE is not M2 money. MOE is the level of expenditures of general fund money they are required to expend to receive M2 funds. Because they had \$1.6 million in indirect costs that they had insufficient documented methodology on, it was disallowed, resulting in the \$1.4 million shortfall.

A committee member commented on Cypress' response letter where they objected vehemently to the findings. Ms. Sutter responded they had met with them in person, and they are in agreement with the findings.

- OCLTA Measure M2 Senior Mobility Program Agreed-Upon Procedures Report, Year ended June 30, 2022.

Ms. Richards presented an overview of the agreed-upon procedures and summarized the results of the audits of the OCLTA Measure M2 Senior Mobility Program (SMP) for four selected cities. Ms. Richards explained some of the more typical exceptions that were found in the audit and that are usually corrected by the cities.

Committee Member Comments:

There were no committee comments.

B. Approve Selections for Fiscal Year 2022-2023 Measure M2 Agreed-Upon Procedures

Ms. Sutter presented a suggested selection of cities for audit for the upcoming fiscal year ending June 30, 2023. The selection list included the last time the city was audited, whether there were any findings and how many, an indication of the volume of the funding allocations for LFS and SMP provided by OCTA, and for Senior Non-Emergency Medical Transportation funds for the County of Orange (County). There is a five-year rotation for LFS and seven years for SMP.

Committee Member Comments:

A committee member asked if Cypress would be selected for audit, again. Ms. Sutter replied that Cypress will be audited for the next two years as directed by OCLTA's Board and does not need to be considered with this selection.

A committee member commented that the City of Laguna Niguel had four findings in the last SMP audit for 2017, which was extreme when compared to the other cities which were audited for 2016.

Committee discussion ensued about the selections as shown in the Measure M Jurisdictions - Suggested Selections for FY2023 chart that was included in the special meeting agenda packet dated May 25, 2023.

A committee member asked if there was any benefit to selecting cities on a random basis as opposed to a five- or seven-year basis where cities can prepare and ensure everything is in order; random or spot audits tend to make for better record keeping. Ms. Sutter asked for a better understanding of "random"; the committee member responded that along with selecting cities that had not been audited for five years, that a couple of cities that had more recent audits, possibly those with larger amounts, be selected, as well. Ms. Sutter responded it is at the committee's discretion to add cities, but when looking at the amounts, larger cities get more funds than smaller cities; but larger cities may have more staff and experience in their finance department than smaller cities.

A committee member asked if in the last five years have any cities like Cypress been encountered, that may not have been disqualified, but were on the verge of disqualification with a sufficient number of findings, still met the threshold, but their accounting or presentation of their accounting was suspect. Ms. Sutter responded that the number of findings does not reflect the seriousness. Reporting errors are findings but are not as serious as not making their MOE. Ms. Sutter also said that subsequent to these audits, OCTA staff follows up with the cities on the findings and asks if they have corrected them.

A committee member commented they had looked for a list of the higher-risk cities, cities that might not be as fiscally healthy, or are financially stressed, and suggested a risk-based approach to selection should be considered. Ms. Sutter asked what the criteria would be based on or what would be the ability to gather data for this type of risk assessment. A committee member responded potentially cities that show negative net asset, cities that are full service and do not contract out services. Ms. Sutter commented that criteria would need to be objective and apply to all cities.

A committee member asked if some sort of random component could be added. Ms. Sutter responded that for selection, that could be done in the current meeting and the committee could add two or more cities, randomly.

A committee member asked for clarification on the County's Senior Non-Emergency Transportation and who or how would they be audited. Ms. Sutter responded the last time they were audited was in 2020, and there were no findings. It is the County that runs the program.

A committee member commented that the City of Anaheim (Anaheim) is a full-service city that draws a lot of funds; their last audit was in 2019.

Another committee member then commented that Anaheim was the largest city listed in the County as having negative net equity.

