



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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August 26, 2009

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

Dear Ms. Higashi:

**LOS ANGELES COUNTY'S DRAFT PARAMETERS & GUIDELINES (Ps&Gs)
MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES TEST CLAIMS**

The County of Los Angeles respectfully submits its draft Ps&Gs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program which the Commission approved on July 31, 2009.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,


Wendy L. Watanabe
Auditor-Controller

WLW:JN:CY:lk

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Enclosure

Los Angeles County's Draft Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims

Narrative

The draft parameters and guidelines (Ps&Gs) proposed by the County of Los Angeles (County) are found on pages 5-14. These Ps&Gs provide the basis for reimbursing local agencies for their costs in implementing the Municipal Storm Water and Urban Runoff Discharges program.

The proposed Ps&Gs closely follow the July 31, 2009 decision of the Commission on State Mandates [Commission]. This decision provides reimbursement only for the "Transit Trash Receptacles" component of the program.

Specifically, the Commission found the costs of placement and maintenance of transit trash receptacles (as specified in the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3) to be reimbursable. Consequently, reimbursement only for the costs of placing and maintaining transit trash receptacles is provided for in the County's draft Ps&Gs.

Only certain local agencies are eligible to obtain reimbursement under this program. The draft Ps&Gs adhere to the Commission's limitation that only those local agencies specified in Permit (CAS004001), that are not subject to a trash TMDL¹, are eligible claimants. These local agencies include the County of Los Angeles, the Los Angeles County Flood Control District and various cities in Los Angeles County².

The County's draft Ps&Gs provide that eligible claimants are entitled to reimbursement for costs incurred in placing and maintaining transit trash receptacles on or after July 1, 2002, a date set in Commission's July 31, 2009 Statement of Decision.

¹ A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

² These eligible city claimants include Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina.

Reimbursable Activities

The reimbursable activities proposed by the County are reasonably necessary in implementing the State mandates identified by the Commission on page 3 of their Statement of Decision. These mandates require eligible claimants to:

“Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.”

The County’s proposed Ps&Gs expands upon the (above) State mandates. Only activities which are reasonably necessary in performing mandated duties are proposed. These activities were initially formulated in a declaration of Aras Ahmed³, Associate Civil Engineer, in the Program Development Division of Los Angeles County’s Department of Public Works, as follows:

- “1. Identifying all transit stops within its jurisdiction except for the Los Angeles River and Ballona Creek Watershed management areas.
2. Selecting proper trash receptacle design and evaluating proper placement of trash receptacles.
3. Designing receptacle pad improvement, if needed.
4. Constructing and installing trash receptacle units.
5. Collecting trash and maintaining receptacles.”

Subsequently, after the Commission’s Statement of Decision was adopted on July 31, 2009, County staff met and conferred with representatives of city co-claimants. As a result, those activities reasonably necessary in performing mandated duties were developed further.

For example, regarding the placement of trash receptacles at transit stops, the draft Ps&Gs provide that eligible claimants may satisfy this requirement using their own staff and materials or by letting construction contracts. Guidance is provided

³ Mr. Aras’s declaration was attached as an exhibit to Los Angeles County’s “Transit Trash Receptacle” test claim (03-TC-04) filed with the Commission on September 2, 2003.

that reimbursement is available for: planning (including identifying transit stops, evaluating and selecting trash receptacle type, evaluation of placement of trash receptacles and specification and drawing preparation); and, preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); and, construction and installation of trash receptacles (including fabrication and installation of receptacles and foundations and construction management).

Regarding trash collection and maintenance, claimants indicated that those activities reasonably necessary to perform State mandated duties should include repairing, replacing, removing and installing trash receptacles and/or pads, as needed. They explained that as new transit stops are added, new pads and receptacles must be added. As old transit stops are discontinued, pads and receptacles must be removed. Also, when receptacles and pads are damaged or missing, replacement or repair is required. Accordingly, language to this effect was added to the Ps&Gs.

Time Study Method

The County's draft Ps&Gs allow claimants to use the time study method of reimbursement to recover their costs in performing the repetitive tasks of trash collection and related receptacle maintenance.

The proposed time study protocol requires that all reimbursable time for an employee or contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for four through nine staff, at least two staff should be time surveyed. If ten or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

A claimant may use the time study method to obtain reimbursement for employee, not contract labor, costs. Use of the time study method requires that a representative sample of the hours to be devoted to the maintenance of the trash receptacles over at least a two month period shall be taken. Time records used to support the time study shall:

- i. Reflect an after-the-fact distribution of each employee's actual activity;
- ii. Account for the total activity for which each employee is compensated;

- iii. Account for the total labor hours of the month;
- iv. Be signed and dated by the employee not later than the end of the pay period that follows the pay period covered by the report; and
- v. Document, by signature or initials and date, supervisor approval.

Reasonable Reimbursement Methodology

It should be noted that the County's draft Ps&Gs do not currently allow claimants to use a 'reasonable reimbursement methodology' (RRM), as there was not sufficient time to develop a RRM. However, it is anticipated that these Ps&Gs will be revised in the coming months in order to provide an RRM unit cost reimbursement rate option. This RRM option will meet pertinent requirements in Government Code Section 17518.5:

“(b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.

(c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.

(d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.”

Accordingly, the County's draft Ps&Gs for the Municipal Storm Water and Urban Runoff Discharges reimbursement program is presented on the following pages.

**Los Angeles County's Draft Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims**

I. SUMMARY OF THE MANDATE

On July 31, 2009 the Commission on State Mandates (Commission) issued a Statement of Decision finding, on page 3, that the Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3, imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. This program requires the County of Los Angeles and various cities to:

“Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.”

The Commission found that the inspection activities, also required under Permit CAS004001, in Parts 4C2a, 4C2b and 4E, mandate inspections of various facilities. The Commission determined that while these requirements were imposed by the State, and not the federal government, these activities were not reimbursable state mandates because the claimants had fee authority within the meaning of Government Code section 17556, subdivision (d), sufficient to pay for the activities in those parts of the permit.

II. ELIGIBLE CLAIMANTS

The County of Los Angeles, Los Angeles County Flood Control District and all cities covered under the municipal storm water permit issued by the Los Angeles Regional Quality Control Board in Order No. 01182, Permit No. CAS0040001, in Part 4F5c3, to the extent that these local agencies were not subject to coverage under a trash ‘Total Maximum Daily Load’, or TMDL requirement.

III. PERIOD OF REIMBURSEMENT

The test claim executive order (Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, in Part 4F5c3) took effect on December 13, 2001, the same date as the Permit.

The requirements to initially install trash receptacles commenced with the effective date of the Permit and continued until February 3, 2003 for all trash receptacles. The requirement to maintain the trash receptacles is continuing.

Government Code section 17557, as amended by Statutes of 1998, Chapter 681 (which became effective on September 22, 1998), states that a test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

On September 30, 2003, the County of Los Angeles and the Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena and West Covina filed test claims for this mandated program, establishing eligibility for reimbursement. The Commission originally refused jurisdiction of the test claims pursuant to Government Code section 17516. After litigation, the California Court of Appeal for the Second District held that the provisions of Section 17516 were unconstitutional and issued a writ directing the Commission to fully consider the test claims. The test claims were re-filed in October and November 2007 and were considered by the Commission to be filed as of September 30, 2003.

Therefore, the reimbursement period is considered to have begun on July 1, 2002.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If the total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

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

employee time records, including time survey forms, time logs, sign-in sheets, and, invoices, receipts and unit cost studies using source documents.

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

Time Study Method

Claimants may use time studies to support labor [salary, benefit and associated indirect] costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office. The reimbursable time recorded on each time survey form must be for specific reimbursable activities as detailed herein.

The proposed time study protocol requires that all reimbursable time for an employee or contracted staff be totaled and then multiplied by their productive hourly rate, as that term is defined in the State Controller's Office annual claiming instruction manual, found on www.sco.ca.gov. If a time study sample is used to claim time for four through nine staff, at least two staff should be time surveyed. If ten or more staff are claimed, a 20% sample, rounded to the nearest whole number of cases, should be taken.

A claimant may use the time study method to obtain reimbursement for employee, not contract labor, costs. Use of the time study method requires that a representative sample of the hours to be devoted to the maintenance of the trash receptacles over at least a two month period shall be taken. Time records used to support the time study shall:

- i. Reflect an after-the-fact distribution of each employee's actual activity;

- ii. Account for the total activity for which each employee is compensated;
- iii. Account for the total labor hours of the month;
- iv. Be signed and dated by the employee not later than the end of the pay period that follows the pay period covered by the report; and
- v. Document, by signature or initials and date, supervisor approval.

Scope of Reimbursable Activities

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

For each eligible claimant, the following activities are reimbursable:

A. Installation of Trash Receptacles. These activities include: planning (identifying transit stops, evaluating and selecting trash receptacle and pad type, evaluation of placement of trash receptacles and pads and specification and drawing preparation); preliminary engineering work (construction contract preparation and specification review, bid advertising and award process); construction and installation of trash receptacles (including fabrication and installation of pads for receptacles and foundations and construction management). The four transit trash installation claiming categories are:

1. Identification of locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Selection of receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and/or drawings.
3. Contract preparation, specification review process, bid ,

advertising, and review and award of bid.

4. Purchase of receptacles and/or construct receptacles and install receptacles.

B. Maintenance of Trash Receptacles. These activities include repairing, removing and installing trash receptacles and/or pads, as needed. The five transit trash maintenance claiming categories are:

1. Collection of trash on routine basis, including trash collection and disposal at disposal/recycling facility.
2. Inspection of receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
3. Maintenance of receptacles and pads, including painting, cleaning and repair of receptacles and replacement of liners, and cost of paints, cleaning supplies and liners.
4. Replacement of individual damaged or missing receptacles, including costs of purchase and installation of replacement receptacles and disposal/recycling of replaced receptacles.
5. Replacement or repair of receptacle pads as needed.

V. CLAIM PREPARATION AND SUBMISSION

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

A. Direct Cost Reporting

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

1. Salaries and Benefits

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

2. Materials and Supplies

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

3. Contracted Services

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

4. Fixed Assets and Equipment

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

reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

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

6. Training

The cost of training an employee to perform the mandated activities, as specified in Section IV of these Parameters and Guidelines, is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Cost Rates

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

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

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

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

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

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three

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

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

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

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

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

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

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state

agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

X. PARAMETERS AND GUIDELINES AMENDMENTS

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

Pursuant to title 2, California Code of Regulations, section 1183.2, Parameters and Guidelines amendments filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original Parameters and Guidelines. A Parameters and Guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for the fiscal year.

XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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



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**Los Angeles County's Draft Parameters and Guidelines
Municipal Storm Water and Urban Runoff Discharges Test Claims**

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, Los Angeles County's [County] representative in this matter, have prepared the attached draft parameters and guidelines for the Municipal Storm Water and Urban Runoff Discharges reimbursement program as adopted by the Commission on July 31, 2009.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs in implementing the test claim legislation, and find that such costs as set forth in the subject test claims, are, in my opinion, are reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

8/26/09, Los Angeles, CA

Date and Place



Signature