

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



January 9, 2015

Mr. Michael Byrne
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Proposed Decision**
Mandate Redetermination Request, 13-MR-02
Second Hearing: New Test Claim Decision
Open Meetings Act/Brown Act Reform (CSM-4257/4469)
Government Code Sections 54952, et al.
California Department of Finance, Requester

Dear Mr. Byrne:

The proposed decision for the second hearing on the above-named matter is enclosed.

Hearing

This matter is set for hearing on **Friday, January 23, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 5
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
PROPOSED DECISION

Government Code Sections 54952, 54954.2, 54954.3, 54957.1, 54957.7;

Statutes 1986, Chapter 641; Statutes 1993, Chapters 1136; 1137; 1138

As Alleged to be Modified by:

Proposition 30, General Election, November 6, 2012

Open Meetings Act/Brown Act Reform (CSM-4257/4469)

13-MR-02

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On March 23, 1988, the Commission on State Mandates (Commission) adopted the *Open Meetings Act* test claim, CSM-4257.¹ On June 28, 2001, the Commission adopted the *Brown Act Reform* test claim, CSM-4469. On April 25, 2002 the Commission adopted and consolidated parameters and guidelines for *Open Meetings Act/Brown Act Reform*. Those parameters and guidelines provide for reimbursement for a county, city, city and county, school district or special district for specified notice, agenda and other public disclosure related requirements required by Government Code sections 54952, 54954.2(a), 54954.3(a), 54957.1(a-c) and 54957.7(a-b), as those sections are added or amended by Statutes 1986, chapter 641; and Statutes 1993, chapters 1136, 1137, and 1138.

On July 19, 2005, Statutes 2005, chapter 72 (AB 138) became effective and directed the Commission to set aside its decisions, reconsiderations and parameters and guidelines in the *Open Meetings Act*, CSM-4257 and *Brown Act Reform*, CSM-4469 test claims. On July 27, 2005, these decisions and parameters and guidelines were set aside by the Commission with an effective date of July 19, 2005 as required by Statutes 2005, chapter 72. However, the court in *California School Boards Association v. State of California* (2009)² held that “the Legislature cannot direct, on a case-by-case basis, that a final decision of the Commission be set aside”, and

¹ Parameters and Guidelines for CSM-4257 were first adopted on December 4, 1991 and were amended on November 30, 2000, but those Parameters and Guidelines are no longer effective and so are not relevant to this decision.

² 171 Cal.App.4th 1183, at pp. 1198-1203.

therefore the directive in AB 138 constituted an unconstitutional violation of separation of powers principles.³ The court therefore ordered the Commission to reinstate the test claim decisions and parameters and guidelines. The test claims and parameters and guidelines were therefore reinstated on September 27, 2009.

On November 6, 2012 the voters approved Proposition 30, also known as “The Schools and Local Public Safety Protection Act of 2012.”⁴ Among other changes, Proposition 30 expressly stated that Notwithstanding Section 6 of Article XIII B, or any other constitutional provision... Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.⁵

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission based on a subsequent change in law. The Government Code provides for a two-hearing process. The Commission’s regulations state that “[i]f the commission proceeds to the second hearing, it shall consider whether the state’s liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”⁶

Procedural History

On July 29, 2013, the Department of Finance (Finance) filed a request for redetermination of the Open Meetings Act (CSM-4257) and Brown Act Reform (CSM-4469) test claims.⁷ Finance asserts that Proposition 30 “has removed the state’s obligation to fund the mandates.”⁸ The State Controller’s Office (Controller) submitted comments on the request, concurring with Finance’s conclusion that Proposition 30 has removed the state’s obligation to fund the *Open Meetings Act*, CSM-4257 and *Brown Act Reform*, CSM-4469 programs.⁹ On September 5, 2014, Commission staff issued the draft proposed decision for the first hearing.¹⁰ On September 26, 2014, the Controller submitted comments concurring with the draft proposed decision.¹¹

³ *Id.*, at pp. 1198-1203.

⁴ Exhibit K, Text of Proposition 30, page 2.

⁵ Article XIII, section 36(c)(3) (adopted November 6, 2012).

⁶ Code of Regulations, title 2, section 1190.5 (Register 2014, No. 21).

⁷ Based on the July 29, 2013 filing date, the potential period of reimbursement affected by this redetermination begins July 1, 2011.

⁸ Exhibit A, Request for Redetermination, page 1.

⁹ Exhibit E, Controller’s Comments on Request for Redetermination.

¹⁰ Exhibit F, Draft Proposed Decision.

¹¹ Exhibit G, Controller’s Comments on Draft Proposed Decision, First Hearing.

On December 5, 2014 the Commission found that Finance had made an adequate showing that the request had a substantial possibility of prevailing at the second hearing, and the Commission therefore directed staff to set the matter for hearing on whether to adopt a new test claim decision.¹² On December 5, 2014, Commission staff issued the draft proposed decision for the second hearing.¹³ On December 22, 2014, the Controller filed comments on the draft proposed decision.¹⁴

Commission Responsibilities

Section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission's regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written responses and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹⁵

The regulations further state:

If the commission proceeds to the second hearing, it shall consider whether the state's liability...has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.¹⁶

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.

¹² Exhibit H, Adopted Decision, First Hearing, issued December 5, 2014.

¹³ Exhibit I, Draft Proposed Decision, Second Hearing.

¹⁴ Exhibit J, Controller's Comments on Draft Proposed Decision, Second Hearing.

¹⁵ Code of Regulations, Title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹⁶ Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

Staff Analysis

The issue for this hearing is to what extent the state's liability under the test claim statutes has been modified and whether a new test claim shall be adopted to supersede the prior test claim decision.

Proposition 30, adopted by the voters on November 6, 2012, added article XIII, section 36 to the California Constitution. Section 36(c)(3) provides that:

Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.

The Open Meetings Act and Brown Act Reform test claims found state-mandated increased costs under Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7. These code sections are all found within Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, as described in Section 36(c)(3).

Generally constitutional or statutory provisions should be harmonized if possible, and both article XIII B, section 6, and article XIII, section 36, as amended by Proposition 30, "have equal dignity as constituents of the state Constitution."¹⁷ The Commission is required to presume that article XIII, section 36 is constitutional, and must interpret the two provisions in such a way as to harmonize their effects.¹⁸ However, if it is not possible to reconcile two potentially conflicting provisions, "special provisions control more general provisions, and the general and special provisions operate together, neither working the repeal of the other."¹⁹ In addition, "where two constitutional provisions conflict, the one that was enacted later in time controls."²⁰ Therefore, article XIII, section 36, enacted by Proposition 30, to the extent that it provides an exemption from the reimbursement requirement of article XIII B, section 6, is presumptively controlling. Article XIII, section 36 is both later-enacted, and more specific, than article XIII B, section 6; it provides an exemption from the subvention requirement pertaining only to a single chapter of the Government Code.

Section 17570 provides that a request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year. This request was filed on July 29, 2013, establishing eligibility beginning July 1, 2012. However, the effective date of article XIII, section 36, is November 7, 2012, the day after the election at which Proposition 30 was approved.²¹ Therefore, as a result of this

¹⁷ *Miller v. Superior Court* (1999) 21 Cal.4th 883, at p. 892.

¹⁸ California Constitution, article III, section 3.5.

¹⁹ *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

²⁰ *Crawford v. Huntington Beach Union High School District* (2002) 98 Cal.App.4th 1275, at p. 1286.

²¹ See Exhibit K, Text of Proposed Law, section 5.

proposed decision, staff finds that the approved activities in the prior test claim decision are no longer reimbursable as of November 7, 2012.²²

Based on the foregoing, staff finds the *Open Meetings Act/Brown Act Reform* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution, beginning November 7, 2012.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision as its new test claim decision, ending reimbursement for the mandated program beginning November 7, 2012.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new test claim decision following the hearing.

²² California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION FOR:

Government Code Sections 54952, 54954.2,
54954.3, 54957.1, 54957.7;

Statutes 1986, Chapter 641; Statutes
1993, Chapters 1136; 1137; 1138

As Alleged to be Modified by:

Proposition 30, General Election,
November 6, 2012

Filed on July 29, 2013

By the Department of Finance, Requester.

Case No.: 13-MR-02

*Open Meetings Act/Brown Act
Reform (CSM-4257/4469)*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500,
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted January 23, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on January 23, 2015. [Witness list will be included in the adopted decision.]

Government Code section 17570 and section 1190 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision as its new test claim decision, granting the request for redetermination and approving the request to end reimbursement for the test claim activities by a vote of [vote count will be included in the adopted decision].

SUMMARY OF THE FINDINGS

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the CSM-4257/4469 mandates has been modified based on a subsequent change in law. Specifically, article XIII, section 36 of the California Constitution, enacted by Proposition 30, which was adopted by the voters on November 6, 2012, expressly declared that activities under Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code (commencing with section 54950) "shall not be a reimbursable mandate" under article XIII

B, section 6. Pursuant to Government Code section 17570, the Commission approves the request for redetermination and concludes that the *Open Meetings Act/Brown Act Reform* program no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution, effective November 7, 2012.²³

COMMISSION FINDINGS

I. Chronology

- 3/23/1988 The Commission adopted the statement of decision for the Open Meetings Act test claim (CSM-4257).²⁴
- 6/28/2001 The Commission adopted the statement of decision for the Brown Act Reform test claim (CSM-4469).²⁵
- 4/25/2002 The Commission adopted consolidated parameters and guidelines for Open Meetings Act/Brown Act Reform (CSM-4257/4469).²⁶
- 7/19/2005 The Legislature enacted Statutes 2005, chapter 72 (AB 138), which required the Commission to set aside the test claim decisions and parameters and guidelines in CSM-4257 and CSM-4469.
- 9/27/2005 The Commission set aside CSM-4257 and CSM-4469, effective 7/19/2005.²⁷
- 3/9/2009 The Third District Court of Appeal held that AB 138 violated separation of powers principles, and ordered the Commission to reinstate the prior decisions in CSM-4257 and CSM-4469.²⁸
- 9/25/2009 The Commission reinstated CSM-4257 and CSM-4469, test claim decisions and parameters and guidelines, pursuant to *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, effective July 31, 2009.²⁹

²³ California Constitution, article II, section 10 [“An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise.”].

²⁴ Exhibit B, Test Claim Statement of Decision CSM-4257.

²⁵ Exhibit C, Test Claim Statement of Decision CSM-4469.

²⁶ Exhibit D, Parameters and Guidelines.

²⁷ Exhibit D, Parameters and Guidelines.

²⁸ *California School Boards Association v. State* (2009) 171 Cal.App.4th 1183, at pp. 1198-1218.

²⁹ Exhibit D, Parameters and Guidelines.

11/6/2012	The voters adopted Proposition 30, which added article XIII, section 36 to the California Constitution. ³⁰
7/29/2013	The Department of Finance (Finance) filed a request for redetermination on CSM-4257 and CSM-4469. ³¹
9/9/2013	The Controller submitted comments on the redetermination request. ³²
9/5/2014	Commission staff issued the draft decision for the first hearing. ³³
9/26/2014	The Controller submitted written comments on the draft. ³⁴
12/05/2014	The Commission adopted the decision on the first hearing, finding that Finance made an adequate showing and directed staff to prepare the draft proposed decision for the second hearing.
12/05/2014	Commission staff issued the adopted decision for the first hearing and the draft proposed decision for the second hearing. ³⁵
12/22/2014	The Controller filed comments on the draft proposed decision for the second hearing. ³⁶

II. Background

A. The Open Meetings Act, the Brown Act, and the Alleged Subsequent Change in Law

Statutes 1986, chapter 641 added section 54954.2 to the Government Code, which requires a local agency to post an agenda 72 hours before a regular meeting, describing the items to be discussed at the meeting and specifying the time and place of the meeting. Statutes 1986, chapter 641 also added section 54954.3, which generally requires all regular meetings to provide an opportunity for public comment. The Commission found this statute imposed costs mandated by the state, in CSM-4257.³⁷

Statutes 1993, chapters 1136, 1137, and 1138 added or amended sections 54952, 54954.2, 54957.1, and 54957.7 to the Government Code. The Commission found that this test claim statute enlarged the definition of “legislative bodies” subject to the requirements of section

³⁰ Exhibit K, Text of Ballot Measure, Proposition 30.

³¹ Exhibit A, Request for Redetermination.

³² Exhibit E, Controller’s Comments on the Request for Redetermination.

³³ Exhibit F, Draft Proposed Decision, First Hearing.

³⁴ Exhibit G, Controller’s Comments on the Draft Proposed Decision, First Hearing.

³⁵ Exhibit H, Adopted Decision, First Hearing; Exhibit I, Draft Proposed Decision, Second Hearing.

³⁶ Exhibit J, Controller’s Comments on Draft Proposed Decision, Second Hearing.

³⁷ See Exhibit B, Test Claim Statement of Decision CSM-4257.

54952.2; required closed session items to be listed on a meeting agenda; required the reporting of closed session items after closed session and the provision of closed session documents; and required the disclosure of certain closed session items prior to and after the closed session.³⁸

In the parameters and guidelines for the two test claims, the reimbursable activities are described as follows:

A. Agenda Preparation and Posting Activities

1. Prepare a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting, including items to be discussed in closed session, and citing the time and location of the regular meeting. (Gov. Code, § 54954.2, subd. (a).)
2. Post a single agenda 72 hours before a meeting in a location freely accessible to the public. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body, subject to exceptions stated therein. (Gov. Code, §§ 54954.2, subd. (a), and 54954.3, subd. (a).)

