

ITEM 11
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE

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

Binding Arbitration
01-TC-07

County of Napa, Claimant

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Statutes 2000, Chapter 906

Binding Arbitration
01-TC-07

County of Napa, Claimant

EXECUTIVE SUMMARY

If the Commission adopts Item 6, the Proposed Parameters and Guidelines for this program, then staff recommends the adoption of Item 11, the Proposed Statewide Cost Estimate of \$211,317 for this program.

Background

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

Commission's Decision

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

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.6, subd. (a)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:

- a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
- b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
- c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
- d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).
- e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
- f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).¹
- g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).²
- h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).³

Proposed Parameters and Guidelines

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

Proposed Statewide Cost Estimate

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

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

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

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

³ Incorporating by reference Code of Civil Procedure section 1283.05.

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

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

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

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

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

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

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

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

⁶ See Exhibit B.

⁷ See Exhibit C.

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

Footnote 2 of this declaration further explains:

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

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

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

Ms. Gong responded:

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

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

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

⁹ See Exhibit C.

¹⁰ See Exhibit D.

Revised Assumptions

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

Conclusion

Staff recommends that the Commission adopt a statewide cost estimate of \$211,317 for the costs incurred by the County of Napa to implement the state-mandated program from January 1, 2001 through April 20, 2003.

Attachment 1

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

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

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

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 1299.8 and 1299.9, subdivision (b)
 Statutes 2000, Chapter 906

Binding Arbitration
 01-TC-07

County of Napa, Claimant

EXECUTIVE SUMMARY

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

Commission's Decision

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

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
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 - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
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- f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).¹
- g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).²
- h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).³

Proposed Parameters and Guidelines

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

Proposed Statewide Cost Estimate

In a declaration filed with the Commission on January 24, 2007, Deputy County Counsel Jacqueline M. Gong declared under penalty of perjury, that:

The full cost of this interest arbitration process to the County is yet to be fully determined, but exceeds \$10,000 based alone on legal fees and expenses incurred. In the course of participating in the arbitration process, the County's Human Resources Director served on the arbitration panel. Responses to discovery requests involved extensive staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. The County also incurred costs for legal counsel, both in-house and retained outside counsel. Expenses were further incurred for a number of expert witnesses in the arbitration hearing.⁴

Assumptions

Staff makes the following assumptions regarding the statewide cost estimate for this program:

- There will be only one eligible claimant, County of Napa.
- Napa's actual claim will exceed \$10,000; however, there is no declaration to support a higher statewide estimate.

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

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

³ Incorporating by reference Code of Civil Procedure section 1283.05.

⁴ Exhibit A, Request to Join as Co-Test Claimant by County of Napa, filed on January 24, 2007, Declaration of Jacqueline M. Gong, Paragraph 6.

Conclusion

Staff recommends that the Commission adopt a statewide cost estimate of \$10,000 for the costs incurred by the County of Napa to implement the state-mandated program from January 1, 2001 through April 20, 2003.

Chronology: Collective Bargaining Process, Mediation, and Binding Arbitration

July 2000	Napa County begins collective bargaining process with Deputy Sheriff's Association.
November, December, January, February	Mediation – four occasions
Jan. 1, 2001	PERIOD OF REIMBURSEMENT BEGINS
Jan. 16, 2001	During mediation, the DSA requested economic issues be submitted to binding arbitration.
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Feb. 20, 2001	Last day of mediation ... County designated its Human Resources Director as its partisan panel member; DSA designated its panel member.
	Discussions between the County's Human Resources Director and legal counsel, the County planned its approach in participating in the joint selection of the neutral arbitrator.
March 2001	County and DSA jointly designated impartial chairperson.
April 17, 2001	Parties met with arbitration panel. <ul style="list-style-type: none"> • Identified the disputed economic issues. • Established hearing timetable for exchange of requested information, exhibits, witness lists. • Agreed on hearing dates. Parties settled on two economic proposals on retirement and dental benefits.
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	<p>situated agencies.</p> <p>Expert witnesses developed analytical studies and prepared for testifying at the arbitration hearing with the assistance of legal counsel.</p> <p>General witnesses were also identified and prepared for testifying about County budgets, revenue and financial commitments.</p> <p>Legal counsel drafted county's last best final offer for submission after consulting with the Board of Supervisors.</p>
May 17, 2001	(5 days before hearing) Parties submitted last best final offer from negotiations.
May 22, 2001	<p>Parties participated in hearing – 3-days.</p> <p>Legal counsel, staff, expert and general witnesses.</p>
	At the direction of the arbitration panel, County through its staff and legal counsel prepared the submission of additional written evidence and closing briefs.
	Panel selects the party's last best offer on each disputed economic issue that most nearly adheres to specified factors under CCP 1299.6.
September 2001	<p>Panel issued its decision.</p> <p>5 Days later, binding decision was made public by the county.</p>

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	<p>situated agencies.</p> <p>Expert witnesses developed analytical studies and prepared for testifying at the arbitration hearing with the assistance of legal counsel.</p> <p>General witnesses were also identified and prepared for testifying about County budgets, revenue and financial commitments.</p> <p>Legal counsel drafted county's last best final offer for submission after consulting with the Board of Supervisors.</p>
May 17, 2001	(5 days before hearing) Parties submitted last best final offer from negotiations.
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	At the direction of the arbitration panel, County through its staff and legal counsel prepared the submission of additional written evidence and closing briefs.
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September 2001	<p>Panel issued its decision.</p> <p>5 Days later, binding decision was made public by the county.</p>



NAPA COUNTY

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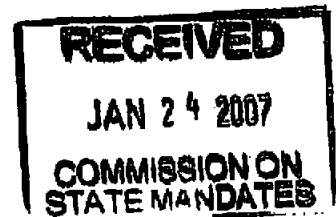
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CHRIS R. Y. APALLAS, Deputy
JANICE D. KILLION, Deputy

CHERI HUBER, Privacy Officer

**REQUEST TO JOIN AS CO-TEST CLAIMANT
BY COUNTY OF NAPA**

Binding Arbitration
(01-TC-07)

Code of Civil Procedures Sections 1281.1, 1299, 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8 and 1299.9
As Added by Statutes 2000, Chapter 906



The County of Napa hereby requests that it be allowed to join the City of Palos Verdes Estates as a co-test claimant in the above-entitled test claim matter. It has recently come to the attention of the County of Napa that the Commission's Staff has recommended denial of the test claim based upon the fact that the City of Palos Verdes Estates did not have any costs associated with Chapter 402, Statutes 2000 ("SB 402"), and is so recommending for the hearing on January 25, 2007.

After the passage of SB 402, the County of Napa did engage in Binding Interest Arbitration with the Napa County Deputy Sheriffs' Association to the final award of a decision by the arbitration panel. To date, the County of Napa has not totaled its expenditures by all staff, counsel, and retained outside counsel, much less expenses, but knows these costs exceed \$10,000.00.

We understand that due to the statute of limitations, we cannot commence a test claim on our own, and unless we join in on the test claim brought by the City of Palos Verdes Estates, we will be forever precluded from recovering our costs incurred in complying with SB 402 from its inception until it was declared unconstitutional.

On January 23, 2007, the Napa County Board of Supervisors authorized this request to the Commission on State Mandates to allow the County of Napa to join in as a co-test claimant in this matter. To the extent that the City of Palos Verdes Estates has plead that SB 402 constitutes a reimbursable mandate, we join in and adopt its pleadings as though they were the County's.

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on January 23, 2007, in Napa, California.

Jacqueline M. Gong
JACQUELINE M. GONG,
Deputy County Counsel
County of Napa

DECLARATION OF JACQUELINE M. GONG

IN SUPPORT OF THE COUNTY OF NAPA
IN ITS REQUEST TO THE COMMISSION ON STATE MANDATES
TO BE JOINED AS CO-TEST CLAIMANT
IN THE TEST CLAIM OF THE CITY OF PALOS VERDES ESTATES

1. I have served in the Office of the Napa County Counsel as a Deputy County Counsel since November 1998, primarily assigned to personnel matters. From January through September 2001, I participated in the binding interest arbitration process between the County and the Napa County Deputy Sheriffs' Association ("DSA") to the final award of an arbitration decision on the disputed economic issues arising from negotiations. DSA is the employee organization representing law enforcement employees of the County.
2. Beginning in July 2000, I served on the County of Napa's bargaining team in its negotiations of a successor Memorandum of Understanding ("MOU") with DSA. Negotiations continued until the parties reached impasse in October of 2000. As provided in the County's Employer-Employee Relations Policy, the parties agreed to participate in mediation, meeting on four occasions in November, December, and then in January and February of 2001.
3. During the mediation process on January 16, 2001, DSA requested the disputed economic issues be submitted to arbitration pursuant to California Code of Civil Procedure Section 1299 et seq. (SB 402). The mediation process continued through February 20th at which time the County designated its partisan arbitrator. The DSA also selected its partisan arbitrator. In March the County and DSA then jointly designated an impartial arbitrator to serve on the arbitration panel as required by SB 402. The parties agreed to commence the arbitration hearing on April 17, 2001. Meeting with the neutral arbitrator, the parties identified the disputed economic issues and established a hearing timetable for the exchange of requested information, exhibits, and witness lists, and the parties agreed on hearing dates. Out of this meeting, the parties further settled on two economic proposals on retirement and dental benefits.
4. Pursuant to agreed upon timelines, the parties conducted discovery and exchanged documents before the hearing set to commence on May 22nd. This entailed not only the time of the negotiating team, but other county staff in gathering the requisite documents and in the conduct of discovery.
5. Five days before the hearing, the parties each submitted their last, best offer from negotiations as required under SB 402. A three-day hearing was held before the arbitration panel, followed by additional submissions of written evidence and legal arguments. In September 2001 the panel issued its decision. The parties made no amendments to the decision. Following a waiting period of five days, the binding decision was made public by the County.

6. The full cost of this interest arbitration process to the County is yet to be fully determined, but exceeds \$10,000.00 based alone on legal fees and expenses incurred. In the course of participating in the arbitration process, the County's Human Resources Director served on the arbitration panel. Responses to discovery requests involved extensive staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. The County also incurred costs for legal counsel, both in-house and retained outside counsel. Expenses were further incurred for a number of expert witnesses in the arbitration hearing.
7. I plan on attending the hearing of the Commission on State Mandates as the representative of the County of Napa, and will be available to provide additional testimony and answer any questions that the Commission Staff, interested state agencies, or the Commission itself may have.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on January 23, 2007, in Napa, California.


JACQUELINE M. GONG

PROOF OF SERVICE

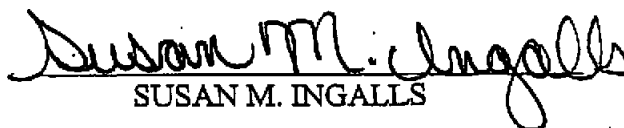
I am a resident of the United States and of the State of California. I am employed in the County of Napa. My business address is 1195 Third Street, Suite 301, Napa, California. My business telephone is (707) 253-4521; fax number (707) 259-8220. I am over the age of eighteen years. I am not a party to the within action or proceeding. On January 23, 2007, I served the following document(s);

REQUEST TO JOIN AS CO-TEST CLAIMANT BY COUNTY OF NAPA

I am familiar with the practice of Napa County Counsel's Office, for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with the ordinary course of business, the above-mentioned document(s) would have been deposited with the United States Postal Service on the same day on which it was placed at Napa County Counsel's Office.

- by placing, or causing to be placed, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Napa County, California, addressed as set forth below. (CCP § 1012, 1013, and 1013(a))
- by personally delivering, or causing to be delivered, a true copy thereof to the person(s) and at the address(es) set forth below. (CCP §1011)
Time: _____ Person served: _____
- by personally delivering, or causing to be delivered, a true copy thereof to the office/court folder of the addressee.
- by causing a true copy thereof to be delivered to the person(s) at the address(es) set forth below, by and/or through the services of:
- a. United Parcel Service
 - b. Federal Express
 - c. Express Mail
 - d. Facsimile (Followed by First Class Mail; Rules of Court §2008) Pursuant to Rules of Court §2008(e), this document was sent by facsimile transmission and this transmission was reported as complete and without error. A copy of this transmission report shall be attached to this proof of service and kept with the file.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 23, 2007, at Napa, California.