A committee member asked if all the cities have their own internal auditor. Ms. Sutter responded most cities do not have an audit function. Anaheim does have an internal audit staff, however, Ms. Sutter commented that most of their effort may be directed at auditing taxes, like the Transient Occupancy Tax and revenues to the city.

A committee member requested adding the Anaheim LFS to the selection list with the Chair's permission. The Chair responded yes, and Ms. Sutter responded that Anaheim would be added to the selection list.

A committee member asked how many times have there been additions to the selection list in prior years, or have previous committees usually just accepted the suggested list of cities. Ms. Sutter responded there had been suggestions in prior years but nothing in the last couple.

A committee member proposed adding the City of Costa Mesa (Costa Mesa) LFS to the selection list. Ms. Sutter indicated it would be added.

Ms. Sutter asked if the committee would like to entertain adding Laguna Niguel SMP. A committee member stated they did not feel strongly about that, nor was there any other supporting comments to add.

A committee member asked if Anaheim SMP could be added to the list. Ms. Sutter responded they had been audited in 2022, but it was their prerogative to add it to the list.

A committee member asked what the rationale for adding Anaheim SMP was and the committee member that proposed Anaheim SMP for audit responded it was the randomness of an audit that would have cities aware that the five- and seven-year methodology of the audit might be changing; it would keep cities in a readiness state.

Mr. Hamilton stated there was consensus for adding LFS audits to the cities of Anaheim and Costa Mesa. A motion could be made, and it would be the prerogative of the motion maker to add the SMP audit of Anaheim during the motion.

*A motion was made by Mr. Sloan to approve the suggested selection of cities for audit, as well as adding the cities of Anaheim and Costa Mesa for audit of LFS, and Anaheim for audit of SMP. Motion was seconded by Mr. Kizzar, no one opposed, motion carried.*

Committee discussion continued after the motion with a member asking for clarification as the Crowe report for Anaheim SMP shows \$0 expended for fiscal year 2022 yet shows \$364,000 was received through the month of June 2023. Ms. Sutter responded they were allocated monies, but the city did not have any expenditures in fiscal year 2022.

A committee member asked why did Anaheim receive funds, and were the funds accrued. Ms. Sutter responded SMP funds continued to be allocated to cities that had temporarily stopped service due to COVID-19, and that funds needed to be kept in a separate fund which is part of the audit.

Ms. Francesca Ching, Measure M Program Manager, provided additional information related to Anaheim's funding allocation, their loss of a SMP provider, and the OCTA Board guideline exception approved for one year to assist the city in procuring another SMP provider. At the end of the one-year timeframe, the city was unable to competitively procure a SMP provider and could no longer charge to the SMP program. Ms. Ching added that during COVID-19, the Board approved another guideline exception to hold the cities' SMP funds in reserve for those cities that suspended service, Anaheim included. When Anaheim was able to resume service, a large check was released to them. That is the reason there appears to be a lot of revenue and very little expenditures.

A committee member asked that if they did not use it, do we need to audit them. Ms. Sutter stated they audit them to make sure the money is used within the three-year timeframe required by the Ordinance.

A committee member asked if interest the money earns is subject to accounting and are there restrictions on products where the money is placed to maintain its availability and the principle. Ms. Sutter commented that part of the audit is to verify



they do allocate interest based on whatever their city allocation methodology is. They do not look at what it is invested in.

A committee member commented that California Government Code restricts the investments that cities and government entities can invest in.

## **5. Presentation Items**

### **A. Quarterly M2 Revenue and Expenditure Report**

Mr. Sean Murdock, Director, Finance and Administration, presented the Quarterly M2 Revenue and Expenditure Report as of March 31, 2023.

#### Committee Member Comments:

A committee member asked if the new problems in the City of San Clemente (San Clemente), the land falling under Casa Romantica and the red tagging of some surrounding buildings that would now affect the tracks, would money from M2 be used to further re-vamp, relocate, or enhance, the tracks down there? Mr. Murdock responded the tracks under Casa Romantica did not move, there was only debris that needed to be cleared.