Beginning January 1, 1994, the following types of “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in section IV.A:

- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the preparation of a brief general description of closed session agenda items, using either the actual or standard time reimbursement options pursuant to section V.A.1 or 2:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.

³⁸ See Exhibit C, Test Claim Statement of Decision CSM-4469.

- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).

B. Closed Session Activities

1. Disclose in an open meeting, prior to holding any closed session, each item to be discussed in the closed session. (Gov. Code, § 54957.7, subd. (a).)
2. Reconvene in open session prior to adjournment to make any disclosures required by Section 54957.1 of action taken in the closed session, including items as follows: (Gov. Code, § 54957.7, subd. (b).)
 - a. Approval of an agreement concluding real estate negotiations as specified in Section 54956.8. (Gov. Code, § 54957.1, subd. (a)(1).)
 - b. Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of consultation under Section 54956.9. (Gov. Code, § 54957.1, subd. (a)(2).)
 - c. Approval given to its legal counsel of a settlement of pending litigation as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final. (Gov. Code, § 54957.1, subd. (a)(3).)
 - d. Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies of the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant. (Gov. Code, § 54957.1, subd. (a)(4).)
 - e. Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. (Gov. Code, § 54957.1, subd. (a)(6).)
3. Provide copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session to a

person who submitted a written request within the timelines specified or to a person who has made a standing request, as set forth in Sections 54954.1 or 54956 within the time lines specified. (Gov. Code, § 54957.1, subd. (b) and (c).)

4. Train members of only those legislative bodies that actually hold closed executive sessions, on the closed session requirements of Brown Act Reform. If such training is given to all members of the legislative body, whether newly appointed or existing members, contemporaneously, time of the trainer and legislative members is reimbursable. Additionally, time for preparation of training materials, obtaining materials including training videos and audio visual aids, and training the trainers to conduct the training is reimbursable. See Section V.B.6 of these parameters and guidelines.

Beginning January 1, 1994, the following “legislative bodies” are eligible to claim reimbursement under these parameters and guidelines for the activities listed in IV.B:

- Governing board, commission, directors or body of a local agency or any board or commission thereof, as well as any board, commission, committee, or other body on which officers of a local agency serve in their official capacity.
- Any board, commission, committee, or body which exercises authority delegated to it by the legislative body.
- Planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency composed of at least a quorum of the members of the legislative body.
- Local Bodies created by state or federal statute.
- Standing Committees with less than a quorum of members of the legislative body that has a continuing subject matter jurisdiction or a meeting schedule fixed by formal action.
- Permanent & Temporary Advisory Bodies (except bodies of less than a quorum of the members of the legislative body).³⁹

Article XIII, section 36 of the California Constitution, enacted by Proposition 30, which was adopted by the voters on November 6, 2012, expressly disclaims the existence of any reimbursable state mandate arising from Government Code 54950 et seq. Specifically, Proposition 30 provides that “[a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code,

³⁹ Exhibit D, Parameters and Guidelines.

with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.”⁴⁰

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. The redetermination process calls for a two hearing process; at the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior the claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6, subdivision (a) of the California Constitution.”⁴¹

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.⁴²

If the Commission finds, at the first hearing, that the requester has made an adequate showing, “when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”⁴³

If the Commission finds, at the second hearing, that the state’s liability has been modified based on a subsequent change in law, “it shall adopt a new decision that reflects the modified liability of the state.”⁴⁴ If the Commission adopts a new test claim statement of decision that supersedes the previously adopted test claim decision, the Commission “shall adopt new parameters and guidelines or amend existing parameters and guidelines...pursuant to Section 17557.”⁴⁵

⁴⁰ Exhibit K, Text of Proposed Laws, November 6, 2012 General Election, page 2.

⁴¹ Code of Regulations, Title 2, section 1190.05(a)(1).

⁴² Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

⁴³ California Code of Regulations, Title 2, section 1190.05(a)(5)(B).

⁴⁴ Code of Regulations, Title 2, section 1190.05(b)(1).

⁴⁵ Government Code section 17570(i) (Stats. 2010, chapter 719 (SB 856)).

III. Positions of the Requester, Test Claimant, and Interested Parties and Persons

A. Department of Finance, Requester

Finance argues that “[b]y adding Article XIII, Section 36, subdivision (c)(3) to the Constitution, the electorate stated the reimbursable requirements of the Open Meetings Act and Brown Act Reform mandates are no longer reimbursable mandates.”⁴⁶

B. Controller’s Position

The Controller states that it “concur[s] that Proposition 30 is the subsequent change in law that eliminated reimbursement of state mandated costs” for the Open Meetings Act and Brown Act Reform test claims.⁴⁷ The Controller stated that it has no comments on the draft proposed decision for the second hearing.⁴⁸

IV. Discussion

Pursuant to article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the increased costs of state-mandated new programs or higher levels of service. For local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a successful test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁴⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁵⁰ In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁵¹

Government Code section 17570 provides that, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a

⁴⁶ Exhibit A, Request for Redetermination, 13-MR-02, page 8.

⁴⁷ Exhibit E, Controller’s Comments, page 1.

⁴⁸ Exhibit J, Controller’s Comments on Draft Proposed Decision, Second Hearing, page 1.

⁴⁹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332; Government Code sections 17551; 17552.

⁵⁰ *County of San Diego v. State of California*, (1997) 15 Cal.4th 68, 109.

⁵¹ *County of Sonoma v. Commission on State Mandates*, (2000) 84 Cal.App.4th 1265, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

subsequent change in law which modifies the states liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.⁵²

A. Proposition 30 Constitutes a Subsequent Change in Law, as Defined.

Government Code section 17570 provides that a test claim decision may be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has altered the state's liability for reimbursement. A subsequent change in law is defined in section 17570 as “[a] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law...”⁵³ Under this definition, then, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) another change in mandates law.

This request for redetermination does not allege a subsequent change in law that requires a finding of a new cost mandated by the state pursuant to section 17514, or a finding that a cost is not mandated by the state pursuant to section 17556. Rather, the request is based on the plain language exception to reimbursement adopted in Proposition 30 and, thus, is alleged as another change in mandates law. Proposition 30, adopted by the voters November 6, 2012, provides, in pertinent part:

Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.⁵⁴

The test claim statements of decision and parameters and guidelines for CSM-4257 and CSM-4469 found reimbursable activities imposed by Government Code sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7. Chapter 9, Part 1, Division 2 of title 5 of the Government Code includes sections 54950 through 54963. Therefore, all code sections found to impose activities in test claims CSM-4257 and CSM-4469 are within Chapter 9, and pursuant to Proposition 30, “shall not be a reimbursable mandate...”

Additionally, while amended article XIII, section 36 provides for an exemption from subvention for “a local agency” required to comply with Chapter 9, the chapter itself interprets “local agency” broadly to include school districts. Government Code sections 17518 and 17519, normally controlling in the Commission’s analyses, define “local agency” and “school district” separately. And generally, when the Commission identifies both local agencies and school districts together, for purposes of a mandate finding, the preferred usage is “local government.”

⁵² Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁵³ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁵⁴ Exhibit K, Text of Proposed Laws, November 6, 2012 General Election, page 2.

However, Government Code 54951, contained within chapter 9, part 1, Division 2 of title 5 of the Government Code, which Proposition 30 purports to modify, provides that “[a]s used in this chapter, local agency means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.” Therefore, section 54951 defines “local agency” more broadly than is usually meant in the Commission’s processes, and article XIII, section 36, as added by Proposition 30, must be interpreted to apply the same definition.

Article XIII, section 36 of the California Constitution as enacted by Proposition 30 effects “a change in mandates law,” in that it directly invokes article XIII B, section 6, and states that a certain chapter of the Government Code, which contains the mandate previously approved by the Commission, cannot impose a reimbursable mandate under section 6. Since Proposition 30 was codified as article XIII, section 36 of the California Constitution, it is on equal footing with article XIII B, section 6, and, being later-enacted, is presumed to take precedence.⁵⁵ In addition, a more specific provision controls over a more general provision. Therefore, to the extent that article XIII, section 36 conflicts with article XIII B, section 6, the former should be treated as an exception to the latter.⁵⁶ The Commission is required to presume that article XIII, section 36 is constitutional, and must interpret the two provisions in such a way as to harmonize their effects.⁵⁷

Based on the foregoing, the Commission found at the first hearing on this redetermination that Proposition 30, adding article XIII, section 36 to the California Constitution, constitutes a subsequent change in law, as defined.⁵⁸

B. Proposition 30 Creates a Valid Exception to the Reimbursement Requirement of Article XIII B, Section 6.

Article XIII, section 36 of the California Constitution, added by Proposition 30, adopted November 6, 2012, provides, in pertinent part:

Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section. Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services

⁵⁵ *People v. Moody* (Cal. Ct. App. 3d Dist. 2002) 96 Cal.App.4th 987.

⁵⁶ *People v. Superior Court* (2002) 28 Cal.4th 798, at p. 809.

⁵⁷ California Constitution, article III, section 3.5.

⁵⁸ See Exhibit H, First Hearing Decision, page 8.

responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.⁵⁹

As shown above, the Commission has previously found reimbursable state-mandated activities under Government Code sections 54952, 54954.2, 54957.7, and 54957.1.⁶⁰ These sections of the Government Code are found within Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, which includes sections 54950 through and include 54963. Therefore, the plain language of article XIII, section 36 directly implicates these sections of the Government Code.

Although the Commission retains exclusive jurisdiction to determine whether a statute imposes a state mandate, the Commission is also bound to presume that subsequent enactments are constitutional.⁶¹ Here, the subsequent enactment is in fact an amendment to the California Constitution, which expressly and directly disclaims the existence of a reimbursable state mandate based on any requirements of Government Code sections 54950-54963.

The California Constitution states that “[a]ll political power is inherent in the people,” and that “[g]overnment is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.”⁶² The California Supreme Court has recognized the supremacy of the electorate as follows: “[t]he people of this state, as the ultimate source of legitimate political power, are of course free through constitutional amendment to adopt whatever changes in the existing system they consider appropriate, subject only to limitations contained in the Constitution of the United States.”⁶³ And the United States Supreme Court has held that the only limitation on the power of a state to alter its constitution is that the government of the state “must be of the Republican form.”⁶⁴

Both articles XIII B, section 6 and XIII, section 36 “have equal dignity, as constituents of the state Constitution.”⁶⁵ The two provisions therefore should be interpreted in a manner that would harmonize their effects, if possible.⁶⁶ If it is not possible to reconcile two potentially conflicting provisions, “special provisions control more general provisions, and the general and special

⁵⁹ California Constitution, article XIII, section 36 (added, Proposition 30, November 6, 2012).

⁶⁰ See Exhibit D, Parameters and Guidelines.

⁶¹ California Constitution, article III, section 3.5 (added, Proposition 5, June 6, 1978).

⁶² California Constitution, article II, section 1.

⁶³ *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, at p. 680.

⁶⁴ *Chisholm v. Georgia* (1793) 2U.S. 419, at p. 448.

⁶⁵ *Miller v. Superior Court* (1999) 21 Cal.4th 883, at p. 892.

⁶⁶ *Ibid.*

provisions operate together, neither working the repeal of the other.⁶⁷ In addition, “where two constitutional provisions conflict, the one that was enacted later in time controls.”⁶⁸

Therefore, article XIII, section 36, enacted by Proposition 30, to the extent that it provides an exception to the reimbursement requirement of article XIII B, section 6, is presumptively controlling. The two provisions cannot be harmonized, because section 36 creates an express exception for “[a]ny requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code...” from the operation of article XIII B, section 6, as that provision has previously been interpreted by the Commission, and as certain sections of chapter 9 have been previously found to impose a reimbursable state mandate.⁶⁹ However, section 36 is both later-enacted, and more specific, than article XIII B, section 6; it provides an exception from the subvention requirement pertaining only to a single chapter of the Government Code. Therefore, the general and special provisions can operate together “neither working the repeal of the other,”⁷⁰ and section 36 is presumed to create a valid exception to the reimbursement requirement of article XIII B, section 6.

Based on the foregoing, the Commission finds that the state’s liability for the test claim statutes has been modified based on a subsequent change in law, and a new test claim decision is required.

C. The Open Meetings Act/Brown Act Reform Program Does Not Constitute a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution Beginning November 7, 2012.

Government Code section 17570 provides that a redetermination request “shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.”⁷¹ This redetermination request was filed on July 29, 2013, establishing potential eligibility beginning July 1, 2012. However, the subsequent change in law identified was adopted on November 6, 2012, and became effective the following day.⁷² Therefore, the Open Meetings Act/Brown Act Reform program no longer constitutes a reimbursable state-mandated program beginning November 7, 2012.

V. CONCLUSION

Based on the foregoing, the Commission approves the request for redetermination and concludes that the Open Meetings Act/Brown Act Reform program does not constitute a reimbursable

⁶⁷ *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

⁶⁸ *Crawford v. Huntington Beach Union High School District* (2002) 98 Cal.App.4th 1275, at p. 1286.

⁶⁹ See Exhibits A, B, C, Test Claims and Parameters and Guidelines.

⁷⁰ *State Board of Education v. Honig* (1993) 13 Cal.App.4th 720, at p. 759.

⁷¹ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁷² California Constitution, article II, section 10.

state-mandated program within the meaning of article XIII B, section 6 and article XIII, section 36 of the California Constitution and, beginning November 7, 2012.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano 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.

On January 9, 2015, I served the:

Proposed Decision

Mandate Redetermination Request, 13-MR-02

Second Hearing: New Test Claim Decision

Open Meetings Act/Brown Act Reform (CSM-4257/4469)

Government Code Sections 54952, et al.

California Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 January 9, 2015 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/2/15

Claim Number: 13-MR-02

Matter: Open Meetings Act/Brown Act Reform (CSM-4257/4469)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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Paul Abelson, Finance Director, *City of Oakley*
Finance Department, 3231 Main Street, Oakley, CA 94561
Phone: (925) 625-7010
abelson@ci.oakley.ca.us

John Adams, Finance Director, *City of Thousand Oaks*
Finance Department, 2100 Thousand Oaks Blvd., Thousand Oaks, CA 91362
Phone: (805) 449-2200
jadams@toaks.org

Bob Adler, Auditor-Controller, *County of San Mateo*
555 County Center, 4th Floor, Redwood City, CA 94063
Phone: (650) 363-4777
badler@smcgov.org

Ron Ahlers, Finance Director / City Treasurer, *City of Moorpark*
Finance Department, 799 Moorpark Ave. , Moorpark, CA 93021
Phone: (805) 517-6249
RAhlers@MoorparkCA.gov

Douglas Alessio, Administrative Services Director, *City of Livermore*
Finance Department, 1052 South Livermore Avenue, Livermore, CA 94550
Phone: (925) 960-4300
finance@cityoflivermore.net

Roberta Allen, *County of Plumas*
520 Main Street, Room 205, Quincy, CA 95971
Phone: (530) 283-6246

robertaallen@countyofplumas.com

Mark Alvarado, *City of Monrovia*
415 S. Ivy Avenue, Monrovia, CA 91016
Phone: N/A
malvarado@ci.monrovia.ca.us

Gary Ameling, *City of Santa Clara*
1500 Warburton Ave, Santa Clara, CA 95050
Phone: (408) 615-2345
Finance@santaclaraca.gov

LeRoy Anderson, *County of Tehama*
444 Oak Street, Room J, Red Bluff, CA 96080
Phone: (530) 527-3474
landerson@tehama.net

Paul Angulo, Auditor-Controller, *County of Riverside*
4080 Lemon Street, 11th Floor, Riverside, CA 92501
Phone: (951) 955-3800
pangulo@co.riverside.ca.us

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Debra Auker, Administrative Services Director, *City of Emeryville*
Administrative Services, 1333 Park Ave, Emeryville, CA 94608
Phone: (510) 596-4300
finance@ci.emeryville.ca.us

Lisa Bailey, *City of San Marino*
2200 Huntington Dr., San Marino, CA 91108
Phone: N/A
lbailey@cityofsanmarino.org

Scott Barber, *City of Riverside*
3900 Main Street, 7th Floor, Riverside, CA 92522
Phone: N/A
sbarber@riversideca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

Mary Barnhart, Interim Chief Fiscal Officer, *City of Gardena*
Department of Finance, 1700 West 162nd Street, Gardena, CA 90247
Phone: (310) 217-9516
mbarnhart@ci.gardena.ca.us

Robert Barron III, Finance Director, *City of Atherton*
Finance Department, 91 Ashfield Rd, Atherton, CA 94027
Phone: (650) 752-0552

rbarron@ci.atherton.ca.us

Timothy Barry, *County of San Diego*

Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA 92101-2469

Phone: (619) 531-6259

timothy.barry@sdcounty.ca.gov

David Batt, Finance Director, *City of South Pasadena*

Finance Department, 1414 Mission Street, South Pasadena, CA 91030

Phone: (626) 403-7250

dbatt@southpasadenaca.gov

David Baum, Finance Director, *City of San Leandro*

835 East 14th St., San Leandro, CA 94577

Phone: (510) 577-3376

dbaum@sanleandro.org

Deborah Bautista, *County of Tuolumne*

2 South Green St., Sonora, CA 95370

Phone: (209) 533-5551

dbautista@co.tuolumne.ca.us

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Mary Bedard, *County of Kern*

1115 Truxtun Avenue, 2nd Floor, Bakersfield, CA 93301

Phone: (805) 868-3599

bedardm@co.kern.ca.us

John Beiers, *County of San Mateo*

Office of the County Counsel, 400 County Center, Redwood City, CA 94063

Phone: (650) 363-4775

jbeiers@smcgov.org

Maria Bemis, *City of Porterville*

291 North Main Street, Porterville, CA 93257

Phone: N/A

mbemis@ci.porterville.ca.us

Paul Benoit, City Administrator, *City of Piedmont*

120 Vista Avenue, Piedmont, CA 94611

Phone: (510) 420-3042

pbenoit@ci.piedmont.ca.us

Richard Benson, Assessor - Recorder - County Clerk, *County of Marin*

3501 Civic Center Drive, Room 208, San Rafael, CA 94903

Phone: (415) 499-7215

rbenson@co.marin.ca.us

Robin Bertagna, *City of Yuba City*

1201 Civic Center Blvd, Yuba City, CA 95993

Phone: N/A

rbertagn@yubacity.net

Angela Bickle, Interim Auditor-Controller, *County of Trinity*
11 Court Street, P.O. Box 1230, Weaverville, CA 96093
Phone: (530) 623-1317
abickle@trinitycounty.org

Heidi Bigall, Director of Admin Services, *City of Tiburon*
Administration, 1505 Tiburon Blvd., Tiburon, CA 94920
Phone: (415) 435-7373
hbigall@townoftiburon.org

Teresa Binkley, Director of Finance, *City of Taft*
Finance Department, 209 E. Kern St. , Taft, CA 93268
Phone: (661) 763-1350
tbinkley@cityoftaft.org

Barbara Bishop, Finance Manager, *City of San Dimas*
Finance Division, 245 East Bonita Avenue, San Dimas, CA 91773
Phone: (909) 394-6220
administration@ci.san-dimas.ca.us

Rene Bobadilla, City Manager, *City of Pico Rivera*
Administration, 6615 Passons Boulevard, Pico Rivera, CA 90660
Phone: (562) 801-4379
rbobadilla@pico-rivera.org

Chris Bonvenuto, *Santa Monica Community College District*
1900 Pico Blvd., Santa Monica, CA 90405-1628
Phone: (310) 434-4201
Bonvenuto_chris@smc.edu

Barbara Boswell, Finance Director, *City of Lancaster*
Finance Department, 44933 N. Fern Avenue , Lancaster , CA 93534
Phone: (661) 723-6033
bboswell@cityoflanasterca.org

Emily Boyd, Finance Director, *City of Crescent City*
Finance Department, 377 J Street, Crescent City, CA 95531
Phone: (707) 464-7483
eboyd@crescentcity.org

Karen Bradley, *City of Fresno*
2600 Fresno St. Rm. 2157, Fresno, CA 93721
Phone: N/A
karen.bradley@fresno.gov

Diane Brady, *California Community Colleges*
Chancellor's Office, 1102 Q Street, 1102 Q Street, Sacramento, CA 95814-6511
Phone: (916) 324-2564
dbrady@cccco.edu

David Brandt, City Manager, *City of Cupertino*
10300 Torre Avenue, Cupertino, CA 95014-3202
Phone: 408.777.3212

manager@cupertino.org

Rob Braulik, Town Manager, *City of Ross*

P.O. Box 320, Ross, CA 94957

Phone: (415) 453-1453

rbraulik@townofross.org

Robert Bravo, Finance Director, *City of Port Hueneme*

Finance Department, 250 N. Ventura Road, Port Hueneme, CA 93041

Phone: (805) 986-6524

rbravo@cityofporthueneme.org

John Brewer, Finance Director, *City of Corning*

Finance Department, 794 Third Street, Corning, CA 96021

Phone: (530) 824-7033

jbrewer@corning.org

Daryl Brock, Finance Director, *City of Orland*

Finance Department, P.O. Box 547, Orland, CA 95963

Phone: (530) 865-1602

dbrock@cityoforland.com

Dawn Brooks, *City of Fontana*

8353 Sierra Way, Fontana, CA 92335

Phone: N/A

dbrooks@fontana.org

Ken Brown, Acting Director of Administrative Services, *City of Irvine*

One Civic Center Plaza, Irvine, CA 92606

Phone: (949) 724-6255

Kbrown@cityofirvine.org

Mike Brown, *School Innovations & Advocacy*

5200 Golden Foothill Parkway, El Dorado Hills, CA 95762

Phone: (916) 669-5116

mikeb@sia-us.com

Daniel Buffalo, Finance Director, *City of Lakeport*

Finance Department, 225 Park Street, Lakeport, CA 95453

Phone: (707) 263-5615

dbuffalo@cityoflakeport.com

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916) 595-2646

Bburgess@mgtamer.com

Jeff Burgh, *County of Ventura*

County Auditor's Office, 800 S. Victoria Avenue, Ventura, CA 93009-1540

Phone: (805) 654-3152

jeff.burgh@ventura.org

Vanessa Burke, Chief Financial Officer, *City of Stockton*
425 N. El Dorado St., Stockton, CA 95202
Phone: (209) 937-8460
vanessa.burke@stocktongov.com

Rob Burns, *City of Chino*
13220 Central Avenue, Chino, CA 91710
Phone: N/A
rburns@cityofchino.org

Michael Byrne, *Department of Finance*
Requester Representative
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
michael.byme@dof.ca.gov

Regan M Cadelario, City Manager, *City of Fortuna*
Finance Department, 621 11th Street, Fortuna, CA 95540
Phone: (707) 725-1409
rc@ci.fortuna.ca.us

David Cain, Director of Finance, *City of Fountain Valley*
10200 Slater Ave, Fountain Valley, CA 92646
Phone: N/A
david.cain@fountainvalley.org

Rebecca Callen, *County of Calaveras*
891 Mountain Ranch Road, San Andreas, CA 95249
Phone: (209) 754-6343
rcallen@co.calaveras.ca.us

James Cameron, *City of Oxnard*
300 West Third Street, Suite 302, Oxnard, CA 93030
Phone: N/A
jim.cameron@ci.oxnard.ca.us

Ronnie Campbell, Finance Director, *City of Camarillo*
Finance Department, 601 Carmen Drive, Camarillo, CA 93010
Phone: (805) 388-5320
rcampbell@ci.camarillo.ca.us

Robert Campbell, *County of Contra Costa*
625 Court Street, Room 103, Martinez, CA 94553
Phone: (925) 646-2181
bob.campbell@ac.cccounty.us

Joy Canfield, *City of Murrieta*
1 Town Square, Murrieta, CA 92562
Phone: N/A
jcanfield@murrieta.org

Lisa Cardella-Presto, *County of Merced*
2222 M Street, Merced, CA 95340

Phone: (209) 385-7511
LCardella-presto@co.merced.ca.us

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Rebecca Carr, *County of Kings*

1400 West Lacey Blvd, Hanford, CA 93230
Phone: (559) 582-1236
becky.carr@co.kings.ca.us

Daria Carrillo, Finance & Administrative Director, *City of San Anselmo*
Administration & Finance, 525 San Anselmo Ave., San Anselmo, CA 94960
Phone: (415) 258-4678
dcarrillo@townofsananselmo.org

Roger Carroll, Finance Director/Treasurer, *Town of Loomis*
Finance Department, 3665 Taylor Road, Loomis, CA 95650
Phone: (916) 652-1840
rcarroll@loomis.ca.gov

Susan Casey, *City of American Canyon*

4381 Broadway, Suite 201, American Canyon, CA 94503
Phone: (707) 647-4360
scasey@cityofamericancanyon.org

Jack Castro, Director of Finance, *City of Huron*

Finance Department, 36311 Lassen Avenue, PO Box 339, Huron, CA 93234
Phone: (559) 945-3020
findir@cityofhuron.com

Rolando Charvel, City Comptroller, *City of San Diego*

202 C Street, MS-6A, San Diego, CA 92101
Phone: (619) 236-6060
comptroller@sandiego.gov

Lin-Lin Cheng, *City of Foster City*

610 Foster City Blvd, Foster City, CA 94404
Phone: N/A
lcheng@fostercity.org

Erick Cheung, Director of Finance/Human Resources, *City of Piedmont*

120 Vista Avenue, Piedmont, CA 94611
Phone: (510) 420-3040
echeung@ci.piedmont.ca.us

Annette Chinn, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Lawrence Chiu, Director of Finance & Administrative Services, *City of Daly City*
Finance and Administrative Services, 333 90th Street, Daly City, CA 94015

Phone: (650) 991-8049
lchiu@dalycity.org

Doug Chotkevys, City Manager, *City of Dana Point*
Finance Department, 33282 Golden Lantern, Dana Point, CA 92629
Phone: (949) 248-3513
dchotkevys@danapoint.org

Hannah Chung, Finance Director, *City of Tehachapi*
Finance Department, 115 S. Robinson St., Tehachapi, CA 93561
Phone: (661) 822-2200
hchung@tehachapicityhall.com

David Cichella, *California School Management Group*
3130-C Inland Empire Blvd., Ontario, CA 91764
Phone: (209) 834-0556
dcichella@cscentral.com

Geoffrey Cobbett, Treasurer, *City of Covina*
Finance Department, 125 E. College Street, Covina, CA 91723
Phone: (626) 384-5506
gcobbett@covinaca.gov

Brian Cochran, Finance Manager, *City of Novato*
75 Rowland Way #200, Novato, CA 94945
Phone: (415) 899-8912
bcochran@novato.org

Russell Cochran Branson, *City of Roseville*
311 Vernon Street, Roseville, CA 95678-2649
Phone: N/A
rbranson@roseville.ca.us

Dennis Coleman, Finance Director/Treasurer, *City of Solana Beach*
Finance Department, City Hall 635 S. HWY 101, Solana Beach, CA 92075
Phone: (858) 720-2431
finance@cosb.org

Harriet Commons, *City of Fremont*
P.O. Box 5006, Fremont, CA 94537
Phone: N/A
hcommons@fremont.gov

Stephen Conway, *City of Los Gatos*
110 E. Main Street, Los Gatos, CA 95031
Phone: N/A
sconway@losgatosca.gov

Cass Cook, Director of Finance, *City of Dinuba*
405 East El Monte, Dinuba, CA 93618
Phone: (559) 591-5900
ccook@dinuba.ca.gov

Julia Cooper, *City of San Jose*
Finance, 200 East Santa Clara Street, San Jose, CA 95113

Phone: (408) 535-7000
Finance@sanjoseca.gov

Viki Copeland, *City of Hermosa Beach*
1315 Valley Drive, Hermosa Beach, CA 90254
Phone: N/A
vcopeland@hermosabch.org

Drew Corbett, Finance Director, *City of Menlo Park*
Finance Department, 701 Laurel St, Menlo Park, CA 94025
Phone: (650) 330-6640
dcorbett@menlopark.org

Lis Cottrell, Finance Director, *City of Anderson*
Finance Department, 1887 Howard Street, Anderson , CA 96007
Phone: (530) 378-6626
lcottrell@ci.anderson.ca.us

Jeremy Craig, Finance Director, *City of Vacaville*
Finance Department, 650 Merchant Street, Vacaville, CA 95688
Phone: (707) 449-5128
jcraig@cityofvacaville.com

Vicki Crow, *County of Fresno*
2281 Tulare Street, Room 101, Fresno, CA 93721
Phone: (559) 488-3496
vcrow@co.fresno.ca.us

Deborah Cullen, *City of El Segundo*
350 Main Street, El Segundo, CA 90245-3813
Phone: N/A
dcullen@elsegundo.org

David Culver, *City of San Mateo*
330 West 20th Avenue, San Mateo, CA 94403-1388
Phone: (650) 522-7100
dculver@cityofsanmateo.org

Gavin Curran, *City of Laguna Beach*
505 Forest Avenue, Laguna Beach, CA 92651
Phone: N/A
gcurran@lagunabeachcity.net

Stefani Daniell, Finance Director, *City of Citrus Hts*
Finance Department, 6237 Fountain Square Dr, Citrus Heights , CA 95621
Phone: (916) 725-2448
sdaniell@citrusheights.net

Chuck Dantuono, Director of Administrative Services, *City of Highland*
Administrative Services , 27215 Base Line , Highland, CA 92346
Phone: (909) 864-6861
cdantuono@cityofhighland.org

Fran David, City Manager, *City of Hayward*
Finance Department, 777 B Street, Hayward, CA 94541

Phone: (510) 583-4000
citymanager@hayward-ca.gov

William Davis, *County of Mariposa*
Auditor, P.O. Box 729, Mariposa, CA 95338
Phone: (209) 966-7606
wdavis@mariposacounty.org

Daniel Dawson, *City Manager, City of Del Rey Oaks*
Finance Department, 650 Canyon Del Rey Rd, Del Rey Oaks, CA 93940
Phone: (831) 394-8511
cityhall@delreyoaks.org

Dilu DeAlwis, *City of Colton*
125 E. College Street, Covina, CA 91723
Phone: N/A
ddealwis@covinaca.gov

Gigi Decavalles-Hughes, *Director of Finance, City of Santa Monica*
Finance, 1717 4th Street, Suite 250, Santa Monica, CA 90401
Phone: (310) 458-8281
gigi.decavalles@smgov.net

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Brent Dennis, *County of Tuolumne*
1021 Harvard Way, El Dorado Hills, CA 95762
Phone: (916) 614-3237
Bdennis@edhcsd.org

Leticia Dias, *Accountant, City of Ceres*
2720 Second Street, Ceres, CA 95307-3292
Phone: (209) 538-5764
leticia.dias@ci.ceres.ca.us

Tom Dibble, *City of Hanford*
315 North Douty Street, Hanford, CA 93230
Phone: (559) 585-2525
tdibble@ci.hanford.ca.us

Steve Diels, *City Treasurer, City of Redondo Beach*
City Treasurer's Department, 415 Diamond Street, Redondo Beach, CA 90277
Phone: (310) 318-0652
steven.diels@redondo.org

Richard Digre, *City of Union City*
34009 Alvarado-Niles Road, Union City, CA 94587
Phone: N/A
rdigre@ci.union-city.ca.us

Andra Donovan, *San Diego Unified School District*
Legal Services Office, 4100 Normal Street, Room 2148, , San Diego, CA 92103

Phone: (619) 725-5630
adonovan@sandi.net

Richard Doyle, *City Attorney, City of San Jose*
200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1900
richard.doyle@sanjoseca.gov

Randall L. Dunn, *City Manager, City of Colusa*
Finance Department, 425 Webster St. , Colusa, CA 95932
Phone: (530) 458-4740
citymanager@cityofcolusa.com

Cheryl Dyas, *City of Mission Viejo*
200 Civic Center, Mission Viejo, CA 92691
Phone: N/A
cdyas@cityofmissionviejo.org

Tom Dyer, *Department of Finance (A-15)*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
tom.dyer@dof.ca.gov

Jennie Ebejer, *County of Siskiyou*
311 Fourth Street, Room 101, Yreka, CA 96097
Phone: (530) 842-8030
Jebejer@co.siskiyou.ca.us

Richard Eberle, *County of Yuba*
915 8th Street, Suite 105, Marysville, CA 95901
Phone: (530) 749-7810
reberle@co.yuba.ca.us

Kerry Eden, *City of Corona*
400 S. Vicentia Avenue. Suite 320, Corona, CA 92882
Phone: (951) 817-5740
kerry.eden@ci.corona.ca.us

Scott Edwards, *City of Poway*
PO Box 789, Poway, CA 92074
Phone: N/A
sedwards@poway.org

Pamela Ehler, *City of Brentwood*
150 City Park Way, Brentwood, CA 94513
Phone: N/A
pehler@brentwoodca.gov

Bob Elliot, *City of Glendale*
141 North Glendale Ave, Ste. 346, Glendale, CA 91206-4998
Phone: N/A
belliot@ci.glendale.ca.us

Edwin Eng, *State Center Community College District*
1525 East Weldon Avenue, Fresno, CA 93704-6398

Phone: (559) 244-5910
ed.eng@scccd.edu

Kelly Ent, Director of Admin Services, *City of Big Bear Lake*
Finance Department, 39707 Big Bear Blvd, Big Bear Lake, CA 92315
Phone: (909) 866-5831
kent@citybigbearlake.com

Tina Envia, Finance Manager, *City of Waterford*
Finance Department, 101 E Street, Waterford, CA 95386
Phone: (209) 874-2328
finance@cityofwaterford.org

James Erb, *County of San Luis Obispo*
1055 Monterey Street, Room D222, San Luis Obispo, CA 93408
Phone: (805) 781-5040
jerb@co.slo.ca.us

Eric Erickson, Director of Finance and Human Resources, *City of Mill Valley*
Department of Finance and Human Resources, 26 Corte Madera Avenue, Mill Valley, CA 94941
Phone: (415) 388-4033
finance@cityofmillvalley.org

Steve Erlandson, Finance Director/City Treasurer, *City of Laguna Niguel*
Finance Director/City Treasurer, 30111 Crown Valley Parkway, Laguna Niguel, CA 92677
Phone: (949) 362-4300
serlandson@cityoflagunaniguel.org

Gary Ernst, City Treasurer, *City of Oceanside*
City Treasurer, 300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3553
gernst@ci.oceanside.ca.us

Jennifer Erwin, Assistant Finance Director, *City of Perris*
Finance Department, 101 N. D Street, Perris, CA 92570
Phone: (951) 943-4610
jerwin@cityofperris.org

Paul Espinoza, *City of Alhambra*
111 South First Street, Alhambra, CA 91801
Phone: N/A
pespinoza@cityofalhambra.org

Lori Ann Farrell, Finance Director, *City of Huntington Beach*
2000 Main St., Huntington Beach, CA 92648
Phone: (714) 536-5630
loriann.farrell@surfcity-hb.org

Sandra Featherson, Administrative Services Director, *City of Solvang*
Finance, 1644 Oak Street, Solvang, CA 93463
Phone: (805) 688-5575
sandraf@cityofsolvvang.com

Nadia Feeser, Administrative Services Director, *City of Pismo Beach*

Finance Department, 760 Mattie Road, Pismo Beach, CA 93449
Phone: (805) 773-7010
nfeeser@pismo beach.org

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Chris Ferguson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Matthew Fertal, *City Manager, City of Garden Grove*
Finance Department, 11222 Acacia Parkway, Garden Grove, CA 92840
Phone: (714) 741-5000
CityManager@ci.garden-grove.ca.us

Jimmy Forbis, *Finance Director, City of Monterey*
Finance Department, 735 Pacific Street, Suite A, Monterey, CA 93940
Phone: (831) 646-3940
forbis@monterey.org

Karen Fouch, *County of Lassen*
221 S. Roop Street, Ste 1, Susanville, CA 96130
Phone: (530) 251-8233
kfouch@co.lassen.ca.us

James Francis, *City of Folsom*
50 Natoma Street, Folsom, CA 95630
Phone: N/A
jfrancis@folsom.ca.us

Charles Francis, *Administrative Services Director/Treasurer, City of Sausalito*
Finance, 420 Litho Street, Sausalito, CA 94965
Phone: (415) 289-4105
cfrancis@ci.sausalito.ca.us

Eric Frost, *Deputy City Manager, City of Visalia*
707 West Acequia, Visalia, CA 93291
Phone: (559) 713-4474
efrost@ci.visalia.ca.us

Harold Fujita, *City of Los Angeles*
Department of Recreation and Parks, 211 N. Figueroa Street, 7th Floor, Los Angeles, CA 90012
Phone: (213) 202-3222
harold.fujita@lacity.org

Mary Furey, *City of Saratoga*
13777 Fruitvale Avenue, Saratoga, CA 95070
Phone: N/A

mfurey@saratoga.ca.us

Carolyn Galloway-Cooper, Finance Director, *City of Buellton*
Finance Department, 107 West Highway 246, Buellton, CA 93427
Phone: (805) 688-5177
carolync@cityofbuellton.com

Robert Galvan, Director of Administrative Services, *City of Hollister*
Administrative Services , 375 Fifth Street, Hollister, CA 95023
Phone: (831) 636-4300
robert.galvan@hollister.ca.gov

Jason Garben, Financial Services Manager, *City of Suisun City*
Administrative Services, 701 Civic Center Blvd., Suisun City, CA 94585
Phone: (707) 421-7320
jgarben@suisun.com

Henry Garcia, Interim Finance Director, *City of Cudahy*
Finance Department, 5220 Santa Ana Street, Cudahy, CA 90201
Phone: (323) 733-5143
hgarcia@cityofcudahyca.gov

Marisela Garcia, Finance Director, *City of Riverbank*
Finance Department, 6707 Third Street , Riverbank, CA 95367
Phone: (209) 863-7109
mhgarcia@riverbank.org

Rebecca Garcia, *City of San Bernardino*
300 North , San Bernardino, CA 92418-0001
Phone: (909) 384-7272
garcia_re@sbcity.org

Jeffry Gardner, City Manager & Finance Director, *City of Plymouth*
P.O. Box 429, Plymouth, CA 95669
Phone: (209) 245-6941
jgardner@ci.plymouth.ca.us

George Gascon, District Attorney, *City and County of San Francisco*
850 Bryant Street, Room 322, San Francisco, CA 94103
Phone: (415) 553-1751
robyn.burke@sfgov.org

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Robert Geis, *County of Santa Barbara*
Auditor-Controller, 105 E Anapamu St, Room 303, Santa Barbara, CA 93101
Phone: (805) 568-2100
geis@co.santa-barbara.ca.us

Gloriette Genereux, Finance Director, *City of Modesto*
Finance Department, 1010 10th Street, P.O. Box 642 Modesto, CA 95353, Modesto, CA 95354

Phone: (209) 577-5371
ggenereux@modestogov.com

Laura S. Gill, City Manager, *City of Elk Grove*
Finance Department, 8401 Laguna Palms Way , Elk Grove, CA 95758
Phone: (916) 478-2201
Lgill@elkgrovecity.org

Jeri Gilley, Finance Director, *City of Turlock*
156 S. Broadway, Ste 230, Turlock, CA 95380
Phone: (209) 668-5570
jgilley@turlock.ca.us

Cindy Giraldo, *City of Burbank*
301 E. Olive Avenue, Financial Services Department, Burbank, CA 91502
Phone: N/A
cgiraldo@ci.burbank.ca.us

James Goins, *City of Richmond*
1401 Marina Way South, P.O. Box 4046, Richmond, CA 94804
Phone: N/A
james_goins@ci.richmond.ca.us

Paul Golaszewski, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8341
Paul.Golaszewski@lao.ca.gov

Donna Goldsmith, Finance Manager, *City of Santee*
Finance Department, 10601 Magnolia Avenue, Building #3, Santee, CA 92071
Phone: (619) 258-4100
dgoldsmith@ci.santee.ca.us

Jesus Gomez, City Manager, *City of El Monte*
Finance Department, 11333 Valley Blvd, El Monte, CA 91731-3293
Phone: (626) 580-2001
citymanager@elmonteca.gov

Jose Gomez, Director of Finance and Administrative Services, *City of Santa Fe Springs*
Finance and Administrative Services, 11710 E. Telegraph Road, Santa Fe Springs, CA 90670
Phone: (562) 868-0511
josegomez@santafesprings.org

Vivian Gong, *City of Dublin*
100 Civic Plaza, Dublin, CA 94568
Phone: N/A
vivian.gong@ci.dublin.ca.us

Patricia Gonzalez, Secretary to the Vice Chancellor, Finance & Administration, *State Center Community College District*
Finance & Administration, 1525 E. Weldon Avenue, Fresno, CA 93704
Phone: (559) 244-5919
patricia.gonzalez@scccd.edu

Adela Gonzalez, City Manager, *City of Soledad*

248 Main St., PO Box 156, Soledad, CA 93960
Phone: (831) 223-5014
adelag@cityofsoledad.com

Joe Gonzalez, *County of San Benito*
440 Fifth Street Room 206, Hollister, CA 95023
Phone: (831) 636-4090
jgonzalez@auditor.co.san-benito.ca.us

Mike Goodson, *City Manager, City of Hawthorne*
Finance Department, 4455 W. 126th Street, Hawthorne, CA 90250
Phone: (310) 349-2901
mgoodson@hawthorneCA.gov

Jim Goodwin, *City Manager, City of Live Oak*
9955 Live Oak Blvd., Live Oak, CA 95953
Phone: (530) 695-2112
liveoak@liveoakcity.org

Craig Graves, *Finance Director, City of Baldwin Park*
14403 East Pacific Avenue, Baldwin Park, CA 91706
Phone: N/A
cgraves@baldwinpark.com

Andrew Green, *Finance Director, City of Pasadena*
Finance Department, 100 N. Garfield Ave, Room S348, Pasadena, CA 91109-7215
Phone: (626) 744-4355
agreen@cityofpasadena.net

Nancy Greenhalgh, *Accounting Specialist, City of Canyon Lake*
Finance Department, 31516 Railroad Canyon Rd, Canyon Lake, CA 92587
Phone: (951) 244-2955
ngreenhalgh@cityofcanyonlake.com

Jan Grimes, *County of Orange*
P.O. Box 567, Santa Ana, CA 92702
Phone: (714) 834-2459
jan.grimes@ac.ocgov.com

John Gross, *City of Long Beach*
333 W. Ocean Blvd., 6th Floor, Long Beach, CA 90802
Phone: N/A
john.gross@longbeach.gov

Shelly Gunby, *Director of Financial Management, City of Winters*
Finance, 318 First Street, Winters, CA 95694
Phone: (530) 795-4910
shelly.gunby@cityofwinters.org

Francisco Gutierrez, *Finance Director, City of Santa Ana*
20 Civic Center Plaza, Santa Ana, CA 92701
Phone: (714) 647-5400
fgutierrez@santa-ana.org

Thomas J. Haglund, *City Administrator, City of Gilroy*

Finance Department, 7351 Rosanna Street, Gilroy, CA 95020
Phone: (408) 846-0202
Tom.Haglund@ci.gilroy.ca.us

Tori Hannah, Finance Director, *City of Capitola*
Finance Department, 480 Capitola Ave, Capitola, CA 95010
Phone: (831) 475-7300
thannah@ci.capitola.ca.us

Ed Hanson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Anne Haraksin, *City of La Mirada*
13700 La Mirada Blvd., La Mirada, CA 90638
Phone: N/A
aharaksin@cityoflamirada.org

Joe Harn, *County of El Dorado*
360 Fair Lane, Placerville, CA 95667
Phone: (530) 621-5633
joe.ham@edcgov.us

George Harris, *City of Rialto*
150 South Palm ave., Rialto, CA 92376
Phone: N/A
gharris@rialtoca.gov

Emily Harrison, Interim Finance Director, *County of Santa Clara*
70 West Hedding Street, San Jose, CA 95110
Phone: (408) 299-5205
emily.harrison@ceo.sccgov.org

Jenny Haruyama, Director of Finance & Administrative Services, *City of Tracy*
Finance Department, 333 Civic Center Plaza, Tracy, CA 95376
Phone: (209) 831-6800
financedept@ci.tracy.ca.us

Jone Hayes, Administrative Services Director, *City of Healdsburg*
Administrative Services , 401 Grove Street, Healdsburg, CA 95448
Phone: (707) 431-3317
jhayes@ci.healdsburg.ca.us

Jim Heller, City Treasurer, *City of Atwater*
Finance Department, 750 Bellevue Rd, Atwater, CA 95301
Phone: (209) 357-6310
finance@atwater.org

Jennifer Hennessy, *City of Temecula*
41000 Main St., Temecula, CA 92590
Phone: N/A
Jennifer.Hennessy@cityoftemecula.org

Darren Hernandez, *City of Santa Clarita*
23920 Valencia Blvd., Suite 295, Santa Clarita, CA 91355
Phone: N/A
dhernandez@santa-clarita.com

Dennis Herrera, *City Attorney, City and County of San Francisco*
Office of the City Attorney, 1 Dr. Carton B. Goodlett Place, Rm. 234, San Francisco, CA
94102
Phone: (415) 554-4700
brittany.feitelberg@sfgov.org

John Herrera, *Interim Finance Director, City of Goleta*
Finance Department, 130 Cremona Drive, Suite B, Goleta, CA 93117
Phone: (805) 961-7500
Jherrera@cityofgoleta.org

Robert Hicks, *City of Berkeley*
2180 Milvia Street, Berkeley, CA 94704
Phone: N/A
finance@ci.berkeley.ca.us

Wally Hill, *City Manager, City of Hemet*
Finance Department, 445 E. Florida Ave, Hemet, CA 92543
Phone: (951) 765-2301
kaguilar@cityofhemet.org

Rod Hill, *City of Whittier*
13230 Penn Street, Whittier, CA 90602
Phone: N/A
rhill@cityofwhittier.org

Lorenzo Hines Jr., *Assistant City Manager, City of Pacifica*
170 Santa Maria Avenue, Pacifica, CA 94044
Phone: (650) 738-7409
lhines@ci.pacifica.ca.us

Daphne Hodgson, *City of Seaside*
440 Harcourt Avenue, Seaside, CA 93955
Phone: N/A
dhodgson@ci.seaside.ca.us

S. Rhetta Hogan, *Finance Director, City of Yreka*
Finance Department, 701 Fourth Street, Yreka, CA 96097
Phone: (530) 841-2386
rhetta@ci.yreka.ca.us

Victoria Holthaus, *Finance Officer, City of Clearlake*
Finance Department, 7684 1st Avenue, Clear Lake, CA 55319
Phone: (320) 743-3111
cityofclearlake@frontiernet.net

Dorothy Holzem, *California Special Districts Association*
1112 I Street, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887

dorothyh@csda.net

David Houser, *County of Butte*

25 County Center Drive, Suite 120, Oroville, CA 95965

Phone: (530) 538-7607

dhouser@buttecounty.net

Shannon Huang, *City of Arcadia*

240 West Huntington Drive, Arcadia, CA 91007

Phone: N/A

shuang@ci.arcadia.ca.us

Elizabeth Hudson, *City of Danville*

510 La Gonda Way, Danville, CA 94526

Phone: N/A

ehudson@danville.ca.gov

Jamie Hughson, Finance Director/City Treasurer, *City of Clovis*

1033 Fifth St., Clovis, CA 93611

Phone: (559) 324-2130

jamieh@ci.clovis.ca.us

Lewis Humphries, Finance Director, *City of Newman*

Finance Department, 938 Fresno Street, Newman, CA 95360

Phone: (209) 862-3725

lhumphries@cityofnewman.com

Sung Hyun, *City of Buena Park*

6650 Beach Boulevard, Buena Park, CA 90622

Phone: N/A

shyun@buenapark.com

Mark Ibele, *Senate Budget & Fiscal Review Committee*

California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103

Mark.Ibele@sen.ca.gov

Cheryl Ide, Associate Finance Budget Analyst, *Department of Finance*

Education Systems Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-0328

Cheryl.ide@dof.ca.gov

Julia James, *City of Fullerton*

303 W. Commonwealth Ave., Fullerton, CA 92832

Phone: N/A

juliaj@ci.fullerton.ca.us

Edward Jewik, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564

ejewik@auditor.lacounty.gov

Rochelle Johnson, Acting Accounting Manager, *City of Wildomar*

Finance Department, 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595

Phone: (951) 677-7751

rjohnson@cityofwildomar.org

Scott Johnson, Assistant City Manager, *City of Oakland*

1 Frank H. Ogawa Plaza, Oakland, CA 94612

Phone: N/A

sjohnson@oaklandnet.com

Onyx Jones, Interim Finance Director, *City of Adelanto*

Finance Department, 11600 Air Expressway, Adelanto, CA 92301

Phone: (760) 246-2300

ojones@ci.adelanto.ca.us

Toni Jones, Finance Director, *City of Kerman*

Finance Department, 850 S. Madera Avenue, Kerman, CA 93630

Phone: (559) 846-4682

tjones@cityofkerman.org

Ferlyn Junio, *Nimbus Consulting Group, LLC*

2386 Fair Oaks Boulevard, Suite 104, Sacramento, CA 95825

Phone: (916) 480-9444

fjunio@nimbusconsultinggroup.com

Kim Juran, Finance Director, *City of San Bruno*

Finance Department, 567 El Camino Real, San Bruno, CA 94066

Phone: (650) 616-7080

Finance-Web@sanbruno.ca.gov

Maria Kachadoorian, Director of Finance, *City of Chula Vista*

276 Fourth Avenue, Chula Vista, CA 91910

Phone: (619) 691-5250

mkachadoorian@ci.chula-vista.ca.us

Will Kaholokula, *City of Bell Gardens*

7100 S. Garfield Avenue, Bell Gardens, CA 90201

Phone: (562) 806-7700

wkaholokula@bellgardens.org

Harshil Kanakia, *County of San Mateo*

Controller's Office, 555 County Center, 4th Floor, Redwood City, CA 94063

Phone: (650) 599-1080

hkanakia@smcgov.org

Jill Kanemasu, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

Emma Karlen, Finance Director, *City of Milpitas*

Finance Department, 455 East Calaveras Boulevard, Milpitas, CA 95035

Phone: (408) 586-3145

ekarlen@ci.milpitas.ca.gov

Anita Kerezsi, *AK & Company*

3531 Kersey Lane, Sacramento, CA 95864

Phone: (916) 972-1666

akcompany@um.att.com

Nancy Kerry, *City of South Lake Tahoe*
1901 Airport Road, South Lake Tahoe, CA 96150
Phone: N/A
nkerry@cityofslt.us

Geoffrey Kiehl, Director of Finance and Treasurer, *City of Palm Springs*
Finance & Treasury, 3200 E. Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, CA
92262
Phone: (760) 323-8229
Geoffrey.Kiehl@palmspringsca.gov

Jean Kinney Hurst, Senior Legislative Representative, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814-3941
Phone: (916) 327-7500
jhurst@counties.org

Jillian Kissee, *Department of Finance*
915 L Street, Sacramento, Ca
Phone: (916) 445-0328
jillian.kissee@dof.ca.gov

Lauren Klein, *County of Stanislaus*
1010 Tenth Street, Suite 5100, Modesto, CA 95353
Phone: (209) 525-6398
kleinl@stancounty.com

Will Kolbow, Finance Director, *City of Orange*
300 E. Chapman Avenue, Orange, CA 92866-1508
Phone: (714) 744-2234
WKolbow@cityoforange.org

Patty Kong, *City of Mountain View*
P.O. Box 7540, Mountain View, CA 94039-7540
Phone: N/A
patty.kong@mountainview.gov

Cathy Krysyna, Assistant Finance Officer, *City of Pacific Grove*
Finance Department, 300 Forest Ave., Pacific Grove, CA 93950
Phone: (831) 648-3102
ckrysyna@ci.pg.ca.us

Jennifer Kuhn, Deputy, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Tina Kundig, *City of Redlands*
P.O. Box 3005, Redlands, CA 92373
Phone: N/A
tkundig@cityofredlands.org

Ana Kwong, *City of Rohnert Park*

Finance, P.O. Box 1489, Rohnert Park, CA 94928
Phone: (707) 585-6722
akwong@rpcity.org

Tammy Lagorio, Deputy Auditor-Controller III, *County of San Joaquin*
Auditor-Controller's Office, 44 N. San Joaquin Street, Suite 550, Stockton, CA 95202
Phone: (209) 953-1184
tlagorio@sjgov.org

Lauren Lai, Finance Director, *City of Marina*
Finance Department, 211 Hillcrest Ave, Marina, CA 93933
Phone: (831) 884-1274
llai@ci.marina.ca.us

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Karina Lam, *City of Paramount*
16400 Colorado Avenue, Paramount, CA 90723
Phone: N/A
klam@paramountcity.com

Judy Lancaster, *City of Chino Hills*
14000 City Center Drive, Chino Hills, CA 91709
Phone: N/A
jlancaster@chinohills.org

Veronica Lanto, *San Jose Unified School District*
855 Lenzen Avenue, San Jose, CA 95126-2736
Phone: (408) 535-6572
Veronica_Lanto@sjusd.org

Ramon Lara, City Administrator, *City of Woodlake*
350 N. Valencia Blvd., Woodlake, CA 93286
Phone: (559) 564-8055
rlara@ci.woodlake.ca.us

Israel Lara Jr., City Manager, *City of Parlier*
Administration, 1100 E. Parlier Avenue, Parlier, CA 93648
Phone: (559) 646-3545
ilara@parlier.ca.us

