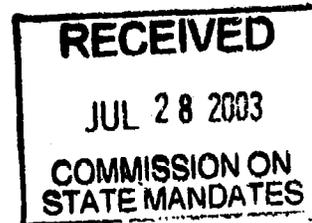




July 24, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms Higashi:

As requested in your letter of July 1, 2003, the Department of Finance has reviewed the test claim submitted by the Sacramento Metropolitan Fire District (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 1521, Statutes of 1985, Chapter No. 72, Statutes of 1990, Chapter No. 463, Statutes of 2000, and Title 24, Part I, Chapter 4, Article 1 of the California Code of Regulations, are reimbursable state mandated costs (Claim No. CSM-02-TC-38 "Essential Services Buildings"). Commencing with Page 3, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- The requirement that design calculations, drawings, and specifications of certain essential services buildings are to be submitted to the appropriate enforcement agency for approval.
- The requirement to obtain a geological assessment under specified circumstances.
- The requirement that the relevant drawings and specifications must be prepared under, and signed off by, an architect and engineer who shall also serve as an observer throughout the construction.
- The requirement that a qualified inspector must inspect during the construction.

As the result of our review, we have concluded that the courts have held that costs to a local entity resulting from an action undertaken at the option of the local entity are not reimbursable as "costs mandated by the state". Specifically, in City of Merced v. State of California, 153 Cal. App. 3d 777 (1984), the court said:

"We agree that the Legislature intended for payment of goodwill to be discretionary. ...whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost."

In County of Contra Costa v State of California, 177 Cal App. 3d 62,79(1986) the court affirmed the City of Merced decision. Based on these court cases, the Department of Finance believes that the provisions of Chapter No. 1521, Statutes of 1985, Chapter No. 72, Statutes of 1990, Chapter No. 463, Statutes of 2000, and Title 24, Part I, Chapter 4, Article 1 of the California Code of Regulations simply make an optional program available to local governments, the costs of which are not reimbursable because they are not costs mandated by the state. Though these

statutes and regulations place certain requirements on entities that choose to construct or remodel essential services buildings, the construction or remodeling work itself is optional.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 1, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Jennifer Osborn, Principal Program Budget Analyst, or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script that reads "Nona Martinez for". The signature is written in black ink and is positioned above the typed name and title.

Calvin Smith
Program Budget Manager

Attachments

Attachment A

DECLARATION OF JENNIFER OSBORN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-38

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 1521, Statutes of 1985, as amended by Chapter No. 72, Statutes of 1990, Chapter No. 463, Statutes of 2000, and implemented by Title 24, Part I, Chapter 4, Article 1 of the California Code of Regulations sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

7-24-03
at Sacramento, CA

Jennifer Osborn
Jennifer Osborn

PROOF OF SERVICE

Test Claim Name: Essential Services Buildings
Test Claim Number: CSM-02-TC-38

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8 Floor, Sacramento, CA 95814.

On July 24, 2003, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Mr. Keith Gmeinder
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. George B. Appel
Sacramento Metro Fire District
2101 Hurley Way
Sacramento, CA 95825

Mr. Stephen Castellanos
State Architect of California
1130 K Street, Suite 101
Sacramento, CA 95814

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

Mr. Paul Minney
Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

Mr. Keith B. Petersen
SixTen & Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Mr. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Ms. Annette Chinn
Cost Recovery Systems
705-2 East Bidwell Street, #294
Folsom, CA 95630

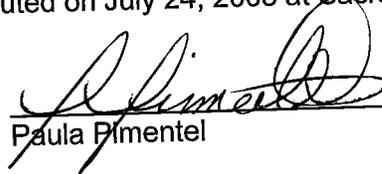
Mr. Steve Smith
Mandated Cost Systems, Inc.
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Ms. Cindy Sconce
Centration Inc.
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Mr. Michael Havey
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

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 July 24, 2003 at Sacramento, California.



Paula Pimentel