A committee member asked if there needs to be any work done to shore up the area as they did for Cyprus Shore, would any of those expenditures be attributable to the funds that the TOC oversees. Mr. Mortazavi responded the work around Casa Romantica is being led by San Clemente and is at the city's expense.

A committee member asked when the Santa Ana rail project is finished, where will the money coming in as sales tax for transportation be spent. Mr. Murdock responded there are a number of different programs within the M2 Transit mode. One program within the M2 Transit mode provides a transit extension to Metrolink, which a portion of the OC Streetcar funded. There will be funds available after the OC Streetcar is completed. The OCTA Board will determine how those funds will be spent.

A committee member asked if there was an expectation that monies would come in rather than be subsidized. Mr. Murdock responded that both Metrolink and the OC Streetcar receive fare revenue, but in either case, they will be heavily subsidized.

A committee member asked if Muni Services was adjusting their forecast on what they were seeing. Mr. Murdock responded yes, they adjusted their sales tax forecast. New long-range forecasts are being updated and will be presented to the committee when available.

A committee member asked how far along is Interstate 405 in its funding completion. Mr. Murdock responded there is about \$300-\$400 million left to fund.

A committee member asked if there was a chance to pay some of the bond debt off early or was it needed for cash flow purposes. Mr. Murdock responded the next available call for M2 debt is 2029, but that this could be evaluated the next time the 20-year plan is updated.

#### B. M2 Ordinance Compliance Matrix

Ms. Francesca Ching, Program Manager, Planning, presented the Ordinance No. 3 Tracking Matrix for Period Ending December 31, 2022.

6. The Measure M TOC AS meeting adjourned at 5:28 p.m. The next regularly scheduled meeting will be at **4 p.m. Tuesday, October 10, 2023**, in Conference Room 09 of the 550 Building, OCTA Headquarters.

# **TAXPAYER OVERSIGHT COMMITTEE AUDIT SUBCOMMITTEE**

## **AUDIT CHARTER June 2023**

The Audit Subcommittee (Subcommittee) of the Taxpayer Oversight Committee (TOC), is established to assist the TOC in fulfilling its oversight responsibilities regarding the Measure M ordinance approved by the voters of Orange County. Specifically, the Subcommittee will have responsibilities in matters related to internal and independent outside audits of the Measure M programs, projects, and financial records.

In providing assistance to the TOC, the Subcommittee will assume the role of an audit committee as provided herein and recommend action on all audit related matters to the full TOC. Recognizing that the Finance and Administration Committee (Committee) of the Board of Directors (Board) of the Orange County Transportation Authority (OCTA) serves as OCTA's audit committee with audit oversight of Measure M projects, programs, and financial records, the role of the Subcommittee is to augment the Committee's audit oversight as it relates specifically to Measure M projects, programs, and financial records.

All members of the Subcommittee will participate in fulfilling these responsibilities. At least one member of the Subcommittee will have financial experience sufficient to provide guidance and assistance to other Subcommittee members on matters related to government accounting, auditing, budgeting, and finance.

In fulfilling its audit responsibilities, the Subcommittee will have prompt and unrestricted access to all relevant OCTA documents, records, and staff. Requests by the Subcommittee for financial or other resources sufficient to fulfill these responsibilities, and beyond that already existing in OCTA's adopted budget, will be directed, through the full TOC, to OCTA's Chairman of the Board.

Members of the Subcommittee will be independent of OCTA, its contractors, consultants, and agents, in both fact and appearance, and will consult with the Chairman of the TOC concerning any circumstances which may compromise their ability to meet this standard. Members of the Subcommittee will comply with all applicable state and federal laws in the performance of their duties under this audit charter.