Tamara Layne, *City of Rancho Cucamonga*
10500 Civic Center Drive, Rancho Cucamonga, CA 91730
Phone: (909) 477-2700
Tamara.Layne@cityofrc.us

Gloria Leon, Admin Services Director, *City of Calistoga*
Administrative Services, 1232 Washington Street, Calistoga, CA 94515
Phone: (707) 942-2802
GLeon@ci.calistoga.ca.us

Grace Leung, *City of Sunnyvale*

Sunnyvale City Hall, 456 W. Olive Ave., Sunnyvale, CA 94086
Phone: (408) 730-7284
gleung@ci.sunnyvale.ca.us

Mark Lewis, City Administrator, *City of Chowchilla*
Finance Department, 130 S. Second Street Civic Center Plaza, Chowchilla, CA 93610
Phone: (559) 665-8615
mlewis@ci.chowchilla.ca.us

Gilbert A. Livas, City Manager, *City of Downey*
11111 Brookshire Ave, Downey, CA 90241
Phone: (562) 904-7284
CityManager@downeyca.org

Darcy Locken, *County of Modoc*
204 S. Court Street, Alturas, CA 96101
Phone: (530) 233-6204
darcylocken@co.modoc.ca.us

Kenneth Louie, *City of Lawndale*
14717 Burin Avenue, Lawndale, CA 90260
Phone: N/A
klouie@lawndalecity.org

Joe Lowe, *County of Amador*
810 Court Street, Jackson, CA 95642-2131
Phone: (209) 223-6357
jlowe@amadorgov.org

Linda Lowry, City Manager, *City of Pomona*
City Manager's Office, 505 South Garey Ave., Pomona, CA 91766
Phone: (909) 620-2051
linda_lowry@ci.pomona.ca.us

Janet Luzzi, Finance Director, *City of Arcata*
Finance Department, 736 F Street, Arcata, CA 95521
Phone: (707) 822-5951
finance@cityofarcata.org

Kathleen Lynch, *Department of Finance (A-15)*
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Gary J. Lysik, Chief Financial Officer, *City of Calabasas*
100 Civic Center Waya, Calabasas, CA 91302
Phone: (818) 224-1600
glysik@cityofcalabasas.com

Van Maddox, *County of Sierra*
211 Nevada Street, 2nd Floor, P.O. Box 425, Downieville, CA 95936
Phone: (530) 289-3273
vmaddox@sierracounty.ws

Martin Magana, City Manager/Finance Director, *City of Desert Hot Springs*

Finance Department, 65-950 Pierson Blvd, Desert Hot Springs, CA 92240
Phone: (760) 329-6411, Ext.
CityManager@cityofdhs.org

Susan Mahoney, *City of Orinda*
22 Orinda Way, Orinda, CA 94563
Phone: N/A
smahoney@cityoforinda.org

James Makshanoff, City Manager, *City of San Clemente*
100 Avenida Presidio, San Clemente, CA 92672
Phone: N/A
makshanoffj@san-clemente.org

Debbie Malicoat, Director of Admin Services, *City of Arroyo Grande*
Finance Department, 300 E. Branch Street, Arroyo Grande, CA 93420
Phone: (804) 473-5410
dmalicoat@arroyogrande.org

Suzanne Mallory, *City of Manteca*
1001 W Center Street, Manteca, CA 95337
Phone: N/A
smallory@ci.manteca.ca.us

Eddie Manfro, *City of Westminster*
8200 Westminster Blvd., Westminster, CA 92683
Phone: N/A
emanfro@westminster-ca.gov

Denise Manoogian, *City of Cerritos*
P.O. Box 3130, Cerritos, CA 90703-3130
Phone: N/A
dmanoogian@cerritos.us

Noel Marquis, *City of Beverly Hills*
455 N. Rexford Dr., Beverly Hills, CA 90210
Phone: N/A
nmarquis@beverlyhills.org

Terri Marsh, Finance Director, *City of Signal Hill*
Finance, 2175 Cherry Ave., Signal Hill, CA 90755
Phone: (562) 989-7319
Finance1@cityofsignalhill.org

Thomas Marston, *City of San Gabriel*
425 South Mission Drive, San Gabriel, CA 91776
Phone: N/A
tmarston@sgch.org

Pio Martin, Finance Manager, *City of Firebaugh*
Finance Department, 1133 P Street, Firebaugh, CA 93622
Phone: (559) 659-2043
financedirector@ci.firebaugh.ca.us

Janice Mateo-Reyes, Finance Manager, *City of Laguna Hills*

Administrative Services Department , 24035 El Toro Rd., Laguna Hills, CA 92653
Phone: (949) 707-2623
jreyes@ci.laguna-hills.ca.us

Hortensia Mato, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Mike Matsumoto, *City of South Gate*
8650 California Ave, South Gate, CA 90280
Phone: N/A
zcaltitla@pico-rivera.org

Dan Matusiewicz, *City of Newport Beach*
3300 Newport Blvd, Newport Beach, CA 92663
Phone: N/A
danm@newportbeachca.gov

Charles McBride, *City of Carlsbad*
1635 Faraday Avenue, Carlsbad, CA 92008-7314
Phone: N/A
chuck.mcbride@carlsbadca.gov

Teresa McBroome, Finance Director/City Treasurer, *City of Del Mar*
Finance Department, 1050 Camino Del Mar, Del Mar, CA 92014
Phone: (858) 755-9313
tmcbroome@delmar.ca.us

Mary McCarthy, Finance Manager, *City of Pleasant Hill*
Finance Division, 100 Gregory Lane, Pleasant Hill, CA 94523
Phone: (925) 671-5231
Mmccarthy@ci.pleasant-hill.ca.us

Kevin McCarthy, Director of Finance, *City of Indian Wells*
Finance Department, 44-950 Eldorado Drive, Indian Wells, CA 92210-7497
Phone: (760) 346-2489
kmccarthy@indianwells.com

Michelle McClelland, *County of Alpine*
P.O. Box 266, Markleeville, CA 96120
Phone: (530) 694-2284
mmclelland@alpinecountyca.gov

Sheila McCrory, Interim Finance Director / Treasurer, *City of St. Helena*
Finance, 1480 Main Street, St. Helena, CA 94574
Phone: (707) 968-2751
sheilam@cityofstheleena.org

Maureen McGoldrick, Director, *City of Simi Valley*
Department of Administrative Services , 2929 Tapo Canyon Road, Simi Valley, CA 93063
Phone: (805) 583-6700
mmcgoldrick@simivalley.org

Michael McGrane, Finance Director, *City of Imperial Beach*

Finance Department, 825 Imperial Beach Blvd., Imperial Beach, CA 91932
Phone: (619) 423-8303
mmcgrane@cityofib.org

Kelly McKinnis, Finance Director, *City of Weed*
Finance Department, 550 Main Street, Weed, CA 96094
Phone: (530) 938-5020
mckinnis@ci.weed.ca.us

Larry McLaughlin, City Manager, *City of Sebastopol*
7120 Bodega Avenue, P.O. Box 1776, Sebastopol, CA 95472
Phone: (707) 823-1153
lwmclaughlin@juno.com

Dennis McLean, *City of Rancho Palos Verdes*
30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275
Phone: N/A
dennism@rpv.com

Rachelle McQuiston, Finance Director, *City of Ridgecrest*
Finance Department, 100 W CALIFORNIA AVE, RIDGECREST, CA 93555
Phone: (760) 499-5020
rmcquiston@ridgecrest-ca.gov

Donald McVey, Director of Finance, *City of Daly City*
Finance Department, 333 90th Street, Daly City, CA 94015
Phone: (650) 991-8127
dmcvey@dalycity.org

Susie Mears, *City of Ojai*
PO Box 1570, Ojai, CA 93024
Phone: N/A
mears@ci.ojai.ca.us

Paul Melikian, *City of Reedley*
1717 Ninth Street, Reedley, CA 93654
Phone: (559) 637-4200
paul.melikian@reedley.ca.gov

Joe Mellett, *County of Humboldt*
825 Fifth Street, Room 126, Eureka, CA 95501
Phone: (707) 476-2452
jmellett@co.humboldt.ca.us

Rebecca Mendenhall, *City of San Carlos*
600 Elm Street, P.O. Box 3009, San Carlos, CA 94070-1309
Phone: (650) 802-4205
rmendenhall@cityofsancarlos.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Dawn Merchant, *City of Antioch*

P.O. Box 5007, Antioch, CA 94531
Phone: (925) 779-7055
dmerchant@ci.antioch.ca.us

Yazmin Meza, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Joan Michaels Aguilar, *City of Dixon*
600 East A Street, Dixon, CA 95620
Phone: N/A
jmichaelsaguilar@ci.dixon.ca.us

Ron Millard, Interim Finance Director, *City of Vallejo*
Finance Department, 555 Santa Clara Street, 3rd Floor, Vallejo, CA 94590
Phone: (707) 648-4592
lkimura@ci.vallejo.ca.us

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Michael Miller, *County of Monterey*
168 W. Alisal Street, 3rd floor, Salinas, CA 93901
Phone: (831) 755-4500
millerm@co.monterey.ca.us

Todd Miller, *County of Madera*
Auditor-Controller, 200 W Fourth Street, 2nd Floor, Madera, CA 93637
Phone: (559) 675-7707
Todd.Miller@co.madera.ca.gov

Leyne Milstein, Finance Director, *Department of Finance*
915 L Street, 7th Floor, 915 L Street, 5th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
Leyne.milstein@dof.ca.gov

Leyne Milstein, *City of Sacramento*
915 I Street, 5th Floor, Sacramento, CA 98514
Phone: N/A
lmilstein@cityofsacramento.org

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Kevin Mizuno, Finance Director, *City of Clayton*
Finance Department, 600 Heritage Trail, Clayton, CA 94517
Phone: (925) 673-7309
kmizuno@ci.clayton.ca.us

Bruce Moe, *City of Manhattan Beach*

1400 Highland Ave., Manhattan Beach, CA 90266

Phone: N/A

bmoe@citymb.info

Julio Morales, Director of Finance, *City of Huntington Park*

Finance Department, 6550 Miles Avenue, Rm 116, Huntington Park, CA 90255

Phone: (323) 584-6201

jmorales@huntingtonpark.org

Minnie Moreno, *City of Patterson*

1 Plaza Circle, Patterson, CA 95363

Phone: N/A

mmoreno@ci.patterson.ca.us

Debbie Moreno, *City of Anaheim*

200 S. Anaheim Boulevard, Anaheim, CA 92805

Phone: (716) 765-5192

DMoreno@anaheim.net

Russell Morreale, Finance Director, *City of Palos Verdes Estates*

Finance Department, 340 Palos Verdes Dr West, Palos Verdes Estates, CA 90274

Phone: (310) 378-0383

rmorreale@pvestates.org

Russell Morreale, *City of Los Altos*

One North San Antonio Road, Los Altos, CA 94022

Phone: N/A

rmorreale@losaltosca.gov

Cindy Mosser, City Treasurer/Finance Director, *City of San Rafael*

1400 Fifth Avenue, PO Box 151560, San Rafael, CA 94915

Phone: (415) 458-5001

cindy.mosser@cityofsanrafael.org

Brian Muir, *County of Shasta*

1450 Court St., Suite 238, Redding, CA 96001

Phone: (530) 225-5541

bmuir@co.shasta.ca.us

walter Munchheimer, Interim Administrative Services Manager, *City of Marysville*

Administration and Finance Department, 526 C Street, Marysville, CA 95901

Phone: (530) 749-3901

wmunchheimer@marysville.ca.us

Randy Murphy, City Administrator, *City of Oroville*

Finance Department, 1735 Montgomery Street, Oroville, CA 95965-4897

Phone: (530) 538-2535

murphyr@cityoforoville.org

Bill Mushallo, Finance Director, *City of Petaluma*

Finance Department, 11 English St., Petaluma, CA 94952

Phone: (707) 778-4352

financeemail@ci.petaluma.ca.us

Jameel Naqvi, Analyst, *Legislative Analysts' Office*

Education Section, 925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8331
Jameel.naqvi@lao.ca.gov

Tim Nash, *City of Encinitas*
505 S Vulcan Avenue, Encinitas, CA 92054
Phone: N/A
finmail@encinitasca.gov

Geoffrey Neill, Senior Legislative Analyst, Revenue & Taxation, *California State Association of Counties (CSAC)*
1100 K Street, Suite 101, Sacramento, CA 95814
Phone: (916) 327-7500
gneill@counties.org

Keith Neves, Director of Finance/City Treasurer, *City of Lake Forest*
Finance Department, 25550 Commercentre Drive, Lake Forest, CA 92630
Phone: (949) 461-3430
kneves@lakeforestca.gov

Howard Newens, *County of Yolo*
625 Court Street, Room 102, Woodland, CA 95695
Phone: (530) 666-8625
howard.newens@yolocounty.org

Doug Newland, *County of Imperial*
940 Main Street, Ste 108, El Centro, CA 92243
Phone: (760) 482-4556
dougnewland@co.imperial.ca.us

Keith Nezaam, *Department of Finance*
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Dale Nielsen, Director of Finance/Treasurer, *City of Vista*
Finance Department, 200 Civic Center Drive, Vista, CA 92084
Phone: (760) 726-1340
dnielsen@ci.vista.ca.us

Marianne O'Malley, *Legislative Analyst's Office (B-29)*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8315
marianne.O'malley@lao.ca.gov

Maria Oberg, Finance Director, *City of Emeryville*
1333, Park Avenue, Emeryville, CA 95608-3517
Phone: (510) 596-4352
moberg@emeryville.org

Patrick OConnell, *County of Alameda*
1221 Oak Street, Room 249, Oakland, CA 94512
Phone: (510) 272-6565
pat.oconnell@acgov.org

Andy Okoro, *City of Norco*
2870 Clark Avenue, Norco, CA 92860
Phone: N/A
aokoro@ci.norco.ca.us

Tina Olson, Director of Finance and Administration, *City of Pittsburg*
Finance Department, 65 Civic Avenue, Pittsburg, CA 94565-3814
Phone: (925) 252-4946
tolson@ci.pittsburg.ca.us

Cathy Orme, Finance Director, *City of Larkspur*
Finance Department, 400 Magnolia Ave, Larkspur, CA 94939
Phone: (415) 927-5019
corne@cityoflarkspur.org

Odi Ortiz, Assistant City Manager/Finance Director, *City of Livingston*
Administrative Services, 1416 C Street, Livingston, CA 95334
Phone: (209) 394-8041
oortiz@livingstoncity.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

June Overholt, Admin Service Director, *City of Banning*
Administrative Services, 99 E. Ramsey St., Banning, CA 92220
Phone: (951) 922-3105
joverholt@ci.banning.ca.us

Wayne Padilla, Interim Director, *City of San Luis Obispo*
Finance & Information Technology Department, 990 Palm Street, San Luis Obispo, CA 93401
Phone: (805) 781-7125
wpadilla@slocity.org

Simona Padilla-Scholtens, Auditor-Controller, *County of Solano*
675 Texas Street, Suite 2800, Fairfield, CA 94533
Phone: (707) 784-6282
sjpadilla@solanocounty.com

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@sashlaw.com

Deborah Paolinelli, *County of Tulare*
411 East Kern Ave, Tulare, CA 93274
Phone: N/A

dpaolinelli@co.tulare.ca.us

Susan Paragas, *City of Azusa*
PO Box 1395, Azusa, CA 91702
Phone: N/A
sparagas@ci.azusa.ca.us

Alice Park-Renzie, *County of Alameda*
CAO, 1221 Oak Street, Oakland, CA 94612
Phone: (510) 272-3873
Alice.Park@acgov.org

Donald Parker, *City of Montclair*
5111 Benito St., Montclair, CA 91763
Phone: N/A
dparker@cityofmontclair.org

Stephen Parker, Administrative Services Director, *City of Stanton*
Administrative Services and Finance Department, 7800 Katella Avenue, Stanton, CA 90680
Phone: (714) 379-9222
sparker@ci.stanton.ca.us

Lalo Perez, *City of Palo Alto*
P.O. Box 10250, Palo Alto, CA 94303
Phone: N/A
lalo.perez@cityofpaloalto.org

Diane Perkin, *City of Lakewood*
5050 Clark Avenue, Lakewood, CA 90712
Phone: (562) 866-9771
dperkin@lakewoodcity.org

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbsixten@aol.com

Eva Phelps, *City of San Ramon*
2226 Camino Ramon, San Ramon, CA 94583
Phone: N/A
ephelps@sanramon.ca.gov

Marcus Pimentel, *City of Santa Cruz*
809 Center Street, Rm 101, Santa Cruz, CA 95060
Phone: N/A
dl_Finance@cityofsantacruz.com

Adam Pirrie, *City of Claremont*
207 Harvard Ave, Claremont, CA 91711
Phone: (909) 399-5328
apirrie@ci.claremont.ca.us

Ruth Piyaman, Finance / Accounting Manager, *City of Malibu*
Administrative Services / Finance, 23825 Stuart Ranch Road, Malibu, CA 90265
Phone: (310) 456-2489

RPiyaman@malibucity.org

Bret M. Plumlee, City Manager, *City of Los Alamitos*
3191 Katella Ave., Los Alamitos, CA 90720
Phone: (562) 431-3538 ext.
bplumlee@cityoflosalamitos.org

Mike Podegracz, City Manager, *City of Hesperia*
Finance Department, 9700 Seventh Ave, Hesperia, CA 92345
Phone: (760) 947-1025
mpodegracz@cityofhesperia.us

Brian Ponty, *City of Redwood City*
1017 Middlefield Road, Redwood City, CA 94063
Phone: (650) 780-7300
finance@redwoodcity.org

Michael Powers, City Manager, *City of King City*
212 South Vanderhurst Avenue, King City, CA 93930
Phone: 831-386-5925
mpowers@kingcity.com

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA
92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Matt Pressey, Director, *City of Salinas*
Finance Department, 200 Lincoln Ave., Salinas, CA 93901
Phone: (831) 758-7211
mattp@ci.salinas.ca.us

Tom Prill, Finance Director, *City of San Jacinto*
Finance Department, 595 S. San Jacinto Ave., Building B, San Jacinto, CA 92583
Phone: (951) 487-7340
TPrill@sanjacintoca.us

Cindy Prothro, Finance Director, *City of Barstow*
Finance Department, 220 East Mountain View Street, Barstow, CA 92311
Phone: (760) 255-5115
cprothro@barstowca.org

Tim Przybyla, Finance Director, *City of Madera*
Finance Department, 205 West Fourth Street, Madera, CA 93637
Phone: (559) 661-5454
tprzybyla@cityofmadera.com

Marc Puckett, Assistant Town Manager of Finance & Administration, *Town of Apple Valley*
Finance Department, 14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
finance@applevalley.org

Raul Purificacion, Finance Manager, *City of La Puente*
Finance Department, 15900 E. Main Street, La Puente, CA 91744

Phone: (626) 855-1500
rpurificacion@lapuente.org

John Quinn, *City of Calexico*
608 Heber Ave., Calexico, CA 92231
Phone: N/A
jqinn@calexico.ca.gov

Frank Quintero, *City of Merced*
678 West 18th Street, Merced, CA 95340
Phone: N/A
quinterof@cityofmerced.org

Yvonne Quiring, *City of Davis*
23 Russell Blvd., Davis, CA 95616
Phone: N/A
yquiring@cityofdavis.org

Sean Rabe, *City Manager, City of Colma*
1198 El Camino Real, Colma, CA 94014
Phone: (650) 997-8318
sean.rabe@colma.ca.gov

Roberta Raper, *Finance Director, City of Napa*
Finance Department, P.O. Box 660, Napa, CA 94559-0660
Phone: (707) 257-9510
rraper@cityofnapa.org

Roberta Reed, *County of Mono*
P.O. Box 556, Bridgeport, CA 93517
Phone: (760) 932-5490
RReed@mono.ca.gov

Karan Reid, *Finance Director, City of Concord*
1950 Parkside Drive, Concord, CA 94519
Phone: (925) 671-3178
karan.reid@cityofconcord.org

Ray Reinhard, *California Community Colleges*
Chancellor's Office, 1102 Q Street, 4th Floor, 1102 Q Street, 4th Floor, Sacramento, CA
95811-6549
Phone: (916) 324-2564
rreinhard@cccco.edu

Sandra Repede, *Principal Financial Analyst, City of San Buenaventura*
Finance & Technology, 501 Poli St. Room 101, Ventura, CA 93001
Phone: (805) 654-7728
srepede@cityofventura.net

Mark Rewolinski, *MAXIMUS*
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*

P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Tina Reza, Interim Finance Director, *City of Morgan Hill*
Finance Department, 17575 Peak Ave., Morgan Hill, CA 95037
Phone: (408) 779-7237
Tina.Reza@morgan-hill.ca.gov

Tae G. Rhee, Finance Director, *City of Bellflower*
Finance Department, 16600 Civic Center Dr, Bellflower, CA 90706
Phone: (562) 804-1424
trhee@bellflower.org

Robert Richardson, City Manager, *City of Grass Valley*
Finance Department, 125 East Main Street, Grass Valley , CA 95945
Phone: (530) 274-4312
r.richardson@cityofgrassvalley.com

Rachelle Rickard, City Manager, *City of Atascadero*
Finance Department, 6500 Palma Ave, Atascadero, CA 93422
Phone: (805) 461-7612
rickard@atascadero.org

Jorge Rifa, City Administrator, *City of Commerce*
Finance Department, 2535 Commerce Way, Commerce, CA 90040
Phone: (323) 722-4805
jorger@ci.commerce.ca.us

James Riley, Administrative Services Director, *City of Lake Elsinore*
130 South Main Street, Lake Elsinore, CA 92530
Phone: N/A
jriley@lake-elsinore.org

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Rosa Rios, *City of Delano*
1015 11th Ave., Delano, CA 93216
Phone: N/A
rios@cityofdelano.org

Amanda Roberson, *City of Lynwood*
11330 Bullis Road, Lynwood, CA 90262
Phone: (310) 603-0220
aroberson@lynwood.ca.us

Mark Roberts, *City of National City*
1243 National City Blvd., National City, CA 91950
Phone: N/A
finance@nationalcityca.gov

Laura Rocha, *City of San Marcos*

1 Civic Center Drive, San Marcos, CA 92069
Phone: (760) 744-1050
Lrocha@san-marcos.net

Rob Rockwell, Director of Finance, *City of Indio*
Finance Department, 100 Civic Center Mall, Indio, CA 92201
Phone: (760) 391-4029
rockwell@indio.org

Paul Rodriguez, City Manager, *City of Eureka*
531 K Street, Eureka, CA 95501
Phone: (707) 441-4144
webmaster@ci.eureka.ca.gov

Benjamin Rosenfield, City Controller, *City and County of San Francisco*
1 Dr. Carlton B. Goodlett Place, Room 316, San Francisco, CA 94102
Phone: (415) 554-7500
ben.rosenfield@sfgov.org

Linda Ruffing, City Manager, *City of Fort Bragg*
Finance Department, 416 N Franklin Street, Fort Bragg, CA 94537
Phone: (707) 961-2823
lruffing@fortbragg.com

Cynthia Russell, Chief Financial Officer/City Treasurer, *City of San Juan Capistrano*
Finance Department, 32400 Paseo Adelanto, San Juan Capistrano, CA 92675
Phone: (949) 443-6343
crussell@sanjuancapistrano.org

Joan Ryan, Finance Director, *City of Escondido*
201 N. Broadway, Escondido, CA 92025
Phone: N/A
jryan@ci.escondido.ca.us

Cathy Saderlund, *County of Lake*
255 N. Forbes Street, Lakeport, CA 95453
Phone: (707) 263-2311
cathy.saderlund@lakecountyca.gov

Leticia Salcido, *City of El Centro*
1275 Main Street, El Centro, CA 92243
Phone: N/A
lsalcido@ci.el-centro.ca.us

Marcia Salter, *County of Nevada*
950 Maidu Avenue, Nevada City, CA 95959
Phone: (530) 265-1244
marcia.salter@co.nevada.ca.us

Robert Samario, *City of Santa Barbara*
P.O. Box 1990, Santa Barbara, CA 93102-1990
Phone: (805) 564-5336
BSamario@SantaBarbaraCA.gov

Kathy Samms, *County of Santa Cruz*

701 Ocean Street, Room 340, Santa Cruz, CA 95060
Phone: (831) 454-2440
shf735@co.santa-cruz.ca.us

Tracy Sandoval, *County of San Diego*
1600 Pacific Highway, Room 166, San Diego, CA 92101
Phone: (619) 531-5413
tracy.sandoval@sdcounty.ca.gov

Kimberly Sarkovich, Chief Financial Officer, *City of Rocklin*
3970 Rocklin Road, Rocklin, CA 95677
Phone: (916) 625-5020
kim.sarkovich@rocklin.ca.us

Clinton Schaad, *County of Del Norte*
981 H Street, Suite 140, Crescent City, CA 95531
Phone: (707) 464-7202
cschaad@co.del-norte.ca.us

Stuart Schillinger, *City of Brisbane*
50 Park Place, Brisbane, CA 94005-1310
Phone: N/A
schillinger@ci.brisbane.ca.us

Karin Schnaider, Finance Director, *City of Benicia*
Finance Department, 250 East L Street, Benicia, CA 94510
Phone: (707) 746-4225
KSchnaider@ci.benicia.ca.us

Clay Schoen, Finance Director, *City of El Cajon*
Finance Department, 200 Civic Center Way, El Cajon, CA 92020
Phone: 619-441-1784
cschoen@cityofelcajon.us

Tracy Schulze, *County of Napa*
1195 Third Street, Suite B-10, Napa, CA 94559
Phone: (707) 299-1733
tracy.schulze@countyofnapa.org

Nicolas Schweizer, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
nicolas.schweizer@dof.ca.gov

Tami Scott, Administrative Services Director, *Cathedral City*
Administrative Services, 68700 Avenida Lalo Guerrero, Cathedral City, CA 92234
Phone: (760) 770-0356
tscott@cathedralcity.gov

Lee Scott, *Department of Finance*
15 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
lee.scott@dof.ca.gov

David Scribner, Max8550

2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970
dscribner@max8550.com

Peggy Scroggins, County of Colusa

546 Jay Street, Ste 202, Colusa, CA 95932
Phone: (530) 458-0400
pscroggins@countyofcolusa.org

Kelly Sessions, Finance Manager, City of San Pablo

Finance Department, 13831 San Pablo Avenue, Building #2, San Pablo, CA 94806
Phone: (510) 215-3021
kellys@sanpabloca.gov

Mel Shannon, Finance Director, City of La Habra

Finance/Admin. Services, 201 E. La Habra Blvd, La Habra, CA 90633-0337
Phone: (562) 383-4050
mshannon@lahabraca.gov

Amy Shepherd, County of Inyo

Auditor-Controller, P.O. Drawer R, Independence, CA 93526
Phone: (760) 878-0343
ashepherd@inyocounty.us

Steve Shields, Shields Consulting Group, Inc.

