

COMMISSION ON STATE MANDATES

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June 30, 2008

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Ms. Jacqueline M. Gong
County of Napa
1195 Third Street,
Suite 301
Napa, CA 94559

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and
Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: Adopted Parameters and Guidelines and Statewide Cost Estimate
Binding Arbitration, 01-TC-07
Code of Civil Procedure, Sections, 1299.2, 1299.3
1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9
County of Napa, Claimant

Dear Mr. Burdick, Ms. Gong and Ms. Brummels:

On June 26, 2008, the Commission adopted parameters and guidelines and a statewide cost estimate of \$211,317 for the above-named program. The parameters and guidelines and cost estimate are enclosed. The statewide cost estimate will be reported to the Legislature.

Please contact Nancy Patton at (916) 323-8217 with questions.

Sincerely,


PAULA HIGASHI
Executive Director

Enclosure

j:mandates/2001/01tc07/psgsadoptrtrans

MAILED: X FAXED: _____
DATE: 6/30/08 INITIAL: E.A
CHRON: _____ FILE: X
WORKING BINDER: _____

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Code of Civil Procedure Sections 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.8 and
1299.9

Statutes 2000, Chapter 906

Filed on October 24, 2001 by
City of Palos Verdes Estates, Claimant and
joined on January 23, 2007 by the County of
Napa, Claimant

No. 01-TC-07

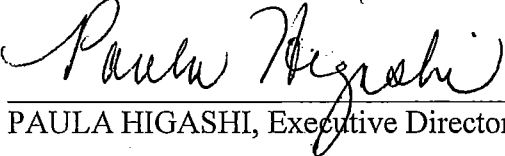
Binding Arbitration

ADOPTION OF PARAMETERS AND
GUIDELINES PURSUANT TO GOVERNMENT
CODE SECTION 17557 AND TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
SECTION 1183.12

(Adopted on June 26, 2008)

PARAMETERS AND GUIDELINES

On June 26, 2008, the Commission on State Mandates adopted the attached parameters and guidelines.



PAULA HIGASHI, Executive Director

Dated: June 30, 2008

Adopted: June 26, 2008

PARAMETERS AND GUIDELINES,

Code of Civil Procedure Sections 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.8 and 1299.9

Statutes 2000, Chapter 906

Binding Arbitration

01-TC-07

Reimbursement Period: January 1, 2001, through April 30, 2003

I. SUMMARY OF THE MANDATE

On March 29, 2007, the Commission on State Mandates (Commission) adopted a Statement of Decision on the *Binding Arbitration* test claim, finding that the prior Statement of Decision adopted on July 28, 2006, was contrary to law, and, in applying the appropriate law to the test claim, the test claim statutes mandate the following activities:

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.6, subd. (a)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
 - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
 - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
 - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
 - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
 - f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).¹
 - g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).²
 - h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).³

The Commission found that these activities constitute a “program” as well as a “new program or higher level of service.” Furthermore, the Commission found that the activities impose “costs

¹ Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

² Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

³ Incorporating by reference Code of Civil Procedure section 1283.05.

mandated by the state” within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Pursuant to Code of Civil Procedure section 1299.2, any city, county, and city and county employing firefighters and/or law enforcement officers, as defined in Code of Civil Procedure section 1299.3, that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs, except a city, county, or city and county governed by a charter that was amended prior to January 1, 2001, to incorporate a requirement for resolving employment disputes via binding arbitration (Code Civ. Proc., § 1299.9, subd. (a)).

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on October 24, 2001, establishing eligibility for fiscal year 2000-2001. However, the operative date of the test claim statutes, as enacted by Statutes 2000, chapter 906, is January 1, 2001. Moreover, the test claim statutes were declared unconstitutional by the California Supreme Court on April 21, 2003. *Therefore, the reimbursement period for costs incurred pursuant to Statutes 2000, chapter 906, is limited to January 1, 2001, through April 30, 2003.*

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

A. Selection of Local Agency Panel Member and Neutral Chairperson

1. Select an arbitration panel member, which includes attorney, staff and negotiator time to research potential members, and prepare for the selection,
2. Brief the panel member, which includes panel member, attorney, staff, and negotiator time.
3. Vet and select a neutral arbitrator which includes attorney, staff and negotiator time to research potential candidates for neutral chairperson. (Code Civ. Proc. § 1299.4, subd. (b), subd. (c), § 1299.8.)

B. Arbitration Process (includes agency panel member, attorney, staff, and negotiator time)

Once the arbitration is triggered under Code of Civil Procedure section 1299.4, the scope of which is defined in Code of Civil Procedure section 1299.3, subdivision (g), the following activities are reimbursable to participate in the arbitration process and when directed by the panel:

1. Prepare for and meet with the arbitration panel in open or closed session, either jointly or separately. (Code Civ. Proc., § 1299.5, subd. (a)).
2. Submit the last best final offer of settlement to the arbitration panel, five days before the hearing, or as may be mutually agreed to by the parties.
3. Conduct discovery or respond to discovery requests, which includes time to research, prepare to make or respond to requests, gather responsive documents, and meet with witnesses and others to obtain responses or responsive documents or discovery requests and draft and serve responses or discovery requests. (Code Civ. Proc., § 1299.8.)⁴
4. Prepare for, respond to, and participate in inquiries or investigations Code Civ. Proc., § 1299.5, subd. (a)).
5. Respond to subpoenas and subpoenas duces tecum, which includes time to prepare to respond to subpoenas, gather responsive documents, meet with witnesses and others to obtain responsive documents draft and service responses. (Code Civ. Proc., § 1299.5, subd. (b).)
6. Respond to or make demands for witness lists and/or documents, which includes time to research, prepare to make or respond to demands, gather responsive documents, and meet with witnesses and others to obtain responses or responsive documents or demands and draft and serve demands or responses. (Code Civ. Proc., § 1299.8.)⁵
7. Prepare for arbitration panel hearing(s) vet, select, and prepare expert and general witnesses.
8. Make application and respond to deposition requests, which includes time to research, prepare to make or respond to requests, gather responsive documents, and meet with

⁴ Incorporating by reference Code of Civil Procedure section 1283.05.

⁵ Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

witnesses and others to obtain responses or responsive documents or requests and draft and serve responses or requests. (Code Civ. Proc., § 1299.8.)⁶

9. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).

10. Consult with the panel, either jointly or separately prior to the award. (Code Civ. Proc., § 1299.5, subd. (a).)

11. Consult with local agency panel member, board of governors, negotiator, attorney, or staff regarding the award. (Code Civ. Proc., § 1299.5, subd. (a).)

12. When directed by the panel:

(a) Submit *updated* last best final offer of settlement to the arbitration panel, including time to prepare for and redraft the last best final offer, and time for consultation with governing board. (Code Civ. Proc. § 1299.6, subd. (a).)

(b) Prepare for and participate in mediation (Code Civ. Proc. § 1299.5, subd. (a).)

(c) Prepare and file closing briefs. (Code of Civ. Proc., § 1299.5, subd. (a).)⁷

C. Non-Reimbursable Activities

The following activities are not reimbursable:

1. train agency management, counsel, staff and members of governing bodies regarding binding arbitration;
2. restructure bargaining units to accommodate binding arbitration;
3. perform discovery activities, as set forth in Code of Civil Procedure sections 1281.1, 1281.2 and 1299.8, when such activities are engaged in outside the binding arbitration process triggered by Code of Civil Procedure section 1299.4;
4. collect and compile comparability data, handle two track negotiations or participation in mediation, when such activities are engaged in outside the binding arbitration process triggered by Code of Civil Procedure section 1299.4;
5. negotiate with the employee organization representatives based on the arbitration panel's award, pursuant to Code of Civil Procedure section 1299.7, subdivision (a);
6. litigate interpretation of the test claim statutes; and
7. fee and mileage of a witness subpoenaed solely upon the determination of the neutral arbitrator.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

⁶ Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

⁷ Incorporating by reference Code of Civil Procedure sections.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant, expert witness, and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁸ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