SUSAN M. INGALLS

SERVICE LIST

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 - 36th St.
Sacramento, CA 95816

Ms. Bonnie Ter Keurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Ms. Leslie McGill
California Peace Officers' Association
1455 Response Road, Suite 190
Sacramento, CA 95815

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 West Temple Street, Room 525
Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Ms. Jess McGuinn
Department of Finance (A-15)
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Daniel Terry
California Professional Firefighters
1780 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

Mr. Steve Keil
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell St., Suite 294
Folsom, CA 95630

Mr. Gerald Shelton
California Department of Education (E-08)
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite 106
Roseville, CA 95661

Ms. Amy Benton
California Professional Firefighters
1780 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

Mr. Jim Jagers
PO Box 1993
Carmichael, CA 95609

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95818

Mr. Glen Everroad
City of Newport Beach
PO Box 1768
Newport Beach, CA 92659-1768

James B. Hendrickson
City Manager
City of Palos Verdes Estates
340 Palos Verdes Drive West
Palos Verdes Estates, CA 90274

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



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

June 4, 2008

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

Dear Ms. Higashi:

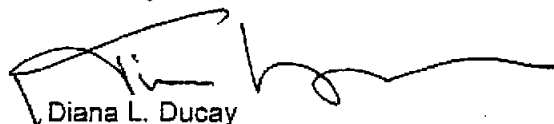
As requested in your letter of May 21, 2008, the Department of Finance has reviewed the draft staff analysis and the proposed statewide cost estimate for Claim No. CSM-01-TC-07, "Binding Arbitration."

As a result of our review, Finance concurs with the staff recommendation to adopt a statewide cost estimate of \$10,000. Finance is aware of only one local agency (Napa County) that incurred costs as a result of this mandate. While Napa County declared costs greater than \$10,000 as the result of binding arbitration the county engaged in during 2001, not all activities proposed by the test claimants were found to be reimbursable. Additionally, the proposed parameters and guidelines scheduled for adoption at the Commission's June 26, 2008 hearing excludes specific activities that may have been included in the county's declared estimate of costs.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your May 21, 2008 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



Diana L. Ducay
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF CARLA CASTAÑEDA
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-07

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

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

at Sacramento, CA


Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Binding Arbitration
Test Claim Number: CSM-01-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On June 4, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

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

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Ms. Bonnie TerKeurst
County of San Bernardino
Office of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415-0018

Mr. Tom McMains
California Peace Officer's Association
1455 Response Road, Suite 190
Sacramento, CA 95815

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

Ms. Susan Geanacou
Department of Finance
915 L-Street, Suite 1190
Sacramento, CA 95814

Ms. Jean Kinney Hurst
California Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814-3941

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

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

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

B-08

Mr. Jim Spano
State Controller's Office, Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Mr. John Liebert
Liebert Cassidy Whitmore
6033 West Century Blvd. #500
Los Angeles, CA 90045

Mr. James B. Hendrickson
City of Palos Verdes Estates
340 Palos Verdes Drive West
Palos Verdes Estates, CA 90274

Mr. Steve Smith
Steve Smith Enterprises, Inc.
2200 Sunrise Blvd., Suite 220
Gold River, CA 95670

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

Mr. J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864

Ms. Amy Benton
California Professional Firefighters
1780 Creekside Oaks Drive, Suite 200
Sacramento, CA 95833

A-15
Ms. Carla Castaneda
Department of Finance
915 L Street, 11th Floor
Sacramento, CA 95814

Ms. Donna Ferebee
Department of Finance
915 L Street, 11th Floor
Sacramento, CA 95814

Ms. Pam Kindig
Napa County Auditor-Controller's Office
1195 Third Street, Suite B-10
Napa, CA 94559

Ms. Nancy Watt
County of Napa
County Executive Office
1195 Third Street, Suite 310
Napa, CA 94559

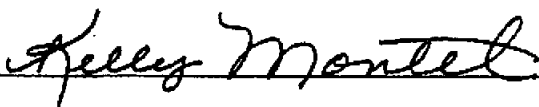
B-08
Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Glen Everroad
City of Newport Beach
3300 Newport Boulevard
PO Box 1768
Newport Beach, CA 92659-1768

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Ms. Juliana F. Gmur
MAXIMUS
2380 Houston Avenue
Clovis, CA 93611

On I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 4, 2008 at Sacramento, California.

A handwritten signature in cursive script, reading "Kelly Montelongo", is written over a solid horizontal line.

Kelly Montelongo

ICC: DUCAY, LYNN, CASTANEDA, SHELTON, FEREBEE, GEANACOU, FILE
I:\MANDATES\Parameters & Guidelines Phase - RRM Phase\Binding Arbitration\June 2008 DSA-SCE
Comments.doc

COUNTY of NAPA
OFFICE OF COUNTY COUNSEL

RECEIVED
JUN 04 2008
**COMMISSION ON
STATE MANDATES**



ROBERT WESTMEYER
County Counsel

+

MARGARET WOODBURY
Chief Deputy

SILVA DARBINIAN
Chief Deputy

+

LAURA J. ANDERSON
Deputy

JACQUELINE M. GONG
Deputy

ROBERT C. MARTIN
Deputy

PATRICIA L. TYRRELL
Deputy

ROBERT W. PAUL
Deputy

KRISHAN CHOPRA
Deputy

CAROL R. GALLAGHER
Deputy

JANICE D. KILLION
Deputy

CHRIS R.Y. APALLAS
Deputy

+

CHERI HUBER
Privacy Officer

+

LINDA HOLBROOK
Office Manager

+

SUSAN M. INGALLS
SORA O'DOHERTY
Paralegals

Sent by fax and U.S. mail

June 4, 2008

Ms. Nancy Patton
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento CA 95841

Re: Comments on Draft Staff Analysis and Proposed Statewide Cost Estimate
Binding Arbitration (01-TC-07)
City of Palos Verdes Estates, Claimant
County of Napa, Co-Claimant

Dear Ms. Patton:

Enclosed please find the County of Napa's Declaration in support of amending the proposed statewide cost estimate. Please let me know if you have any questions or require any further information.