Responsibilities of the Subcommittee will include, but may not be limited to, the following:

### **Independent Financial Statements Audits**

1. Review with management and the independent financial statement auditors:
  - a. The annual financial statements of the Orange County Local Transportation Authority and related footnotes, schedules, and unadjusted differences, including

- the accounting principles used, and significant estimates or judgments made, by management.
- b. The management letter issued by the independent auditors in relation to their audit of OCTA and all its legal entities.
  - c. Any other independent audit reports the Subcommittee believes may be relevant to the exercise of its duties.
2. Discuss with the independent financial statement auditors any difficulties encountered during the course of their work, disagreements with management, or restrictions or limitations placed upon them.
  3. Assist OCTA in the selection, retention, or discharge of its independent auditor. This assistance may be provided through:
    - a. Participation on the independent auditor procurement selection panel.
    - b. In coordination with the full TOC, provide performance feedback regarding the independent auditor to OCTA's Board and Internal Audit Department (Internal Audit).
  4. Inquire of the auditors as to their independence, their compliance with Government Auditing Standards, and applicable accounting and auditing guidance issued by the Government Accounting Standards Board, the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and other standard-setting bodies.

### **Independent Outside Compliance Audit**

1. Review with management and the independent outside compliance auditors results of the annual compliance audit of the OCLTA, Measure M2 Ordinance No. 3, including any identified instances of non-compliance, or any significant deficiencies or material weaknesses in internal controls identified through the audit.
2. Discuss with the independent outside compliance auditors any difficulties encountered during the course of their work, disagreements with management, or restrictions or limitations placed upon them.
3. Assist OCTA in the selection, retention, or discharge of its independent outside compliance auditor. This assistance may be provided through:
  - Participation on the independent outside compliance auditor procurement selection panel.
  - In coordination with the full TOC, provide performance feedback regarding the independent outside compliance auditor to OCTA's Board and Internal Audit.
4. Inquire of the auditors as to their independence, their compliance with Government Auditing Standards, and applicable accounting and auditing guidance issued by the

Government Accounting Standards Board, the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and other standard-setting bodies.

### **Agreed Upon Procedures**

1. Review with the independent auditors the results of agreed-upon procedures performed at the direction of the Subcommittee and/or the Board of OCTA.
2. Design procedures to provide assurance that Measure M2 funds are used in compliance with the ordinance, and expenditures are reported accurately.
3. Periodically evaluate the sufficiency and applicability of the procedures.
4. In coordination with the full TOC, provide management and OCTA's Board with recommendations based on the results of the procedures.
5. Review relevant city/county data and select a sample of jurisdictions for annual audit, to determine the level of compliance with the Measure M2 ordinance.

### **Triennial Performance Assessment**

1. Participate in the development of a scope of work for the triennial performance assessment required by Measure M2.
2. Participate in the selection of the independent consultant.
3. Review the results of the triennial performance assessment, including management responses. Monitor the implementation of all recommendations.
4. In coordination with the full TOC, provide feedback to OCTA's Board on the performance of the independent consultant, the adequacy of management's responses, and/or the sufficiency of corrective action planned in response to assessment recommendations.

### **Internal Audit and Internal Controls**

1. Receive and review the annual Internal Audit Plan and quarterly updates of audit activity.
2. Review internal audit reports that have Measure M2 implications, including management responses and planned corrective action.
3. Consider the effectiveness of OCTA's system of internal controls, including controls over financial reporting.
4. Inquire of Internal Audit as to restrictions or limitations placed upon it by management or the Board.
5. Review the results of Internal Audit's triennial quality assurance (or "peer") review, and confirm that Internal Audit has been found independent as defined by Government Auditing Standards.

6. In coordination with the full TOC, provide OCTA's Board feedback or recommendations related to audit findings, internal controls, or the performance of the internal audit function.

**Other**

1. Review this Audit Charter at least annually to assess its adequacy and recommend changes.
2. Provide updates to the TOC on actions taken, communications by, or recommendations made by the Subcommittee.
3. Inquire annually of the Chairman of the Committee as to any concerns the Committee has regarding OCTA's internal controls, its internal audit function, its independent financial statement auditors and independent outside compliance auditors, Measure M projects, programs, financial records, or other matters, and report to the full TOC.