⁸ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Adopted: June 26, 2008

STATEWIDE COST ESTIMATE

Code of Civil Procedure
Sections 1299.2, 1299.3, 1299.4, subdivision (b),
1299.5, subdivision (a), 1299.6, subdivision (a),
1299.8 and 1299.9, subdivision (b)
Statutes 2000, Chapter 906

Binding Arbitration
01-TC-07

County of Napa, Claimant

Background

The test claim statutes in their entirety were declared unconstitutional by the California Supreme Court on April 21, 2003, as violating portions of article XI of the California Constitution. The basis for the decision is that the statutes (1) deprived the county of its authority to provide for the compensation of its employees as guaranteed in article XI, section 1, subdivision (b); and (2) delegate to a private body the power to interfere with local agency financial affairs and to perform a municipal function, as prohibited in article XI, section 11, subdivision (a). However, before this decision, only one county implemented the new program.

Commission's Decision

On March 29, 2007, the Commission on State Mandates (Commission) reconsidered the Statement of Decision on the *Binding Arbitration* test claim, finding that the prior Statement of Decision adopted on July 28, 2006, was contrary to law. The Commission adopted a new decision and approved reimbursement for the following state-mandated activities pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.6, subd. (a)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
 - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
 - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
 - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
 - e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).

- f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).¹
- g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).²
- h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).³

Proposed Parameters and Guidelines

The proposed parameters and guidelines for this program are also on this agenda. If adopted, the State Controller's Office will issue claiming instructions within 60 days; and one eligible claimant may file reimbursement claims. The original claimant, City of Palos Verdes, did not incur actual costs but filed the test claim based on estimated costs. The County of Napa joined the claim as a co-claimant and alleged increased actual costs incurred during the period of reimbursement, January 1, 2001 through April 20, 2003. (Throughout this test claim proceeding, we have identified only one county that is an eligible claimant.)

Proposed Statewide Cost Estimate

On May 21, 2008, the Commission staff issued a Proposed Statewide Cost Estimate of \$10,000.⁴ The estimate was based on a declaration filed with the Commission on January 24, 2007. In that declaration, Deputy County Counsel Jacqueline M. Gong declared under penalty of perjury, that:

The full cost of this interest arbitration process to the County is yet to be fully determined, but exceeds \$10,000 based alone on legal fees and expenses incurred. In the course of participating in the arbitration process, the County's Human Resources Director served on the arbitration panel. Responses to discovery requests involved extensive staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. The County also incurred costs for legal counsel, both in-house and retained outside counsel. Expenses were further incurred for a number of expert witnesses in the arbitration hearing.⁵

To prepare the draft staff analysis and proposed statewide cost estimate, staff made the following assumptions regarding the statewide cost estimate for this program:

- There will be only one eligible claimant, County of Napa.
- The actual full cost of the County of Napa's interest arbitration process is yet to be determined. However, there is a declaration to support a statewide estimate in the amount of \$ 10,000.

¹ Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

² Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

³ Incorporating by reference Code of Civil Procedure section 1283.05.

⁴ See Exhibit A, Draft Staff Analysis, Proposed Statewide Cost Estimate

⁵ See Exhibit A, Request to Join as Co-Test Claimant by County of Napa, filed on January 24, 2007, Declaration of Jacqueline M. Gong, Paragraph 6.

Comments Filed by the Department of Finance and the County of Napa

On June 3, 2008, the Department of Finance filed comments in support of the Proposed Statewide Cost Estimate of \$10,000.⁶ On June 4, 2008, the County of Napa filed a new declaration in support of amending the statewide cost estimate to \$213,317.⁷

The declaration of Jacqueline M. Gong, Deputy County Counsel of Napa, declared that the “actual, full cost of the County’s interest arbitration process is yet to be determined. However, I have reviewed documentation that generally identifies staff and time spent in the arbitration process....” Ms. Gong describes the County’s summary of Estimated Staff Time and Costs as an “approximation of the staff time and related costs for conducting the arbitration.” This summary is excerpted below.