Sincerely,

Jacqueline M. Gong
Deputy County Counsel

Encs.

1195 THIRD STREET
SUITE 301
NAPA, CALIFORNIA
94559

+

TELEPHONE:
707-253-4521

+

FAX:
707-259-8220

+

CO.NAPA.CA.US

**DECLARATION OF JACQUELINE M. GONG
IN SUPPORT OF AMENDMENTS TO THE PROPOSED STATEWIDE COST
ESTIMATES**

***Binding Arbitration
(01-TC-07)***

Code of Civil Procedures Sections 1281.1, 1299, 1299.2,
1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8 and 1299.9
As Added by Statutes 2000, Chapter 906

I, Jacqueline M. Gong, declare:

1. I am a Deputy County Counsel for the County of Napa, primarily assigned to employment law matters. From January through September 2001, I participated in the binding interest arbitration process between the County and the Napa County Deputy Sheriffs' Association ("DSA") to the final award of an arbitration decision on the disputed economic issues arising from negotiations. I have personal knowledge of the facts stated herein, and if called upon to testify, I could so competently.

2. The actual, full cost of the County's interest arbitration process is yet to be determined. However, I have reviewed documentation that generally identifies staff and time spent in the arbitration process. Based upon the proposed parameters and guidelines, as modified by claimant and staff of the Commission on State Mandates and set for hearing on June 26, 2008, I have prepared a chart of County staff and others who participated in various reimbursable arbitration activities, which is attached and incorporated by reference. In addition I have calculated a general estimate of the County's costs for the arbitration based upon the proposed parameters and guidelines. The following summary is an approximation of the staff, time and related costs for conducting the arbitration:

Summary of Estimated Staff Time and Costs

<u>Employee Class</u>	<u>Hours</u>	<u>PHR¹</u>	<u>Contract Services</u>	<u>Total</u>
Deputy County Counsel	250 hours	\$83.33		\$20,833.33
Human Resources Director	150 hours	\$80.87		\$12,130.50
Principal HR Analyst	20 hours	\$63.49		\$ 1,269.78
Benefits Administrator	15 hours	\$58.75		\$ 173.23

¹ PHR is the County's estimated productive hourly rate that includes administrative overhead in support of the staff position.

Legal Secretary	5 hours	\$34.65	\$	857.27
Asst. CEO	15 hours	\$85.73	\$	1,285.95
Auditor-Controller	5 hours	\$88.60	\$	443.02
CEO Analyst	5 hours	\$64.88	\$	324.39
Outside Counsel			\$126,000	
Expert Witnesses			\$ 50,000	
	Totals:		\$176,000²	\$37,317.47

Total Estimated Cost: \$213,317 (rounded up to \$215,000)

3. Based upon the foregoing, the amount of \$215,000 is a fair estimation of the costs incurred by the County of Napa to implement the state-mandated program from January 1, 2001 through April 20, 2003, and is a reasonable amount for the Commission on State Mandates to adopt as the statewide cost estimate.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge. This declaration is executed this 2nd day of June, 2008, in Napa, California.

Jacqueline M. Gong
 Jacqueline M. Gong
 Deputy County Counsel
 County of Napa

² The County of Napa retained outside counsel for the arbitration. The services were provided pursuant to Napa County Agreement No. 4489 and the First Amendment to this Agreement, copies of which are attached and incorporated by reference. The contract provided for a maximum amount of \$172,000 for compensation and expenses, including the retention of experts and consultants. In addition, County directly retained one expert witness/consultant to address retirement benefit costs. The estimate of \$176,000 for costs of outside counsel and expert witnesses is based upon a review of documentation relating to invoices paid by the County.

NAPA COUNTY AGREEMENT NO. 4489

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of this 2nd day of March, 2001, by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and CURIALE DELLAVERSON HIRSCHFELD KELLY & KRAEMER, LLP, whose federal tax identification number is 94-3256666, and business address is 727 Sansome Street, San Francisco, California 94111, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY is subject to pending arbitration pursuant to California Code of Civil Procedure Section 1299 et. seq.; and

WHEREAS, COUNTY wishes to obtain specialized legal services from a law firm with significant experience in handling local agency binding interest arbitration and administrative and judicial proceedings relating thereto; and

WHEREAS, CONTRACTOR is a legal partnership possessing the experience necessary to provide the legal services desired by COUNTY and is willing to provide such services under the terms and conditions set forth below; and

WHEREAS, CONTRACTOR has provided COUNTY with such services since on or about March 2, 2001, subject to negotiation of this Agreement; and

WHEREAS, CONTRACTOR and COUNTY have now agreed upon the scope of services as well as the method and rate of compensation.

TERMS

NOW, THEREFORE, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the terms and conditions set forth herein:

1. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall continue until completion of the binding interest arbitration matter between the COUNTY and the Napa County Deputy Sheriffs' Association, or June 30, 2002, whichever occurs first, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause) or 10 (Termination for Convenience); except that the obligations of CONTRACTOR to COUNTY under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall

also continue after said expiration date or early termination in relation to the obligations prescribed by Paragraphs 15 (Confidentiality), 22 (Taxes) and 24 (Access to Records/Retention).

2. Scope of Services.

(a) CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A", attached hereto and incorporated by reference herein; provided, however, that nothing in this agreement and no statement by CONTRACTOR to COUNTY shall be construed as a promise or guarantee about the outcome of the matters for which CONTRACTOR has been retained. Comments by CONTRACTOR regarding the possible outcome of matters for which CONTRACTOR has been retained are expressions of opinion only and cannot be construed as promises or guarantees.