1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Ed Shikada, City Manager, City of San Jose

200 E. Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-8100
ed.shikada@sanjoseca.gov

Wayne Shimabukuro, County of San Bernardino

Auditor/Controller-Recorder-Treasurer-Tax Collector, 222 West Hospitality Lane, 4th Floor,
San Bernardino, CA 92415-0018
Phone: (909) 386-8850
wayne.shimabukuro@atc.sbcounty.gov

Donna Silva, Finance Director, City of Rancho Cordova

Finance Department, 2729 Prospect Park Drive, Rancho Cordova, CA 95670
Phone: (916) 851-8730
dsilva@cityofranhocordova.org

Lucy Simonson, County of Mendocino

501 Low Gap Road, Rm 1080, Ukiah, CA 95482
Phone: (707) 463-4388
simonsol@co.mendocino.ca.us

Andrew Sisk, County of Placer

2970 Richardson Drive, Auburn, CA 95603
Phone: (530) 889-4026

asisk@placer.ca.gov

Susan Slayton, Administrative Services Director, *City of Morro Bay*
Administrative Services , 595 Harbor Street, Morro Bay, CA 93442
Phone: (805) 772-6201
sslayton@morro-bay.ca.us

Nelson Smith, *City of Bakersfield*
1600 Truxtun Avenue, Bakersfield, CA 93301
Phone: N/A
nsmith@bakersfieldcity.us

Margarita Solis, City Treasurer, *City of San Fernando*
117 Macneil Street, San Fernando, CA 91340
Phone: (818) 898-1218
msolis@sfcity.org

Carla Soracco, Finance Manager, *City of Jackson*
Finance Department, 33 Broadway, Jackson, CA 95642
Phone: (209) 223-1646
csoracco@ci.jackson.ca.us

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Cathy Spinella, Finance Manager, *City of Martinez*
Finance Department , 525 Henrietta Street, Martinez, CA 94553
Phone: (925) 372-3579
cspinella@cityofmartinez.org

Betsy St. John, *City of Palmdale*
38300 Sierra Highway, Suite D, Palmdale, CA 93550
Phone: N/A
bstjohn@cityofpalmdale.org

Susan A. Stanton, City Manager, *City of Greenfield*
Finance Department, 599 El Camino Real, Greenfield, CA 93927
Phone: (831) 674-5591
sstanton@ci.greenfield.ca.us

Robert Stark, *County of Sutter*
463 2nd Street, Suite 117, Yuba City, CA 95991
Phone: (530) 822-7127
rstark@co.sutter.ca.us

Jim Steele, *City of South San Francisco*
P.O. Box 711, South San Francisco, CA 94083
Phone: N/A

jim.steele@ssf.net

Joe Stephenshaw, *Senate Budget and Fiscal Review Committee*

State Capitol, Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103

Joe.Stephenshaw@sen.ca.gov

Jason Stilwell, *City Administrator, City of Carmel*

Finance Department, Monte Verde Street 7th Ave., Carmel, CA 93921

Phone: (831) 620-2000

jstilwell@ci.carmel.ca.us

Stephen Strong, *Finance Director, City of Redding*

Finance Department, 3rd Floor City Hall, 777 Cypress Avenue, Redding, CA 96001

Phone: (530) 225-4079

sstrong@ci.redding.ca.us

Jana Stuard, *City of Norwalk*

P.O. Box 1030, Norwalk, CA 90650

Phone: N/A

jstuard@norwalkca.gov

Leslie Suelter, *City of Coronado*

1825 Strand Way, Coronado, CA 92118

Phone: N/A

lsuelter@coronado.ca.us

Edmund Suen, *Finance Director, City of East Palo Alto*

Finance Department, 2415 University Ave, East Palo Alto, CA 94303

Phone: (650) 853-3122

financedepartment@cityofepa.org

Karen Suiker, *City Manager, City of Trinidad*

409 Trinity Street, PO Box 390, Trinidad, CA 95570

Phone: (707) 677-3876

citymanager@trinidad.ca.gov

Deborah Sultan, *Finance Director, City of Sanger*

Finance, 1700 7th Street, Sanger, CA 93657

Phone: (559) 876-6300

dsultan@ci.sanger.ca.us

David Sundstrom, *County of Sonoma*

585 Fiscal Drive, Room 100, Santa Rosa, CA 95403

Phone: (707) 565-3285

david.sundstrom@sonoma-county.org

David Sung, *City of Hawaiian Gardens*

21815 Pioneer Boulevard, Hawaiian Gardens, CA 90716

Phone: N/A

dsung@hgcity.org

Meg Svoboda, *Senate Office of Research*

1020 N Street, Suite 200, Sacramento, CA

Phone: (916) 651-1500

meg.svoboda@sen.ca.gov

Kim Szczurek, Administrative Services Director, *Town of Truckee*
Administrative Services, 10183 Truckee Airport Road, Truckee, CA 96161
Phone: (530) 582-2913
kszczurek@townoftruckee.com

Jesse Takahashi, *City of Campbell*
70 North First Street, Campbell, CA 95008
Phone: N/A
jesset@cityofcampbell.com

Amy Tang-Paterno, Educational Fiscal Services Consultant, *California Department of Education*
Government Affairs, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 322-6630
ATangPaterno@cde.ca.gov

Jill Taura, *City of Glendora*
116 East Foothill Blvd, Glendora, CA 91741-3380
Phone: N/A
jtaura@ci.glendora.ca.us

Rick Teichert, *City of Moreno Valley*
14177 Frederick Street, Moreno Valley, CA 92552-0805
Phone: N/A
richardt@moval.org

Gina Tharani, Finance Director, *City of Aliso Viejo*
Finance Department, 12 Journey, Suite 100, Aliso Viejo, CA 92656-5335
Phone: (949) 425-2524
financial-services@cityofalisoviejo.com

Lynn Theissen, Finance Director, *City of Chico*
411 Main St., Chico, CA 95927
Phone: (530) 879-7300
ltheisse@ci.chico.ca.us

Geoff Thomas, *City of El Cerrito*
10890 San Pablo Avenue, El Cerrito, CA 94530-2392
Phone: N/A
gthomas@ci.el-cerrito.ca.us

Darlene Thompson, Finance Director / Treasurer, *City of Tulare*
Finance Department, 411 E Kern Ave., Tulare, CA 93274
Phone: (559) 684-4255
dthompson@ci.tulare.ca.us

John Thornberry, Finance Director, *City of Carpinteria*
Finance Department, 5775 Carpinteria Ave, Carpinteria, CA 93013
Phone: (805) 684-5405
johnt@ci.carpinteria.ca.us

James Throop, Finance Director, *City of El Paso De Robles*
Administrative Services, 1000 Spring Street, Paso Robles, CA 93446

Phone: (805) 227-7276
jthroop@prcity.com

Sheryl Thur, *County of Glenn*
516 West Sycamore Street, Willows, CA 95988
Phone: (530) 934-6402
sthur@countyofglenn.net

Cathleen Till, Finance Director, *City of Lemon Grove*
Finance Department, 3232 Main Street, Lemon Grove, CA 91945
Phone: (619) 825-3803
ctill@lemongrove.ca.gov

Donna Timmerman, Financial Manager, *City of Ferndale*
Finance Department, 834 Main Street, Ferndale, CA 95535
Phone: (707) 786-4224
finance@ci.ferndale.ca.us

Steve Toler, Finance Director, *City of Millbrae*
621 Magnolia Avenue, Millbrae, CA 94030
Phone: (650) 259-2334
stoler@ci.millbrae.ca.us

Jolene Tollenaar, *MGT of America*
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

Eric Tsao, *City of Torrance*
Finance Department, 3031 Torrance Blvd., Torrance, CA 90503
Phone: (310) 618-5850
etsao@TorranceCA.gov

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Stefanie Turner, Finance Director, *City of Rancho Santa Margarita*
Finance Department, 22112 El Paseo, Rancho Santa Margarita, CA 92688
Phone: (949) 635-1808
sturner@cityofrsm.org

Brian Uhler, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov

Julie Valverde, *County of Sacramento*
700 H Street, Room 3650, Sacramento, CA 95814
Phone: (916) 874-7248
valverdej@saccounty.net

Sue Vannucci, *City of Woodland*
300 First Street, Woodland, CA 95695

Phone: N/A
svannucci@cityofwilliams.org

Ruby Vasquez, *County of Colusa*
546 Jay Street, Suite 202, Colusa, CA 95932
Phone: (530) 458-0424
rvasquez@countyofcolusa.com

Ezequiel Vega, Director, *City of Watsonville*
250 Main St., Watsonville, CA 95076
Phone: (831) 768-3450
ezequiel.vega@cityofwatsonville.org

Patty Virto, Finance Manager, *City of Fillmore*
Finance Department, 250 Central Avenue, Fillmore, CA 93015
Phone: (805) 524-3701
pvirto@ci.fillmore.ca.us

Rene Vise, Director of Administrative Services, *City of Santa Maria*
Department of Administrative Services, 110 East Cook Street Room 6, Santa Maria, CA
93454-5190
Phone: (805) 925-0951
rvise@ci.santa-maria.ca.us

Nawel Voelker, Acting Director of Finance (Management Analyst), *City of Belmont*
Finance Department, One Twin Pines Lane, Belmont, CA 94002
Phone: (650) 595-7433
nvoelker@belmont.gov

Mary Jo Walker, *County of Santa Cruz*
701 Ocean Street, Room 100, Santa Cruz, CA 95060-4073
Phone: (831) 454-2500
Aud002@co.santa-cruz.ca.us

Melinda Wall, *City of Lompoc*
P.O. Box 8001, Lompoc, CA 93438-8001
Phone: N/A
m_wall@ci.lompoc.ca.us

Sarah Waller-Bullock, *City of La Mesa*
P.O. Box 937, La Mesa, CA 91944-0937
Phone: N/A
sbullock@ci.la-mesa.ca.us

George Warman Jr., *City of Corte Madera*
P.O. Box 159, Corte Madera, CA 94976-0159
Phone: N/A
gwarman@ci.corte-madera.ca.us

Dave Warren, Director of Finance, *City of Placerville*
Finance Department, 3101 Center Street, Placerville, CA 95667
Phone: (530) 642-5223
dwarren@cityofplacerville.org

Tara Webley, *County of Tulare*

411 East Kern Ave., Tulare, CA 93274

Phone: N/A

twebley@co.tulare.ca.us

Renee Wellhouse, *David Wellhouse & Associates, Inc.*

3609 Bradshaw Road, H-382, Sacramento, CA 95927

Phone: (916) 797-4883

dwa-renee@surewest.net

Kevin Werner, City Administrator, *City of Ripon*

Administrative Staff, 259 N. Wilma Avenue, Ripon, CA 95366

Phone: (209) 599-2108

kwerner@cityofripon.org

David White, *City of Fairfield*

1000 Webster Street, Fairfield, CA 94533

Phone: N/A

dwhite@fairfield.ca.gov

Michael Whitehead, Administrative Services Director & City Treasurer, *City of Rolling Hills Estates*

Administrative Services, 4045 Palos Verdes Drive North, Rolling Hills Estates, CA 90274

Phone: (310) 377-1577

MikeW@RollingHillsEstatesCA.gov

Gina Will, Finance Director, *City of Paradise*

Finance Department, 5555 Skyway, Paradise, CA 95969

Phone: (530) 872-6291

gwill@townofparadise.com

David Wilson, *City of West Hollywood*

8300 Santa Monica Blvd., West Hollywood, CA 90069

Phone: N/A

dwilson@weho.org

Chris Woidzik, Finance Director, *City of Avalon*

Finance Department, 410 Avalon Canyon Rd., Avalon, CA 90704

Phone: (310) 510-0220

Scampbell@cityofavalon.com

Jeff Woltkamp, *County of San Joaquin*

44 N San Joaquin St. Suite 550, Stockton, CA 95202

Phone: (209) 468-3925

jwoltkamp@sjgov.org

Clara Wong, *City of West Covina*

1444 W. Garvey Ave. South, West Covina, CA 91790

Phone: N/A

clara.wong@westcovina.org

Rita Woodard, *County of Tulare*

County Civic Center, 221 South Mooney Blvd, Room 101-E, Visalia, CA 93291-4593

Phone: (559) 636-5200

rwoodard@co.tulare.ca.us

Susie Woodstock, *City of Newark*
37101 Newark Blvd., Newark, CA 94560
Phone: N/A
susie.woodstock@newark.org

Phil Wright, Director of Administrative Services, *City of West Sacramento*
Finance Division, 1110 West Capitol Avenue, 3rd Floor, West Sacramento, CA 95691
Phone: (916) 617-4575
Philw@cityofwestsacramento.org

Jane Wright, Finance Manager, *City of Ione*
Finance Department, 1 East Main Street , PO Box 398, Ione, CA 95640
Phone: (209) 274-2412
JWright@ione-ca.com

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

Curtis Yakimow, Town Manager, *Town of Yucca Valley*
57090 Twentynine Palms Highway, Yucca Valley, CA 92284
Phone: (760) 369-7207
townmanager@yucca-valley.org

Annie Yaung, *City of Monterey Park*
320 West Newmark Avenue, Monterey Park, CA 91754
Phone: N/A
ayaung@montereypark.ca.gov

Carl Yeats, *City of Burlingame*
501 Primrose Rd., Burlingame, CA 94010
Phone: N/A
cyeats@burlingame.org

Bobby Young, *City of Costa Mesa*
77 Fair Drive, Costa Mesa, CA 92626
Phone: N/A
Bobby.Young@costamesaca.gov