Employee Class	Hours	Productive Hourly Rate ⁸	Contract Services	Total
Deputy County Counsel	250	\$83.33		\$20,833.33
Human Resources Director	150	\$80.87		\$12,130.50
Principal HR Analyst	20	\$63.49		\$1,269.78
Benefits Administrator	15	\$58.75		\$ 173.23
Legal Secretary	5	\$34.65		\$857.27
Asst. CEO	15	\$85.73		\$1,285.95
Auditor-Controller	5	\$88.60		\$443.02
CEO Analyst	5	\$64.88		\$324.39
Outside Counsel			\$ 126,000	
Expert Witnesses			\$ 50,000	
		Totals	\$176,000	\$37,317.47
Total Estimated Cost	\$213,317	(rounded up to \$215,000)		

Footnote 2 of this declaration further explains:

The county retained outside counsel for the arbitration. The services were provided pursuant to Napa County Agreement No. 4489 and the First Amendment to this Agreement The contract provided for a maximum amount of \$172,000 for compensation and expenses, including the retention of experts and consultants. In addition, County directly retained one expert witness/consultant to address retirement benefit costs. The estimate of \$176,000

⁶ See Exhibit B.

⁷ See Exhibit C.

⁸ This rate includes administrative overhead in support of the staff position.

for costs of outside counsel and expert witnesses is based upon a review of documentation relating to invoices paid by the County.

The county also prepared a chart of county staff and others who participated in various reimbursable arbitration activities, based on the proposed parameters and guidelines as modified by claimant and staff and set for hearing on June 26, 2008.⁹

Staff reviewed the contract for retention of outside legal counsel. In Exhibit A, Scope of Work, the contract authorized legal representation in "court proceedings." Since litigation costs are not reimbursable, staff e-mailed Ms. Gong to request clarification.

Ms. Gong responded:

Our outside counsel did not appear on behalf of or represent the County in any court proceedings. I believe the agreement language regarding court proceedings was included in the event there were potential disputes regarding the scope or application of Code of Civil Procedure Section 1299 et. seq. as the arbitration progressed. Early on, the union initially filed a motion to compel arbitration which I handled on behalf of the County; the County's position was that the motion was without merit and that it had not refused to arbitrate and had in fact proceeded with selection of our arbitration panel member. I did have outside counsel review my pleadings on the motion to compel arbitration, but counsel's billing time in reviewing the pleadings is interspersed with time preparing for the arbitration (strategizing/calling the neutral arbitrator/preparing for the preliminary meeting with the arbitration panel); the time is not clearly separated out. The motion was held in abeyance pending the parties proceeding with arbitration and ultimately dismissed. A rough, ballpark estimate of outside counsel's time on the motion to compel arbitration (consultation- review of pleadings- strategizing about discussions with the neutral arbitrator) amounts to approximately \$2000 (10 hours of attorney time at \$200/hour) and that is probably generous.¹⁰

Since costs for litigation are not reimbursable, county's estimated cost of \$213,317 is reduced by \$2,000.

Thus, based on staff's review of the County's new declaration, supporting evidence, and clarification of costs for litigation, staff revises the proposed statewide cost estimate to \$211,317.

Revised Assumptions

- There will be only one eligible claimant, County of Napa.
- The actual one-time full cost of the County of Napa's interest arbitration process is yet to be determined. However, a declaration by Deputy County Counsel Jacqueline Gong supports a statewide cost estimate in the amount of \$ 211,317.
- Actual amount to be claimed may be higher than the estimated amount of \$211,317.
- If the County of Napa's actual reimbursement claim is audited by the State Controller, the amount claimed may be reduced.

⁹ See Exhibit C.

¹⁰ See Exhibit D.

Conclusion

On June 26, 2008, the Commission on State Mandates adopted a statewide cost estimate of \$211,317 for the costs incurred by the County of Napa to implement the state-mandated program from January 1, 2001 through April 20, 2003.

