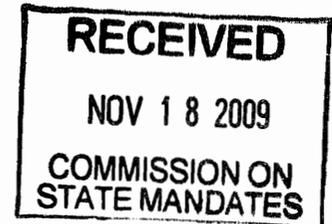


BURHENN & GEST LLP  
624 SOUTH GRAND AVENUE  
SUITE 2200  
LOS ANGELES, CALIFORNIA 90017  
TELEPHONE (213) 688-7715  
FACSIMILE (213) 688-7716



WRITER'S DIRECT NUMBER  
(213) 629-8788

WRITER'S E-MAIL ADDRESS  
DBURHENN@burhennigest.com

November 13, 2009

Via FedEx

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

Re: *Test Claim No.03-TC-04; 03-TC-20; 03-TC-21: Rebuttal to  
Comments of Department of Finance*

Dear Ms. Higashi:

This letter constitutes the rebuttal of Claimants the Cities of Artesia, Beverly Hills, Carson, Norwalk, Rancho Palos Verdes, Vernon, Westlake Village, Azusa, Commerce, Bellflower, Covina, Downey, Monterey Park and Signal Hill ("Cities") to the comments dated October 20, 2009 filed by the State Department of Finance ("DOF") to the proposed Parameters and Guidelines ("Ps&Gs") filed by the Cities and the County of Los Angeles.

**Section I – Scope of Mandate:** The DOF comments that this section should be "corrected to reflect the Commission's adopted statement of decision." The Cities believe that the Section accurately reflects the Statement of Decision and do not believe that any correction is required.

**Section II – Eligible Claimants:** The DOF comments that this section should be amended to "list the eligible claimants that are not subject to a Total Maximum Daily Load requirement." The Cities believe that this level of specificity is not required, as the Statement of Decision provides adequate clarity as to what cities are entitled to a subvention of funds. Thus, no amendment is required.

**Section III – Period of Reimbursement:** The DOF makes three comments, each of which will be addressed.

First, the DOF states that the reimbursement period for the placement of trash receptacles should commence July 1, 2002 and end, respectively, at August 1, 2002 for

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the placement of receptacles at transit stops with shelters and February 3, 2003 for remaining transit stops. The DOF further requests that the reimbursement period for maintenance receptacles continue until the test claim Permit is no longer valid.

In response, the proposed Ps&Gs already identify July 1, 2002 as the commencement date. The Cities do not agree with end dates of August 1, 2002 and February 3, 2003, as costs may have been incurred after those dates. For example, after those dates, municipalities may be required to place trash receptacles at new transit stops as the result of changes in transit routes. With respect to the reimbursement period for maintenance, the Cities do not object to a limitation to the period during which the executive order remains valid. The Cities note that the Order in question has remained valid beyond its official expiration date of December 13, 2006,

Second, the DOF requests deletion of the reference to estimated claims for the succeeding year. The Cities do not object to this comment.

Third, the DOF requests revising the minimum threshold to \$1,000. The Cities do not object to this comment.

**Section IV – Reimbursable Activities:** The DOF requests amendment of item (1) under Section IV(A) and deletion of the existing items (1) through (4). The DOF also requests modification of items 1 and 2 under Section IV(B) and deletion of existing items (2), (3), (5) and (6).

The Cities object to these comments. First, with respect to the items under Section IV(A), all are reasonably required by the mandate in question, as set forth in the expert Declaration of Aras Ahmed of the County of Los Angeles Department of Public Works, attached as an exhibit to the County's test claim 03-TC-04 filed with the Commission on September 2, 2003. While not all Claimants may have incurred all of the costs set forth in Section IV(A), the Ps&Gs must provide for the subvention of such costs if they have been incurred. Given the need to install trash receptacles that were durable and theft-proof, prior planning and design was required, including relating to the construction and installation of pads.

Second, with respect to the comments on Section IV(B), all of the items in the proposed Ps&Gs are reasonably related to the effort required to respond to the mandate. In particular, the deletion of maintenance items relating to inspections, liner replacement and repair of receptacle pads (if present), would result in a failure adequately to compensate the Claimants for the reasonable costs of complying with the mandate. Obviously, if such costs are not incurred, no subvention of funds is required. In particular, as noted in the rebuttal to comments made by the Los Angeles Regional Water Quality Control Board filed concurrently herewith, the value of routine inspections of the condition of the receptacles, as opposed to the greater expense and poorer performance of random surveys, is essential to economical and thorough compliance with the

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maintenance aspects of the mandate. The Ps&Gs must be sufficiently inclusive to cover such costs if they incurred by Claimants.

**Section V – Claim Preparation and Submission:** The DOF comments that the Ps&Gs should exclude the costs of training and purchasing computers as reimbursable direct costs. The Cities disagree. Such costs, if reasonably related to the efforts required to comply with the mandate, must be included.

**Section VII – Offsetting Savings and Other Reimbursements:** The DOF comments that this section should be amended to deduct from the claim any offsets experienced by Claimants in the same program as a result of the same statutes or executive orders found to contain the mandate, and also from any reimbursement for the mandate from any source, including service fees, federal funds and other state funds.

The Cities do not object in principle to this comment, but believe that the wording of Section VII should read as follows (with new language in **bold** type), to ensure that only an “identical” mandate would create a deduction:

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

The Cities appreciate this opportunity to provide this rebuttal to the comments of the Department of Finance. Should you have further questions regarding the matters discussed in this letter, please contact us at the address noted above.

Very truly yours,



David W. Burhenn

cc: Mailing List

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**PROOF OF SERVICE**

I am employed in Los Angeles County. I am over the age of 18 and not a party to this action. My business address is 624 S. Grand Avenue, 22<sup>nd</sup> Floor, Los Angeles, California 90017.