(b) CONTRACTOR shall assign the following members of its firm to be primarily responsible for providing the representation required of CONTRACTOR under this agreement: Jeffrey Sloan and Alison Neufeld. Any alteration in this primary assignment shall be made only after consulting with and securing the approval of the Napa County Counsel; provided, however, that nothing in this paragraph shall preclude CONTRACTOR from utilizing other partners, members or employees of the firm to provide services in support of the purposes for which CONTRACTOR has been retained.

(c) CONTRACTOR shall provide the services required with the level of care, skill and expertise customarily exercised by licensed attorneys practicing Personnel/Labor law with additional expertise in litigating binding arbitration matters in the San Francisco Bay area. All persons assigned by CONTRACTOR to provide legal representation in court shall, at all times during the term of this Agreement, be members in good standing of the State Bar of California and/or admitted to practice before the federal courts located in California.

3. Compensation.

(a) Rates. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates set forth in Exhibit "B", attached hereto and incorporated by reference herein.

(b) Expenses. Travel and other expenses will be reimbursed by COUNTY upon submission of an invoice in accordance with Paragraph 4 at the rates and/or in accordance with the policy(s) set forth in Exhibit "B".

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement shall be a total of one hundred twenty-two thousand dollars (\$122,000.00) for professional services and expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and expenses actually incurred.

(d) Late Charges. Late fees shall not be charged.

4. **Method of Payment.**

(a) Invoices - Compensation. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. CONTRACTOR shall submit invoices not more often than monthly to the Napa County Counsel who, after review and approval as to form and content, shall submit the invoice to the Napa County Auditor no later than ten (10) working days following receipt. The Napa County Counsel reserves the right to question and disapprove any billings which are excessive in time or amount, lie outside the scope of this Agreement, or are inconsistent with the terms and conditions of this Agreement. Amounts disallowed shall not be paid until the dispute regarding same is resolved by agreement, settlement or judgment.

(b) Invoices - Reimbursement. All payments to CONTRACTOR representing reimbursement for (i) expenses incurred by CONTRACTOR due to the retention of consultants or experts or (ii) extraordinary expenses (see Exhibit "B" paragraphs 4-5), shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor. Invoices for reimbursement must include as an attachment a copy of the billing(s) received from the provider of such services. CONTRACTOR may submit invoices for such reimbursements at any time. Such invoices will be processed on a priority basis upon receipt of same by the Napa County Counsel.

5. **Consultants.** It may be necessary for CONTRACTOR to retain consultants in order to best provide the services required of CONTRACTOR under this Agreement. CONTRACTOR shall consult with, and obtain the prior approval of the Napa County Counsel regarding any such retention and the costs and other terms thereof.

6. **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, County employees for any purpose, including workers' compensation and employee benefits. CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation insurance. If and to the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement; including but not limited to, coverage for workers' compensation and disability, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability insurance

1. General Liability. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement commercial or comprehensive general liability [CGL] insurance coverage (personal injury and property damage) of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, issued by a company duly and legally licensed to transact business in the State of California, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement.

2. Professional Liability. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement professional liability/errors and omissions insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than One Million Dollars (\$1,000,000) combined single limit for each occurrence.

3. Comprehensive Automobile Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement, a policy of comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than Three Hundred Thousand Dollars (\$300,000) combined single limit per occurrence.

(c) Certificates. All insurance coverages referenced in 7(b), above, shall be evidenced by written confirmation of coverage which shall be filed with the County Counsel. This insurance coverage shall be kept current during the term of this agreement and the insurer shall agree in writing to provide COUNTY no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change in said coverage. Upon request of COUNTY, CONTRACTOR shall provide or arrange for the insurer to provide, within thirty (30) days of the request, certified copies of the actual insurance policies.

8. **Hold Harmless/Defense/Indemnification.** CONTRACTOR shall defend, indemnify and hold harmless COUNTY, its officers, agents and employees from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by CONTRACTOR, or its officer,

agents, or employees, of activities required under this Agreement, which performance is negligent or is in breach of the agreement, except such loss, injury, or damage caused by acts or omissions of the officers, agents or employees of COUNTY. COUNTY shall defend, indemnify and hold harmless CONTRACTOR, its partners, associates and employees from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with acts or omissions of COUNTY, or its officers, agents, or employees.

9. **Termination for Cause.** If CONTRACTOR shall fail to fulfill in a timely and proper manner CONTRACTOR's obligations under this agreement or otherwise breach this Agreement, COUNTY may, in addition to any other remedies it may have, terminate this Agreement by giving written notice to CONTRACTOR in the manner set forth in Paragraph 13 (Notices) in which case all uncompensated services rendered prior to the termination date set forth in the notice shall be paid at the rate set forth in Paragraph 3 (Compensation). If any event or circumstance occurs which would render continuing advisement or representation of COUNTY by CONTRACTOR unlawful or unethical, CONTRACTOR may terminate this Agreement and withdraw from advisement or representation of COUNTY upon first giving COUNTY at least five (5) days prior notice thereof.

10. **Termination for Convenience.** This Agreement may be terminated by either party for any reason and at any time by giving no less than thirty (30) days written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination.

11. **Disposition of and Payment for Work upon Termination.** In the event of termination for cause under Paragraph 9 or termination for the convenience of a party under Paragraph 10, all finished or unfinished documents and other materials, if any, at the option of COUNTY, become its property and CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement was terminated for convenience or cause, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

12. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

13. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other

party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

Robert Westmeyer
Napa County Counsel
1195 Third Street, Suite 301
Napa, California 94559

CONTRACTOR

Jeffrey Sloan, Esq.
Curiale Dellaverson Hirschfeld Kelly
& Kraemer
727 Sansome Street
San Francisco, California 94111

14. **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** To comply with state and federal laws, COUNTY has adopted various policies pertaining to workplace procedures and conditions. CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy adopted by resolution of the Board of Supervisors on March 26, 1991.

(b) County of Napa "Policy for Maintaining a Harassment Free Work Environment" revised effective December 12, 2000.

(c) County of Napa Drug and Alcohol Policy adopted by resolution of the Board of Supervisors on June 25, 1991.

(d) Napa County Computer Use and Information Security Policy adopted by resolution of the Board of Supervisors on March 25, 1997. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy which is entitled, "NAPA COUNTY, Computer Information Use & Security Policy, STANDARD OF CONDUCT STATEMENT".

15. **Confidentiality.** Confidential information is defined as all information disclosed to CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive, if any, in trust and confidence, except with the prior written authorization of COUNTY. In the provision of the services hereunder, CONTRACTOR shall

not waive the attorney-client privilege as to any matter unless expressly authorized to do so by the COUNTY. For purposes of this paragraph, CONTRACTOR shall assume that only the following persons are authorized to direct, request, or authorize CONTRACTOR to take action, disclose confidential information, or waive the attorney-client privilege, on behalf of COUNTY: the Board of Supervisors of the County of Napa by collective action, the Napa County Administrator or the Napa County Counsel.

16. **Responsibility of County.** All information, data, records, files, research material, and the like which are existing, available, in the possession of COUNTY, and necessary for CONTRACTOR to perform the services required under this Agreement shall be furnished to CONTRACTOR without charge by the COUNTY. COUNTY shall be responsible for making reasonable staff assistance available to CONTRACTOR to collect such information and shall promptly review CONTRACTOR's work prior to the filing of any documents other than procedural documents, utilizing compatible computer transmission of documents wherever possible. The Napa County Counsel shall make available one or more deputies to work in conjunction with CONTRACTOR for the purpose of containing to the maximum extent possible the cost of the legal services to be provided by CONTRACTOR.

17. **Ownership of Materials/Attorney Client Privilege.** All finished or unfinished documents, briefs, data, studies, computer programs and reports prepared by CONTRACTOR or by any expert retained by CONTRACTOR as part of the performance of any of the services required of CONTRACTOR under this Agreement shall be considered the property of the COUNTY as the client of CONTRACTOR and the Napa County Counsel, both of whom shall maintain the confidentiality, pursuant to the attorney-client and attorney work products privileges, of all such material except as waived by COUNTY as provided in paragraph 15. Upon completion of the services required of CONTRACTOR under this Agreement, or upon termination of this Agreement prior to completion, copies of all such materials in the possession of CONTRACTOR not previously furnished to the Napa County Counsel shall be provided to the Napa County Counsel by CONTRACTOR.

18. **No Assignments or Subcontracts.**

(a) In general. Because of the specialized skills required by CONTRACTOR in the performance of the services required by this Agreement and the fact that COUNTY has entered into this Agreement with CONTRACTOR in part based upon relatively unique factors such as the nature and quality of CONTRACTOR's prior work for various public agencies involving binding interest arbitration matters, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, as expressed through the Napa County Counsel, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. This Paragraph does not apply to consultants, including expert witnesses, retained by CONTRACTOR pursuant to Paragraph 5.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to give COUNTY written notice of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

19. Amendment/Modification. Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, through its Board of Supervisors in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "A". Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

20. Interpretation; Venue.

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California.

21. Compliance with Laws. With regard to CONTRACTOR's provision of legal services under this Agreement, CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical

condition (including cancer, HIV and AIDS), or use of family care leave. CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Inclusion in Subcontracts. To the extent any of the legal services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

22. Taxes. CONTRACTOR agrees to file federal and state tax returns on applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

23. Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation or limited liability partnership, or lawfully assigns any portion of this Agreement to a

corporation or limited liability partnership during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be maintained on file with COUNTY at all times during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

24. **Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records for at least five (5) years after all pending matters are closed.

25. **Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

26. **Conflict of Interest.** CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict.

27. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

28. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

29. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

30. **Entirety of Contract.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the

date first above written.

CURIALE-DELLAVERSON HIRSCHFELD
KELLY & KRAEMER, LLP

By [Signature] Partner
[NAME] , [Title]

[if a corporation, add 2nd line]

By _____
[NAME] ; [Title]

“CONTRACTOR”

COUNTY OF NAPA, a political subdivision of
the State of California

By [Signature]
MIKE RIPPEN, Chairman of the Board of
Supervisors

“COUNTY”

ATTEST: MARY JEAN MCLAUGHLIN,
Clerk of the Board of Supervisors

By [Signature] Deputy

APPROVED 5-22-01
BOARD OF SUPERVISORS
COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

[Signature] Deputy

APPROVED AS TO FORM	
Office of County Counsel	
By: <u>[Signature]</u>	
Date: <u>5/30/01</u>	

EXHIBIT "A"

SCOPE OF WORK

1. **Litigation.** Legal representation in litigation involving binding interest arbitration between the COUNTY and the Napa County Deputy Sheriffs' Association pursuant to California Code of Civil Procedure Section 1299 et. seq. CONTRACTOR shall represent COUNTY as counsel of record including, but not limited to, providing the following legal services:
 - a. Research, prepare, write and draft pleadings, documents and agreements, if any, that are necessary for the representation of the COUNTY.
 - b. Appear on behalf of the COUNTY in all arbitration and court proceedings, if any, and act as primary legal representative of the COUNTY in any discussions, negotiations or contacts with respect to the subject matter of the representation.
 - c. Consult with, and keep Napa County Counsel (general legal counsel for COUNTY) informed of the status of the case, all documents proposed to be filed, any settlement offers, hearing or discovery dates, and strategy. CONTRACTOR shall provide Napa County Counsel with advance copies of all matters proposed to be filed with the arbitration panel or court and copies of any correspondence relating to the subject matter of the representation.

1. **Attendance at Meetings.** Attend, upon request by Napa County Counsel, meetings, regular or special, of the COUNTY Board of Supervisors.

2. **Supplemental Attorney Services.** Subject to the exceptions set forth below, CONTRACTOR may utilize other attorneys and legal assistants of CONTRACTOR to assist in the representation of COUNTY and has the discretion to determine which persons will provide such services.

3. **Association of Counsel; Prohibited Without Written Consent.** In the performance of the services described herein, CONTRACTOR shall not associate with other counsel without prior written consent of the Napa County Counsel.

4. **General Provisions.** In providing the legal services described in this Agreement, CONTRACTOR shall endeavor to avoid duplication of effort wherever possible, internally or between its staff and that of the Napa County Counsel. Only one member of CONTRACTOR's staff will appear, on a billable basis, at any meeting or in any proceeding, unless otherwise approved in advance by the Napa County Counsel. At his option, the Napa County Counsel may require such requests and approvals to be in writing. It is also the understanding of CONTRACTOR and COUNTY that CONTRACTOR is assigning attorneys who are trained and experienced in handling binding interest arbitration issues and matters and therefore no consultation between professional members of CONTRACTOR's firm other than those identified in this Agreement, supervision of a subordinate's work, or proofreading/review of written work shall be billed to COUNTY.

EXHIBIT "B"

COMPENSATION AND EXPENSE REIMBURSEMENT

1. Methodology. Charges for professional services shall be in minimum units of 1/10th of an hour.

2. Rates for Services.
\$240/hour - Jeffrey Sloan
\$200/hour - Alison Neufeld
\$125/hour - Legal Intern
\$90/hour - Paralegal

Charges for professional services may include travel time on COUNTY's behalf.

3. Expenses.

In-Office Copying	no charge
Facsimile Transmission	no charge
Travel (if authorized in advance)	\$.28 per mile

Actual costs for usual miscellaneous expenses (Fed Ex etc.) will be paid by CONTRACTOR and reimbursed by COUNTY unless other arrangements are made with the County Counsel and reduced to writing. CONTRACTOR shall itemize these expenses in all its invoices submitted for reimbursement from COUNTY.

4. Extraordinary Expenses. Extraordinary expenses, if approved in advance, shall be billed at actual cost with supporting documentation for such costs provided to COUNTY upon request.

5. COUNSEL is authorized to contract with consultants or experts for needed reports and services after securing the approval of the Napa County Counsel. COUNSEL upon receipt of a billing from consultants or experts will promptly request reimbursement from COUNTY in the manner set forth in paragraph 4 of this Agreement. COUNTY will reimburse COUNSEL within 30 days of receipt of a request for reimbursement.

**FIRST AMENDMENT TO
NAPA COUNTY AGREEMENT NO. 4489**

PROFESSIONAL SERVICES AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT NO. 4489 is made and entered into as of this 25th day of September, 2001, by and between the COUNTY OF NAPA, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and CURIALE DELLAVERSON HIRSCHFELD KELLY & KRAEMER, LLP, whose federal tax identification number is 94-3256666, and business address is 727 Sansome Street, San Francisco, California 94111, hereinafter referred to as "CONTRACTOR";

RECITALS

WHEREAS, COUNTY is subject to pending arbitration pursuant to California Code of Civil Procedure Section 1299 et. seq.; and

WHEREAS, CONTRACTOR has provided COUNTY with such services since on or about March 2, 2001, subject to negotiation of this Agreement; and

WHEREAS, continuing negotiations have necessitated further services of CONTRACTOR and subsequently require an increase in the term of the agreement and compensation.

TERMS

NOW, THEREFORE, COUNTY hereby amend Agreement No. 4489 in accordance with the terms and conditions set forth below:

1) Section 3(c) (Compensation, Maximum Amount) of Agreement 4489 is amended to read in full as follows:

(c) Maximum Amount. Notwithstanding subparagraphs (a) and (b), the maximum payments under this Agreement during fiscal year 2001-2002 shall be increased by fifty thousand dollars (\$50,000) to a total of one hundred seventy-two thousand dollars (\$172,000.00) for professional services and expenses; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and expenses actually incurred.

2) All other terms and provisions of Agreement No. 4489 shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment to Agreement No. 4489 was executed

by the parties hereto as of the date first above written.

CURIALE DELLAVERSON HIRSCHFELD
KELLY & KRAEMER, LLP

By [Signature] Partner
[NAME] , [Title]

"CONTRACTOR"

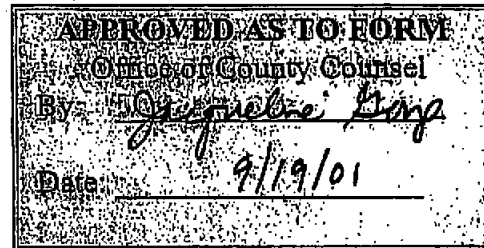
COUNTY OF NAPA, a political subdivision of
the State of California

By [Signature]
MIKE REPPEY, Chairman of the Board of
Supervisors

"COUNTY"

ATTEST: MARY JEAN MCLAUGHLIN,
Clerk of the Board of Supervisors

By [Signature] Deputy



9-25-01
OF SUPERVISORS
COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

[Signature] Clerk

PROOF OF SERVICE

Test Claim Name: Binding Arbitration
Test Claim No: Csm-01-Tc-07

I, the undersigned, declare as follows:

I am employed in the County of Napa, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1195 Third St., Ste. 301, Napa, CA. 94559.

On June 4, 2008, I served the attached Declaration in support of amending the proposed statewide cost estimate by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants, state and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Napa, California, addressed as follows:

NANCY PATTON
ASST EXECUTIVE DIRECTOR
COMMISSION ON STATE MANDATES
980 NINTH ST STE 300
SACRAMENTO CA 95841

MS. PAULA HAGASHI
EXECUTIVE DIRECTOR
COMMISSION ON STATE MANDATES
980 NINTH STREET SUITE 300
SACRAMENTO CA 95841

MR STEVE SHIELDS
SHIELDS CONSULTING GROUP INC
1536 - 36TH ST
SACRAMENTO CA 95816

TOM MCMAINS
CALIFORNIA PEACE OFFICERS ASSN
1455 RESPONSE RD STE 190
SACRAMENTO CA 95815

MS BONNIE TER KEURST
COUNTY OF SAN BERNARDINO
OFC OF THE AUDITOR/CONTROLLER-RECORDER
222 WEST HOSPITALITY LANE
SAN BERNARDINO CA 92415-0018

R LEONARD KAYE ESQ
L A AUDITOR-CONTROLLERS OFC
500 WEST TEMPLE ST RM 525
KENNETH HAHN HALL OF ADMIN
LOS ANGELES CALIFORNIA 90012

MS SUSAN GEANACOU
DEPARTMENT OF FINANCE (A-15)
915 L STREET SUITE 1190
SACRAMENTO CA 95814

CARLA CASTANEDA
DEPT OF FINANCE
915 L ST 11TH FLR
SACRAMENTO CA 95814

MS JEAN KINNEY HURST
CALIFORNIA ASSN OF COUNTIES
1100 K STREET STE 101
SACRAMENTO CA 95814-3941

MS ANNETTE CHIN
COST RECOVERY SYSTEMS INC
705-2 EAST BIDWELL ST NO 294
FOLSOM CA 95630

DAVID WELLHOUSE
DAVID WELLHOUSE & ASSOC INC
9175 KIEFER BLVD STE 121
SACRAMENTO CA 95826

MS AMY BENTON
CALIFORNIA PROFESSIONAL FIREFIGHTERS
1780 CREEKSIDE OAKS DRIVE SUITE 200
SACRAMENTO CA 95833

MR J BRADLEY BURGESS
PUBLIC RESOURCE MANAGEMENT GROUP
1380 LEAD HILL BOULEVARD SUITE 106
ROSEVILLE CA 95661

MS GINNY BRUMMELS
STATE CONTROLLERS OFFICE (B-08)
DIVISION OF ACCOUNTING & REPORTING
3301 C STREET SUITE 500
SACRAMENTO CA 95816

MR GLEN EVERROAD
CITY OF NEWPORT BEACH
PO BOX 1768
NEWPORT BEACH CA 92659-1768

JAMES B HENDRICKSON
CITY MANAGER
CITY OF PALOS VERDES ESTATES
340 PALOS VERDES DRIVE WEST
PALOS VERDES ESTATES CA 90274

ALLAN BURDICK
MAXIMUS INC
4320 AUBURN BLVD SUITE 2000
SACRAMENTO CA 95841

JIM SPANO
STATE CONTROLLERS OFC
DIVISION OF AUDITS
300 CAPITOL MALL STE 518
SACRAMENTO CA 95814

JOHN LIEBERT
LIEBERT CASSIDY WHITMORE
6033 WEST CENTURY BLVD #500
LOS ANGELES CA 90045

STEVE SMITH
STEVE SMITH ENTERPRISES INC
2200 SUNRISE BLVD STE 220
GOLD RIVER CA 95670

DONNA FEREBEE
DEPT OF FINANCE
915 L ST 11TH FLR
SACRAMENTO CA 95814

PAM KINDIG
NAPA CO AUDITOR CONTROLLERS OFC
1195 THIRD ST STE B10
NAPA CA 94559

NANCY WATT
NAPA COUNTY EXECUTIVE OFFICE
1195 THIRD ST STE 310
NAPA CA 94559

BETH HUNTER
CENTRATION INC
8570 UTICA AVE STE 100
RANCHO CUCAMONGA CA 91730

JULIANA F SMUR
MAXIMUS
2380 HOUSTON AVE
CLOVIS CA 93611

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 4, 2008 at Napa, California.



NINA JACK

Paula Higashi

From: Gong, Jackie [JGONG@co.napa.ca.us]
Sent: Thursday, June 05, 2008 12:21 PM
To: Paula Higashi
Subject: RE: Binding Arbitration 01-TC-07/County of Napa, Co-Claimant

Dear Ms. Higashi:

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

Please let me know if you have any questions or need anything further.

Jackie Gong

From: Paula Higashi [mailto:paula.higashi@csm.ca.gov]
Sent: Thursday, June 05, 2008 10:25 AM
To: Gong, Jackie
Subject: RE: Binding Arbitration 01-TC-07/County of Napa, Co-Claimant
Sensitivity: Confidential

Ms. Gong,
 Thank you for sending the additional information documenting the county's costs. In reviewing Exhibit A, Scope of Work, I noticed that the contract authorizes legal representation in "court proceedings." Were any costs billed for "court proceedings"? If so, have these costs already been subtracted from the total contract amount?
 Paula Higashi, Executive Director
 Commission on State Mandates
 (916) 323-8210

From: Gong, Jackie [mailto:JGONG@co.napa.ca.us]
Sent: Wednesday, June 04, 2008 4:52 PM
To: Paula Higashi
Subject: FW: Binding Arbitration 01-TC-07/County of Napa, Co-Claimant
Sensitivity: Confidential

Dear Ms. Higashi:

Pursuant to your request, please find the County's response to the draft staff analysis and proposed statewide cost estimates. Because of the lengthiness of the County agreement for outside counsel, I did not send you PDF copies of this document. Hard copies of the entire response, including the agreement, were faxed to Nancy Patton's attention today. If you would like me to directly fax you the County agreement, I would be happy to do so.

Please let me know if you have any questions regarding the response, or have need of anything else.

Jackie Gong
Deputy County Counsel
Napa County Counsel's Office
(707) 259-8249

From: O'Doherty, Sora
Sent: Wednesday, June 04, 2008 10:23 AM
To: Gong, Jackie
Subject:

Hi Jackie,

I hope this is OK.

Sara O'Doherty
Paralegal
Office of County Counsel
(707) 251-1090

Paula Higashi

From: Paula Higashi
Sent: Thursday, June 05, 2008 10:25 AM
To: 'Gong, Jackie'
Subject: RE: Binding Arbitration 01-TC-07/County of Napa, Co-Claimant
Sensitivity: Confidential

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Please let me know if you have any questions regarding the response, or have need of anything else.

Jackie Gong
 Deputy County Counsel
 Napa County Counsel's Office
 (707) 259-8249

From: O'Doherty, Sora
Sent: Wednesday, June 04, 2008 10:23 AM
To: Gong, Jackie
Subject:

Hi Jackie,

I hope this is OK.

Sora O'Doherty
 Paralegal
 Office of County Counsel
 (707) 251-1090