Attachment 1

Updated Chronology: Collective Bargaining Process, Mediation, and Binding Arbitration

July 2000	Napa County begins collective bargaining process with Deputy Sheriff's Association.
November, December, January, February	Mediation – four occasions
Jan. 1, 2001 Jan. 16, 2001	PERIOD OF REIMBURSEMENT BEGINS During mediation, the DSA requested economic issues be submitted to binding arbitration.
	County consulted with other agencies; the County's Human Resources Director met with legal counsel.
Feb. 20, 2001	Last day of mediation ... County designated its Human Resources Director as its partisan panel member; DSA designated its panel member.
	Discussions between the County's Human Resources Director and legal counsel, the County planned its approach in participating in the joint selection of the neutral arbitrator.
March 2001	County and DSA jointly designated impartial chairperson. <i>Napa County contracts with Curiale Dellaverson Hirschfeld Kelly & Kramer, LLP to represent County, as counsel of record in binding interest arbitration between the County and the Napa County Deputy Sheriffs' Association pursuant to California Code of Civil Procedure Section 1299 et seq. (\$122,000)</i>
April 17, 2001	Parties met with arbitration panel. <ul style="list-style-type: none"> • Identified the disputed economic issues. • Established hearing timetable for exchange of requested information, exhibits, witness lists. • Agreed on hearing dates. Parties settled on two economic proposals on retirement and dental benefits.
April 17 – May 22	Parties conducted discovery and exchanged documents as agreed to with the arbitration panel: Responses to discovery requests involved staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. County also incurred costs for legal counsel, both

	<p>in-house and retained outside counsel.</p> <p>County searched for and retained expert witnesses to analyze the fiscal impact of proposed economic issues on the County and its ability to pay, as well as to study the comparability of the County's economic proposals to similarly situated agencies.</p> <p>Expert witnesses developed analytical studies and prepared for testifying at the arbitration hearing with the assistance of legal counsel.</p> <p>General witnesses were also identified and prepared for testifying about County budgets, revenue and financial commitments.</p> <p>Legal counsel drafted county's last best final offer for submission after consulting with the Board of Supervisors.</p>
May 17, 2001	5 days before hearing, parties submitted last best final offer from negotiations.
May 22, 2001	<p>Parties participated in hearing – 3-days.</p> <p>Legal counsel, staff, expert and general witnesses.</p>
	At the direction of the arbitration panel, County through its staff and legal counsel prepared the submission of additional written evidence and closing briefs.
	Panel selects the party's last best offer on each disputed economic issue that most nearly adheres to specified factors under CCP 1299.6.
September 2001	<p>Panel issued its decision.</p> <p>5 Days later, binding decision was made public by the county.</p> <p><i>County amends contract with Curiale Dellaverson Hirschfeld Kelly & Kraemer, LLP, by increasing maximum amount by \$50,000.</i></p>

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

June 30, 2008, I served the:

RE: Adopted Parameters and Guidelines

Binding Arbitration, 01-TC-07

Code of Civil Procedure, Sections, 1299.2, 1299.3,
1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9

County of Napa, Claimant

By placing a true copy thereof in an envelope addressed to:

Mr. Allan P. Burdick
Maximus
4320 Auburn Blvd.,
Suite 2000
Sacramento, CA 95841

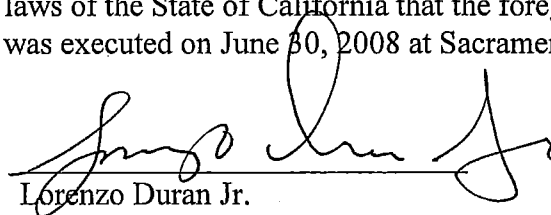
Ms. Jacqueline M. Gong
County of Napa
1195 Third Street, Suite 301
Napa, CA 94559

Ms. Ginny Brummels
State Controller's Office
Division of Accounting
& Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

And by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 30, 2008 at Sacramento, California.


Lorenzo Duran Jr.

Commission on State Mandates

Original List Date: 10/25/2001
Last Updated: 1/4/2007
List Print Date: 06/30/2008
Claim Number: 01-TC-07
Issue: Binding Arbitration

Mailing Information: Notice of Adopted SCE

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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