On November 13, 2009 I served the foregoing document, described as

**REBUTTAL OF CLAIMANT CITIES TO COMMENTS OF DEPARTMENT  
OF FINANCE ON DRAFT PARAMATERS AND GUIDANCE**

- the original of the document  
 true copies of the document

in separate sealed envelopes addressed as follows:

See Attached Service List

**BY U.S. MAIL:** I sealed and placed such envelope for collection and mailing to be deposited on the same day at Los Angeles, California. The envelopes were mailed with postage thereon fully prepaid. I am readily familiar with Burhenn & Gest LLP's practice of collection and processing corresponding for mailing. Under this practice, documents are deposited with the U.S. Postal Service on the same day that is stated in the proof of service, with postage fully prepaid at Los Angeles, California in the ordinary course of business.

**BY FEDERAL EXPRESS:** I am familiar with the firm's practice of collecting and processing correspondence for delivery via Federal Express. Under that practice, it would be picked up by Federal Express on that same day at Los Angeles, California and delivered to the parties as listed on this Proof of Service the following business morning.

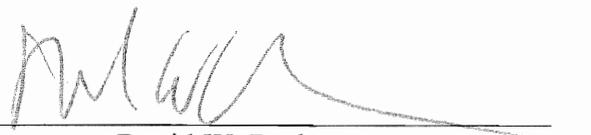
**BY FACSIMILE:** I caused the above referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service.

**BY PERSONAL SERVICE:** I personally delivered such envelope by hand to the office of the addressee(s).

**STATE:** I declare under penalty of perjury under the laws of the state of California that the above is true and correct.

**FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 13, 2009 at Los Angeles, California.

  
\_\_\_\_\_  
David W. Burhenn

# Commission on State Mandates

Original List Date: 9/29/2003  
Last Updated: 9/14/2009  
List Print Date: 09/14/2009  
Claim Number: 03-TC-04  
Issue: Transit Trash Receptacles

## Agenda Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

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

Ms. Hasmik Yaghobyan County of Los Angeles Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 893-0792 Fax: (213) 617-8106
Mr. Michael Lauffer State Water Resources Control Board	Tel: (916) 341-5183 Fax: (916) 641-5199
Ms. Tracy Egoscue Los Angeles Regional Water Quality Control Board 320 West 4th Street, Suite 200 Los Angeles, CA 90013-2343	Tel: (213) 576-6600 Fax: (213) 576-6840
Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: (916) 323-5849 Fax: (916) 327-0832
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 12th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 323-9584
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 449-5252
Mr. Howard Gest David W. Burhenn & Gest, LLP 624 S. Grand Ave., Suite 2200 Los Angeles, California 90017	Tel: (213) 688-7715 Fax: (213) 688-7716
Ms. Emmerline Foote City of Inglewood One Manchester Blvd., Suite 860 Inglewood, CA 90301	Tel: (310) 412-5111 Fax:
Mr. Clark Moseley City of El Monte 11333 Valley Boulevard El Monte, CA 91731-3293	Tel: (626) 580-2001 Fax: 626-580-2274

Mr. Scott Nichols Alvarez-Glasman & Clovin 13181 Crossroads Parkway North Suite 400 City of Industry, CA 91746	Tel: (562) 699-5500 Fax: (562) 692-2244
Ms. Dorothy Rice State Water Resources Control Board P.O. Box 2815 Sacramento, CA 95812-2815	Tel: (916) 341-5615 Fax: (916) 341-5621
Mr. Richard Montevideo Rutan & Tucker, LLP P.O. Box 1950 Costa Mesa, CA 92626-1950	Tel: (714) 662-4642 Fax:
Mr. David Wellhouse David Wellhouse & Associates, Inc. 9175 Kiefer Blvd, Suite 121 Sacramento, CA 95826	Tel: (916) 368-9244 Fax: (916) 368-5723
Mr. Allan Burdick MAXIMUS 3130 Kilgore Road, Suite 400 Rancho Cordova, CA 95670	Tel: (916) 471-5538 Fax: (916) 366-4838
Ms. Juliana F. Gmur MAXIMUS 2380 Houston Ave Clovis, CA 93611	Tel: (916) 485-8102 Fax: (916) 485-0111
Mr. Glen Everroad City of Newport Beach 3300 Newport Blvd. P. O. Box 1768 Newport Beach, CA 92659-1768	Tel: (949) 644-3127 Fax: (949) 644-3339
Mr. Steve Smith Steve Smith Enterprises, Inc. 2200 Sunrise Blvd., Suite 220 Gold River, CA 95670	Tel: (916) 852-8970 Fax: (916) 852-8978
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
Ms. Annette Chinn Cost Recovery Systems, Inc. 705-2 East Bidwell Street, #294 Folsom, CA 95630	Tel: (916) 939-7901 Fax: (916) 939-7801
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916) 324-0256 Fax: (916) 323-6527
Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: (916) 712-4490 Fax: (916) 290-0121

Ms. Elizabeth Miller Jennings State Water Resources Control Board P.O. Box 100 Sacramento, CA 95812-0100	Tel: (916) 341-5161 Fax: (916) 341-5199
Ms. Lisa Bond Richards, Watson & Gershon, LLP 355 South Grand Avenue, 40th Floor Los Angeles, CA 90071	Tel: (213) 626-8484 Fax:
Mr. Leonard Kaye  Auditor-Controller's Office 500 W. Temple Street, Room 603 Los Angeles, CA 90012	Tel: (213) 974-9791 Fax: (213) 617-8106
Mr. Sergio Ramirez City of Foster City/Estero Municipal Improvement District 100 Lincoln Centre Drive Foster City, CA 94404	Tel: (650) 286-3544 Fax: