



March 17, 2020

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

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

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

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**

*Animal Adoption, 17-9811-I-04*

Civil Code Sections 1834 and 1846; Food and Agriculture Code  
Sections 31108, 31752, 31752.5, 31753, 32001, and 32003;

As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

Fiscal Years: 2007-2008 and 2008-2009

Town of Apple Valley, Claimant

Dear Ms. Chinn and Ms. Sidarous:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the Draft Proposed Decision by **April 7, 2020**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Ms. Chinn and Ms. Sidarous

March 17, 2020

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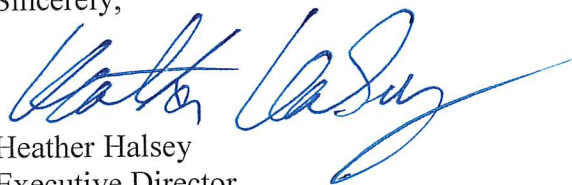
### Hearing

This matter is set for hearing on **Friday, May 22, 2020**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about May 8, 2020.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer be sending reminder emails. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey  
Executive Director

**ITEM \_\_\_\_**  
**INCORRECT REDUCTION CLAIM**  
**DRAFT PROPOSED DECISION**

Civil Code Sections 1834 and 1846;  
Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003;  
As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

*Animal Adoption*

Fiscal Years 2007-2008, 2008-2009

17-9811-I-04

Town of Apple Valley, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) was filed in response to reductions by the State Controller's Office (Controller) of the Town of Apple Valley's (claimant's) annual reimbursement claims under the *Animal Adoption*, 98-TC-11 program for fiscal years 2007-2008 and 2008-2009. The Final Audit Report determined that out of the \$2,256,209 in total costs claimed, \$215,608 was allowable and \$2,040,601 was unallowable.<sup>1</sup>

The claimant challenges the following audit findings: reduction of all costs claimed for the construction of a new facility (Finding 1); the Controller's recalculation of total annual salaries and benefits as an element of the formula for calculating the care and maintenance costs related to the mandate (Finding 2); and the allowable amount of indirect costs (Finding 7). In addition, the claimant alleges that the necessary and prompt veterinary care costs were claimed in the composite cost per animal per day under the care and maintenance component and that the claimant should have been given an opportunity to provide support for these costs during the audit. Thus, the claimant alleges that reimbursement for necessary and prompt veterinary costs should have been allowed by the Controller.

Staff recommends the Commission partially approve this IRC.

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<sup>1</sup> Exhibit A, IRC, page 286 (Final Audit Report). The cover page of the IRC, however, states the total amount reduced during the audit period as \$2,105,792, exceeding the amount of reductions identified in the audit report by \$65,191. (Exhibit A, IRC, page 1.)

## The Animal Adoption Program

The *Animal Adoption* program arose from amendments to the Civil Code and Food and Agriculture Code made by Statutes 1998, chapter 752 (SB 1785<sup>2</sup>). The purpose of the test claim statute was to carry out the state policy that “*no adoptable animal* should be euthanized if it can be adopted into a suitable home” and “*no treatable animal* should be euthanized.”<sup>3</sup> Generally, the program increases the holding period to allow for the adoption and redemption of stray and abandoned dogs, cats, and other specified animals before the local agency can euthanize the animal, and requires:

- verification of the temperament of feral cats;
- posting of lost and found lists;
- maintenance of records for impounded animals; and
- that impounded animals receive “necessary and prompt veterinary care.”

On January 25, 2001, the Commission partially approved the Test Claim, for the increased costs in performing the following activities only:

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture and four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);
2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);
3. For dogs, cats, and other specified animals held for four business days after the day of impoundment, either:
  - (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or
  - (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);

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<sup>2</sup> Sometimes referred to as the Hayden Bill.

<sup>3</sup> Civil Code section 1834.4, Penal Code section 559d, and Food and Agricultural Code section 17005 as added or amended by Statutes 1998, chapter 752.

4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);
5. Posting lost and found lists (Food & Agr. Code, § 32001);
6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and
7. Providing “necessary and prompt veterinary care” for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ.Code, §§ 1834 and 1846).

The Commission adopted the Parameters and Guidelines for this program on February 28, 2002. The Parameters and Guidelines, in addition to the activities identified in the Test Claim Statement of Decision, as described above, provide reimbursement for one-time activities of developing policies and procedures; training; and developing or procuring computer software for maintaining records; as well as ongoing costs for:

- Acquisition of additional space by purchase or lease or construction of new facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals;<sup>4</sup> and
- Remodeling/renovating existing facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.<sup>5</sup>

On March 12, 2003, the Joint Legislative Audit Committee authorized an audit of the *Animal Adoption* mandate, which was completed by the Bureau of State Audits on October 15, 2003. The audit report recommended that the Legislature “direct the Commission to amend the Parameters and Guidelines of the *animal adoption* mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space.” In 2004, AB 2224 (Stats. 2004, ch. 313) was enacted to direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* program to:

1. Amend the formula for determining the reimbursable portion of acquiring or building additional shelter space that is larger than needed to comply with the increased holding period to specify that costs incurred to address preexisting shelter overcrowding or animal population growth are not reimbursable.
2. Clarify how the costs for care and maintenance shall be calculated.
3. Detail the documentation necessary to support reimbursement claims under this mandate, in consultation with the Bureau of State Audits and the Controller's office.

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<sup>4</sup> Exhibit X, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, page 23.

<sup>5</sup> Exhibit X, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, page 25.

On January 26, 2006, the Commission adopted the Parameters and Guidelines Amendment, applicable to claims beginning July 1, 2005, to require, among other things, contemporaneous source documents to show the validity of costs claimed and their relationship to the reimbursable activities. The 2006 amendment also amended the formula for determining the reimbursable portion of “acquiring additional space by purchase or lease and/or construction of new facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period” and clarified the definition of “average daily census” of dogs and cats, for purposes of the formula to calculate care and maintenance; this amendment is clarifying only, and does not affect the methodology used to calculate actual costs for this component.<sup>6</sup>

### **Procedural History**

The claimant’s claim for fiscal year 2007-2008 is dated February 11, 2009.<sup>7</sup> The claimant’s claim for fiscal year 2008-2009 is dated February 9, 2010.<sup>8</sup> The claimant’s amended claim for fiscal year 2007-2008 is dated February 9, 2010 and was filed on February 16, 2010.<sup>9</sup> The claimant’s amended claim for fiscal year 2008-2009 is not dated and does not indicate the filing date.<sup>10</sup> On June 15, 2015 the Controller initiated the audit.<sup>11</sup> On June 8, 2016 the Controller issued the Draft Audit Report.<sup>12</sup> On June 17, 2016, the claimant filed comments on the Draft Audit Report.<sup>13</sup> On August 15, 2016, the Controller issued the Final Audit Report.<sup>14</sup> The claimant filed the IRC on August 1, 2017.<sup>15</sup> The Controller filed comments on the IRC on

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<sup>6</sup> Exhibit X, Staff Analysis and Proposed Amendment to Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 11, January 26, 2006.

<sup>7</sup> Exhibit A, IRC, page 519 (2007-2008 Reimbursement Claim).

<sup>8</sup> Exhibit A, IRC, page 664 (2008-2009 Reimbursement Claim).

<sup>9</sup> Exhibit A, IRC, page 401 (2007-2008 Amended Reimbursement Claim). See also Exhibit A, IRC, page 293, FN 3 (Final Audit Report) (stating that the claimant submitted an amended claim on February 16, 2010, totaling \$878,735).

<sup>10</sup> Exhibit A, IRC, page 640 (2008-2009 Amended Reimbursement Claim).

<sup>11</sup> Exhibit B, Controller’s Comments on the IRC, page 6 (Affidavit of Assistant Division Chief Jim L. Spano).

<sup>12</sup> Exhibit A, IRC, page 122.

<sup>13</sup> Exhibit A, IRC, page 337.

<sup>14</sup> Exhibit A, IRC, page 286; Exhibit B, Controller’s Comments on the IRC, page 6 (Affidavit of Assistant Division Chief Jim L. Spano).

<sup>15</sup> Exhibit A, IRC, page 1.

October 19, 2017.<sup>16</sup> The claimant filed rebuttal comments on November 20, 2017.<sup>17</sup> Commission staff issued the Draft Proposed Decision on March 17, 2020.<sup>18</sup>

### **Commission Responsibilities**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>19</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>20</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>21</sup>

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>22</sup> In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions

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<sup>16</sup> Exhibit B, Controller's Comments on the IRC.

<sup>17</sup> Exhibit C, Claimant's Rebuttal Comments.

<sup>18</sup> Exhibit D, Draft Proposed Decision.

<sup>19</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>20</sup> *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>21</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>22</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>23</sup>

**Claims**

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Was the IRC timely filed?	Section 1185.1 of the Commission’s regulations requires IRCs to be filed no later than three years from when the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.	<i>Timely filed</i> – The Controller’s Final Audit Report is dated August 15, 2016 and the IRC was filed August 1, 2017, less than three years from the date of the Controller’s Final Audit Report.
Is the Controller’s reduction of all costs claimed for the construction of a new shelter facility correct as matter of law?	The Parameters and Guidelines require the claimant to show that the costs incurred for construction of new facilities were required as a direct result of the mandate. The Parameters and Guidelines require the claimant to submit with the reimbursement claim, contemporaneous documentation reflecting a determination by the	<i>Correct</i> – The claimant has the burden to support costs claimed by documentation that shows the validity of the costs and their relationship to the mandate in accordance with the Parameters and Guidelines. Absent such a showing, the Controller’s reductions are correct as a matter of law. The claimant failed to provide adequate supporting documentation.

<sup>23</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.



Issue	Description	Staff Recommendation
	<p>governing board that “acquiring additional space by purchase, lease, and/or construction of new facilities” is necessary for the increased holding period mandated by Statutes of 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats, and other specified animals that die during the increased holding period or are ultimately euthanized.</p> <p>The Controller reduced all shelter construction costs because the claimant did not provide supporting documentation that the construction was a direct result of the increased holding period mandated by the test claim statutes.</p>	<p>None of the documents in the record provide evidence that the claimant’s governing board made the determination and the findings required by the Parameters and Guidelines.</p> <p>The record instead shows that the claimant acquired additional space by purchasing land and constructing a new facility because of the availability of redevelopment agency funds; an overall increase in population in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate.</p>
<p>Is the Controller’s reduction of care and maintenance costs correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>The Parameters and Guidelines provide a specific formula for calculating the actual costs for care and maintenance during the increased holding period mandated by the test claim statutes.</p>	<p><i>Partially Correct</i> – The Controller’s disallowance of care and maintenance costs as claimed is correct as a matter of law. The Controller’s recalculation of care and maintenance costs is partially incorrect because the Controller’s requirement that the sum of percentages of</p>

Issue	Description	Staff Recommendation
	<p>The claimant used the actual cost method to claim its care and maintenance costs during the audit period. The claimant, however, did not identify the costs allowable under the first step of the actual cost method formula, such as labor costs, which were incurred specifically for the care and maintenance component during each year of the audit period. Instead, the claimant used a different formula to calculate total annual care and maintenance costs by taking a total unsegregated amount of all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40% overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines formula that directly relate to the care and maintenance of animals.</p> <p>The Controller disallowed the costs for care and maintenance as claimed and recalculated care and maintenance costs, allowing reimbursement of \$33,584 for the audit period (reduced from \$153,233).</p>	<p>time devoted by various employee classifications to care and maintenance be limited to 100 percent, when recalculating total annual labor cost of care and maintenance, is arbitrary, capricious, and entirely lacking in evidentiary support. Neither the audit report nor the Controller's comments on the IRC explain the methodology used to adjust and reduce the percentages allocated to the classifications performing care and maintenance services or show what it was based on and therefore the recalculation is not supported by evidence in the record.</p>
<p>Are the Controller's disallowance of indirect costs included in the claimant's calculation of care and maintenance costs, the Controller's refusal to</p>	<p>The Parameters and Guidelines provide only two options for calculating indirect costs: (1) using ten percent of direct labor costs, excluding fringe benefits, or</p>	<p><i>Correct</i> – The claimant failed to comply with the Parameters and Guidelines and claiming instructions. Although the claimant alleges that it incorporated indirect</p>

Issue	Description	Staff Recommendation
<p>consider the Indirect Cost Rate Proposal (ICRP) submitted in 2016 to support indirect costs for fiscal years 2007-2008 and 2008-2009, and the recalculation of indirect costs at the ten percent default rate correct as a matter of law?</p>	<p>(2) if indirect costs exceed ten percent, then preparing an ICRP for approval by the Controller. The claiming instructions applicable to the claimant's 2007-2008 and 2008-2009 reimbursement claims specify that if the claimant's indirect cost rate is greater than ten percent of direct salaries, the claimant is required to prepare an ICRP and include it with the reimbursement claim.</p> <p>The claimant did not claim indirect costs as a separate item in its 2007-2008 and 2008-2009 reimbursement claims, but incorporated indirect costs into the care and maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director, without submitting an ICRP to support this calculation of indirect costs.</p>	<p>costs in its reimbursement claims at a rate higher than the ten percent default rate when calculating care and maintenance, the claimant never submitted an ICRP to support those costs until 2016. The claimant's submittal of an ICRP in 2016 for fiscal years 2007-2008 and 2008-2009 is too late. Finally, the Controller's allowance of indirect costs at the ten percent default rate complies with the Parameters and Guidelines and is, therefore, correct as a matter of law. Since the claimant did not prepare and submit ICRPs with its reimbursement claims, it was only entitled to the ten percent default rate under the Parameters and Guidelines and claiming instructions.</p>
<p>Does the Commission have jurisdiction to determine whether the claimant is entitled to reimbursement for necessary and prompt veterinary care costs?</p>	<p>The claimant did not identify any veterinary care costs on its reimbursement claims. In response to the Draft Audit Report the claimant requested reimbursement of \$10,608 for fiscal year 2007-2008 and \$10,298 for fiscal year 2008-2009 for wellness vaccine costs and for employee salary and benefit costs.</p> <p>The Controller refused to review the claimant's request</p>	<p><i>No jurisdiction</i> – The Commission's jurisdiction is limited to a claim by a local government that "the Controller has incorrectly <i>reduced</i> payments to the local agency."<sup>24</sup> There can be no <i>reduction</i> of a cost that was never the subject of a reimbursement claim.</p> <p>Despite the claimant's argument that it claimed necessary and prompt veterinary care costs by</p>

<sup>24</sup> Government Code section 17551(d), emphasis added.

Issue	Description	Staff Recommendation
	<p>because the claimant did not claim veterinary care costs.</p> <p>The claimant argues that the necessary and prompt veterinary care costs were claimed because they were included in the composite cost per animal per day under the care and maintenance component, and requests that its time studies and any additional material necessary to support the costs be reviewed and the costs for the necessary and prompt veterinary care be restored.</p>	<p>including all unsegregated costs for veterinary care in its formula for calculating care and maintenance, necessary and prompt veterinary care costs were not identified or claimed on the reimbursement claims for the audit period. Thus, they are not the subject of a reduction.</p>

**Staff Analysis**

**A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, which Complies with Government Code Section 17558.5(c).**

To be timely filed, an IRC must be filed with the Commission no later than three years “following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.”<sup>25</sup> Here, the Final Audit Report is dated August 15, 2016.<sup>26</sup> The IRC was filed with the Commission less than three years later on August 1, 2017.<sup>27</sup> Accordingly, this IRC was timely filed within the period prescribed in Code of Regulations, title 2, section 1185.1.

**B. The Controller’s Reduction of All Costs Claimed for the Acquisition of Additional Space by Purchasing Land and Constructing a New Shelter Facility (Finding 1), Is Correct as a Matter of Law Because the Claimant Failed to Provide Adequate Supporting Documentation, as Required by the Parameters and Guidelines, Showing that the Costs Were Incurred as a Direct Result of the Mandate.**

In its 2007-2008 and 2008-2009 reimbursement claims, the claimant alleged that it incurred reimbursable state-mandated costs for acquiring additional space by purchasing land and

<sup>25</sup> California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

<sup>26</sup> Exhibit A, IRC, page 291 (Final Audit Report, page 3).

<sup>27</sup> Exhibit A, IRC, page 1.

constructing a new animal shelter facility, and claimed a percentage of overall costs totaling \$1,978,499 for the audit period.<sup>28</sup>

To be eligible for reimbursement, the Parameters and Guidelines require the claimant to show that the costs incurred for construction of new facilities were required as a direct result of the mandate. The Parameters and Guidelines require the claimant to submit with the reimbursement claim contemporaneous documentation reflecting a determination by the governing board that acquiring additional space by purchasing land and constructing new facilities is necessary for the increased holding period mandated by Statutes of 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats, and other specified animals that die during the increased holding period or are ultimately euthanized.<sup>29</sup>

The Controller disallowed all shelter construction costs because the claimant “did not support, through a Board Agenda or other similar supporting documentation, that the construction was a direct result of the increased holding period requirements of this mandated program.”<sup>30</sup>

Staff finds that the Controller’s reduction of all costs claimed for acquiring additional shelter space by purchasing land and constructing a new facility is correct as a matter of law because the claimant failed to provide adequate supporting documentation required by the Parameters and Guidelines showing that the costs were incurred as a direct result of the mandate. The record instead shows that the claimant acquired additional space by purchasing land and constructing a new facility because of the availability of redevelopment agency funds; an overall increase in population in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate.

**C. The Controller’s Disallowance of Care and Maintenance Costs as Claimed (Finding 2), Is Correct as a Matter of Law. However, the Controller’s Recalculation of Annual Labor Costs to Determine Reimbursable Costs for Care and Maintenance Is Arbitrary, Capricious, and Entirely Lacking in Evidentiary Support.**

The Parameters and Guidelines provide a specific formula for calculating the actual costs for care and maintenance during the increased holding period mandated by the test claim statutes.

The claimant used the actual cost method to claim its care and maintenance costs.<sup>31</sup> The claimant, however, did not identify the costs allowable under the first step of the actual cost method formula, such as labor costs for each year of the audit period, which were incurred

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<sup>28</sup> Exhibit A, IRC, pages 403-404 (2007-2008 Amended Reimbursement Claim), 641-642 (2008-2009 Amended Reimbursement Claim).

<sup>29</sup> Exhibit A, IRC, pages 259-262 (2006 Parameters and Guidelines Amendment).

<sup>30</sup> Exhibit A, IRC, page 295 (Final Audit Report).

<sup>31</sup> Exhibit A, IRC, page 302 (Final Audit Report).

specifically for the care and maintenance component.<sup>32</sup> Instead, the claimant used a different formula to calculate total annual care and maintenance costs by taking a total unsegregated amount of all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines formula that directly relate to the care and maintenance of animals.<sup>33</sup> The claimant then applied the rest of the steps of the care and maintenance formula to this unsegregated amount of total shelter costs to arrive at the amount that it claimed as its actual care and maintenance costs.<sup>34</sup>

The Controller disallowed the costs for care and maintenance as claimed and recalculated care and maintenance costs, allowing reimbursement of \$33,584 for the audit period (reduced from \$153,233).<sup>35</sup>

Staff finds that the Controller's disallowance of care and maintenance costs as claimed, is correct as a matter of law because the claimant did not comply with the formula required by the Parameters and Guidelines. The Parameters and Guidelines, which are regulatory in nature and are binding on the parties, require the application of a specific formula in order to detail the care and maintenance costs under the actual cost method. The formula first requires a claimant to calculate the total annual costs incurred to provide care and maintenance for all animals housed in its shelter(s) by adding up pertinent labor, materials, supplies, indirect costs, and contract services costs. While the Parameters and Guidelines use inclusive language to describe costs for this component ("total cost of care and maintenance includes labor, materials, supplies...") the care and maintenance costs cannot be interpreted beyond the reasonable scope of the approved activity, to include labor, materials, supplies, indirect costs, and contract services costs incurred for all other activities conducted by the shelter beyond *care and maintenance*. Thus, the reduction is correct as a matter of law.

However, the Controller's recalculation of annual labor costs, which is the first step in the calculation of care and maintenance, is arbitrary, capricious, and entirely lacking in evidentiary support. To recalculate annual labor costs, the Controller requested the duty statements of the employee classifications that provide care and maintenance to assist in determining the percentage of the daily workload for each classification devoted to care and maintenance.<sup>36</sup> The Controller's auditor explained that the purpose of requesting the duty statements was "to assist us in determining the percentage of the daily workload that each classification devoted to caring for and maintaining the animals (cleaning, feeding and grooming). The goal is to assign a pro-rata percentage to those classifications involved in care and maintenance activities, where the sum of

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<sup>32</sup> Exhibit A, IRC, pages 405-406 (2007-2008 Amended Reimbursement Claim), 643-644 (2008-2009 Amended Reimbursement Claim).

<sup>33</sup> Exhibit A, IRC, page 303 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, pages 27-28.

<sup>34</sup> Exhibit A, IRC, pages 303-304 (Final Audit Report).

<sup>35</sup> Exhibit A, IRC, pages 294, 301 (Final Audit Report).

<sup>36</sup> Exhibit A, IRC, page 305 (Final Audit Report).

all percentages equal to 100%.<sup>37</sup> The claimant provided a list of classifications and designated the percentages of time spent by each classification on care and maintenance services, the total of which exceeded 100 percent.<sup>38</sup> The Controller included five of the classifications in the formula, and reduced the percentages per employee so that when the percentage for each employee is added together it equals a total of 100 percent.

The claimant contends that the Controller's recalculation of annual labor costs results in an incorrect reduction of actual costs incurred, and is "illogical, incorrect, and arbitrary," because the Controller did not allow *actual time* for various employees for the care and maintenance calculation.<sup>39</sup> Specifically, the claimant contends that the animal shelter attendant's time devoted to care and maintenance should be 85 percent, rather than 60 percent; and that the animal shelter supervisor's time devoted to care and maintenance should be 10 percent, rather than 5 percent, as originally provided by the claimant.<sup>40</sup> Second, the claimant alleges that the Controller erroneously concluded that staff time between all positions had to total 100 percent.<sup>41</sup> The claimant states that "[w]hile it is logical that the total time allotted for each individual on various activities must total to 100% - there is no reason why the total time spent by a GROUP of different individuals on a mandated activity must add to 100% between all of them. We asked the SCO to examine this finding and to explain their reasoning, but the SCO did not respond either formally or informally and provided no explanation."<sup>42</sup>

The choice of methodology for auditing annual labor costs for care and maintenance of animals, in the absence of supporting documentation showing the actual employee time spent on care and maintenance as required by the Parameters and Guidelines, is a matter within the discretion of the Controller. However, neither the audit report nor the Controller's comments on the IRC fully explain the methodology used to adjust and reduce the percentages allocated to the classifications performing care and maintenance services. On the one hand, the Controller asserts that the percentages were reduced based on a review of the duty statements.<sup>43</sup> On the other hand, it appears from the record that the Controller's allocation of percentages, including those for the animal shelter attendant and the animal shelter supervisor, were reduced to make the percentages simply add up to 100 percent.<sup>44</sup> If the methodology used by the Controller estimates percentages of *time* spent by the claimant's employees on care and maintenance, then adding these percentages across all employee classifications to a limit of 100 percent (i.e. a total of 40 hours per work week) does not make sense and is arbitrary, capricious, and entirely lacking

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<sup>37</sup> Exhibit C, Claimant's Rebuttal Comments, page 21.

<sup>38</sup> Exhibit A, IRC, page 305 (Final Audit Report); Exhibit C, Claimant's Rebuttal Comments, pages 8-9, 20 (April 12, 2016 email from the claimant to the Controller).

<sup>39</sup> Exhibit A, IRC, pages 9-10.

<sup>40</sup> Exhibit A, IRC, pages 10, 312-313 (Final Audit Report).

<sup>41</sup> Exhibit A, IRC, page 9, 313 (Final Audit Report).

<sup>42</sup> Exhibit A, IRC, page 10; see also, Exhibit C, Claimant's Rebuttal Comments, page 8.

<sup>43</sup> Exhibit A, IRC, page 314 (Final Audit Report).

<sup>44</sup> Exhibit A, IRC, pages 305 (Final Audit Report), 363-366 (Claimant's Response to Draft Audit Report).

in evidentiary support. For example, employees from five classifications could each spend 60 percent of their time on care and maintenance, which clearly exceeds 100 percent. If the Controller used a factor or methodology *other than the employee's time worked* to calculate annual labor costs, then the record provides no explanation of that methodology. The Final Audit Report refers to “*the extent of*” and “*percentages of employee classification involvement*” and “*applicable percentages of actual salaries and benefits costs,*” but does not explain how the extent of involvement and the applicable percentages were determined and applied with respect to individual employee classifications and balanced across classifications to 100 percent.<sup>45</sup> The Controller simply states that “[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%.”<sup>46</sup> This statement does not explain what is being calculated, or how the Controller came up with annual labor costs of \$210,000 for fiscal year 2007-2008 and \$155,101 for fiscal year 2008-2009.<sup>47</sup>

Accordingly, to the extent that the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs, that reduction is arbitrary, capricious, and entirely lacking in evidentiary support.

**D. The Controller's Disallowance of Indirect Costs Included in the Claimant's Calculation of Care and Maintenance Costs, the Controller's Refusal to Consider the ICRP Submitted by the Claimant in 2016 to Support Indirect Costs for Fiscal Years 2007-2008 and 2008-2009, and the Recalculation of Indirect Costs at the Ten Percent Default Rate Provided in the Parameters and Guidelines (Finding 7), Are Correct as a Matter of Law.**

The claimant did not claim indirect costs as a separate item, but incorporated indirect costs into the care and maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director.<sup>48</sup> The Controller found this approach to be incorrect and not in accordance with the Parameters and Guidelines.<sup>49</sup> The Controller recalculated indirect costs using the ten percent default rate and found that \$12,708 is reimbursable.<sup>50</sup> While the claimant first agreed with the Controller's use of the ten percent rate to recalculate indirect costs during the audit,<sup>51</sup> in response to the Draft Audit Report on June 17, 2016, the claimant for the first time

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<sup>45</sup> Exhibit A, IRC, page 306 (Final Audit Report), emphasis added.

<sup>46</sup> Exhibit B, Controller's Comments on the IRC, page 28.

<sup>47</sup> Exhibit A, IRC, page 306 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, page 29.

<sup>48</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>49</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>50</sup> Exhibit A, IRC, page 328-329 (Final Audit Report).

<sup>51</sup> Exhibit A, IRC, pages 328-329 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, pages 30 and 111 (Tab 6 - Phone Log, stating that during the April 12, 2016 telephone call discussion of regarding indirect costs, the claimant's Assistant Director of Finance “Kofi decided



submitted an ICRP for a higher rate (between 67 percent and 78.9 percent, based on salaries and wages)<sup>52</sup> for both fiscal years of the audit period.<sup>53</sup> The Controller did not consider this proposal.<sup>54</sup>

Staff finds that the Controller's disallowance of indirect costs included in the claimant's calculation of care and maintenance costs, the Controller's refusal to consider the ICRP submitted in 2016 in support of indirect costs for fiscal year 2007-2008 and 2008-2009, and the recalculation of indirect costs at the ten percent default rate are correct as a matter of law. The Parameters and Guidelines provide only two options for calculating indirect costs: (1) using ten percent of direct labor costs, excluding fringe benefits, or (2) if indirect costs exceed ten percent, then preparing an ICRP for approval by the Controller.<sup>55</sup> The claiming instructions applicable to the claimant's 2007-2008 and 2008-2009 reimbursement claims specify that if the claimant's indirect cost rate is greater than ten percent of direct salaries, the claimant is required to prepare an ICRP and include it with the reimbursement claim.<sup>56</sup> Although the claimant alleges that it incorporated indirect costs in its reimbursement claims at a rate higher than the ten percent default rate when calculating care and maintenance, the claimant never submitted an ICRP to support those costs until 2016. The claimant's submittal of an ICRP in 2016 for fiscal years 2007-2008 and 2008-2009 is too late. Finally, the Controller's allowance of indirect costs at the ten percent default rate is correct as a matter of law. Since the claimant did not prepare and submit ICRPs with its reimbursement claims, it was only entitled to the ten percent default rate under the Parameters and Guidelines and claiming instructions.

**E. The Commission Does Not Have Jurisdiction To Determine Whether the Claimant Is Entitled to Reimbursement for Necessary and Prompt Veterinary Costs Because There Has Been No Reduction of Necessary and Prompt Veterinary Costs.**

Finally, the reimbursement claims filed by the claimant do not identify any costs for necessary and prompt veterinary care. The line item for "veterinary care" was left blank in both reimbursement claims.<sup>57</sup> In its June 17, 2016 response to the Draft Audit Report, however, the claimant "questioned why the SCO did not allow any reimbursement for the Necessary and

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that due to the town's record retention issues and unavailability of supporting documentation, that using the flat 10% would be the best option.").

<sup>52</sup> Exhibit A, IRC, page 370 ("ICRP Input Screen, provided with the Claimant's Response to the Draft Audit Report.").

<sup>53</sup> Exhibit A, IRC, pages 331 (Final Audit Report). Exhibit A, IRC, pages 369-399 (Claimant's Response to the Draft Audit Report).

<sup>54</sup> Exhibit A, IRC, pages 331 (Final Audit Report).

<sup>55</sup> Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment).

<sup>56</sup> Exhibit X, Excerpt of 2007-2008 State Mandated Cost Claiming Instructions No. 2006-11, revised February 6, 2009, pages 1, 27; Exhibit A, IRC, page 280 (State Mandated Cost Claiming Instructions No. 2006-11, revised October 26, 2009).

<sup>57</sup> Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

Prompt Veterinary Care component as these costs are eligible for reimbursement.”<sup>58</sup> The claimant’s response to the Draft Audit Report requests reimbursement for necessary and prompt veterinary costs of \$10,608 for fiscal year 2007-2008 and \$10,298 for fiscal year 2008-2009, consisting of wellness vaccine costs and employee salary and benefit costs for the time to conduct the initial physical exam to determine the animal’s baseline health and to administer the wellness vaccine.<sup>59</sup> The claimant’s IRC states that veterinary care costs were included as part of the care and maintenance component, and argues that the Controller incorrectly refused to accept supporting documents for veterinary costs, including time study results, after the exit conference.<sup>60</sup>

Despite the claimant’s argument that it claimed necessary and prompt veterinary care costs by including all unsegregated costs for veterinary care in its formula for calculating care and maintenance, necessary and prompt veterinary care costs were not identified or claimed on the reimbursement claims for the audit period. Thus, there were no costs to reduce. Pursuant to Government Code section 17551(d), the Commission has jurisdiction only to hear and decide incorrect *reduction* claims. Therefore, the Commission does not have jurisdiction to determine whether the claimant is entitled to reimbursement for necessary and prompt veterinary care.

### **Conclusion**

Based on the foregoing analysis, staff recommends that the Commission partially approve this IRC based on the following conclusions:

- The IRC was timely filed.
- The Controller’s reduction of the entire amount claimed for the construction of a new shelter facility (Finding 1) is correct as a matter of law because the claimant failed to provide adequate supporting documentation required by the Parameters and Guidelines that the costs were incurred as a direct result of the increased holding period mandated by the test claim statutes.
- The Controller’s disallowance of care and maintenance costs as claimed (Finding 2) is correct as a matter of law because the claimant did not comply with the formula required by the Parameters and Guidelines. However, the Controller’s recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, is arbitrary, capricious, and entirely lacking in evidentiary support.
- The Controller’s disallowance of indirect costs included in the claimant’s calculation of care and maintenance costs; the Controller’s refusal to consider the claimant’s ICRP submitted in 2016 to support indirect costs for fiscal years 2007-2008 and 2008-2009; and the recalculation of indirect costs at the 10 percent default rate (Finding 7) are correct as a matter of law.

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<sup>58</sup> Exhibit A, IRC, pages 337-338 (Claimant’s Response to Draft Audit Report).

<sup>59</sup> Exhibit A, IRC, pages 334 (Final Audit Report), 337-338 (Claimant’s Response to Draft Audit Report).

<sup>60</sup> Exhibit A, IRC, pages 5-7.

- The Commission does not have jurisdiction over the claimant's request for reimbursement of necessary and prompt veterinary care costs which were never specifically claimed and for which there was no reduction.

**Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision partially approving the IRC and, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, request that the Controller reinstate the following costs that were incorrectly reduced:

- Care and maintenance costs, to the extent that the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs.

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

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

<p><b>IN RE INCORRECT REDUCTION CLAIM</b></p> <p>Civil Code Sections 1834 and 1846;          Food and Agriculture Code Sections 31108,          31752, 31752.5, 31753, 32001, and 32003;</p> <p>As Added or Amended by Statutes 1998,          Chapter 752 (SB 1785)</p> <p>Fiscal Years 2007-2008, 2008-2009</p> <p>Filed on August 1, 2017</p> <p>Town of Apple Valley, Claimant</p>	<p>Case No.: 17-9811-I-04</p> <p><i>Animal Adoption</i></p> <p>DECISION PURSUANT TO          GOVERNMENT CODE SECTION 17500          ET SEQ.; CALIFORNIA CODE OF          REGULATIONS, TITLE 2, DIVISION 2,          CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted May 22, 2020)</i></p>
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**DECISION**

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on May 22, 2020. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller	

## **Summary of the Findings**

This IRC was filed in response to the following alleged reductions by the State Controller's Office (Controller) of the Town of Apple Valley's (claimant's) annual reimbursement claims under the *Animal Adoption*, 98-TC-11 program for fiscal years 2007-2008 and 2008-2009: disallowance of construction of new facilities costs (Finding 1); reduction of care and maintenance costs resulting from the Controller's recalculation of total annual salaries and benefits incurred for all pertinent care and maintenance activities as an element of the formula for calculating the care and maintenance costs related to the mandate (Finding 2); and disallowance of the rate proposed by the claimant for indirect costs (Finding 7). In addition, the claimant alleges that the necessary and prompt veterinary care costs were claimed in the composite cost per animal per day under the care and maintenance component and that these costs should have been allowed by the Controller.

The Commission finds that this IRC was timely filed.

The Commission further finds that the Controller's reduction of all costs claimed for acquiring additional shelter space by purchasing land and constructing a new shelter facility is correct as a matter of law because the claimant failed to provide adequate supporting documentation required by the Parameters and Guidelines showing that the costs were incurred as a direct result of the mandate. The record instead shows that the claimant acquired additional space by purchasing land and constructing a new facility because of the availability of redevelopment agency funds; an overall increase in population in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate.

The Commission finds that the Controller's disallowance of care and maintenance costs as claimed, is correct as a matter of law because the claimant did not comply with the specific formula required by the Parameters and Guidelines. The claimant calculated the total annual care and maintenance costs by lumping together all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines formula that directly relate to the care and maintenance of animals.<sup>61</sup> However the first part of the formula requires a claimant to calculate the total annual costs incurred to provide care and maintenance for all animals housed in its shelter(s) by adding up pertinent labor, materials, supplies, indirect costs, and contract services costs and then that number is divided by the annual census of all animals housed in the shelter to determine the cost per animal per day, which is multiplied by the number of impounded animals that die during the increased holding period or are ultimately euthanized (i.e., those animals for which there is no fee authority) and by each reimbursable day.<sup>62</sup> The costs for care and maintenance cannot be interpreted beyond the reasonable scope of the approved activity, to

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<sup>61</sup> Exhibit A, IRC, pages 303-304 (Final Audit Report).

<sup>62</sup> Exhibit A, IRC, pages 266-267 (2006 Parameters and Guidelines Amendment).

include labor, materials, supplies, indirect costs, and contract services costs incurred for other activities conducted by the shelter beyond *care and maintenance*. Thus, the disallowance of care and maintenance costs as claimed is correct as a matter of law.

However, the Controller's recalculation of annual labor costs, which is a part of the first step in the calculation of care and maintenance, is arbitrary, capricious, and entirely lacking in evidentiary support. To recalculate annual labor costs, the Controller requested the duty statements of the employee classifications that provide care and maintenance to assist in determining the percentage of the daily workload for each classification devoted to care and maintenance.<sup>63</sup> The Controller then reduced the percentages provided by the claimant so that the sum of all percentages equals 100 percent. On the one hand, the Controller asserts that the percentages were reduced based on its review of the duty statements.<sup>64</sup> On the other hand, it appears from the record that the Controller's allocation of percentages, including those for the animal shelter attendant and the animal shelter supervisor, were reduced in order for the allocation of percentages to simply add up to 100 percent.<sup>65</sup> If the methodology used by the Controller estimates percentages of *time* spent by the claimant's employees on care and maintenance, then adding these percentages across all employee classifications to a limit of 100 percent does not make sense and is arbitrary, capricious, and entirely lacking in evidentiary support. For example, five employees could spend 60 percent of their time on care and maintenance, which clearly exceeds 100 percent. If the Controller used a factor or methodology *other than time* to calculate annual labor costs, then the record provides no explanation of that methodology. The Final Audit Report refers to "*the extent of*" and "*percentages of employee classification involvement*" and "*applicable percentages of actual salaries and benefits costs,*" but does not explain how the extent of involvement and the applicable percentages were determined and applied with respect to individual employee classifications and balanced across classifications to 100 percent.<sup>66</sup> The Controller simply states that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."<sup>67</sup> This statement does not explain what was being calculated, or how the Controller came up with annual labor costs of \$210,000 for fiscal year 2007-2008 and \$155,101 for fiscal year 2008-2009.<sup>68</sup> Accordingly, to the extent that the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results

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<sup>63</sup> Exhibit A, IRC, page 305 (Final Audit Report).

<sup>64</sup> Exhibit A, IRC, page 314 (Final Audit Report).

<sup>65</sup> Exhibit A, IRC, pages 305 (Final Audit Report), 363-366 (Claimant's Response to Draft Audit Report).

<sup>66</sup> Exhibit A, IRC, page 306 (Final Audit Report), emphasis added.

<sup>67</sup> Exhibit B, Controller's Comments on the IRC, page 28.

<sup>68</sup> Exhibit A, IRC, page 306 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, page 29.

in a reduction of care and maintenance costs, that reduction is arbitrary, capricious, and entirely lacking in evidentiary support.

The Commission finds that the Controller's disallowance of indirect costs included in the claimant's calculation of care and maintenance costs, the Controller's refusal to consider the indirect cost rate proposal (ICRP) submitted in 2016 in support of indirect costs for fiscal year 2007-2008 and 2008-2009, and the recalculation of indirect costs at the ten percent default rate are correct as a matter of law. The claimant did not claim indirect costs as a separate item, but incorporated overhead costs into the care and maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director.<sup>69</sup> This does not comply with the Parameters and Guidelines. The Parameters and Guidelines provide only two options for calculating indirect costs: (1) using ten percent of direct labor costs, excluding fringe benefits, or (2) if indirect costs exceed ten percent, then preparing an ICRP for approval by the Controller.<sup>70</sup> The Controller's allowance of indirect costs at the ten percent default rate is correct as a matter of law. Since the claimant did not prepare and submit ICRPs with its reimbursement claims, it was only entitled to the ten percent default rate under the Parameters and Guidelines and claiming instructions.

Finally, the reimbursement claims filed by the claimant do not identify any costs for necessary and prompt veterinary care. The line item for "veterinary care" was left blank in both reimbursement claims.<sup>71</sup> Since these costs were not claimed on the reimbursement claim form, there was no "reduction" of these costs and the Commission does not have jurisdiction. The Commission's jurisdiction is limited to alleged incorrect *reductions* of costs claimed.<sup>72</sup>

Accordingly, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations, that the Controller reinstate the following costs which were incorrectly reduced:

- To the extent the Controller's recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs.

All other reductions made by the Controller are correct as a matter of law.

## COMMISSION FINDINGS

### I. Chronology

02/11/2009 The date on the claimant's fiscal year 2007-2008 reimbursement claim.<sup>73</sup>

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<sup>69</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>70</sup> Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment).

<sup>71</sup> Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

<sup>72</sup> Government Code section 17551(d).

<sup>73</sup> Exhibit A, IRC, page 519 (2007-2008 Reimbursement Claim).

02/09/2010 The date on the claimant's fiscal year 2008-2009 reimbursement claim.<sup>74</sup>  
02/09/2010 The date on the claimant's amended fiscal year 2007-2008 reimbursement claim.<sup>75</sup>  
N/A The claimant's amended fiscal year 2008-2009 reimbursement claim is not dated.<sup>76</sup>  
06/15/2015 The Controller initiated the audit.<sup>77</sup>  
06/08/2016 The Controller issued the Draft Audit Report.<sup>78</sup>  
06/17/2016 The claimant filed comments with the Controller on the Draft Audit Report.<sup>79</sup>  
08/15/2016 The Controller issued the Final Audit Report.<sup>80</sup>  
08/01/2017 The claimant filed the IRC.<sup>81</sup>  
10/19/2017 The Controller filed comments on the IRC.<sup>82</sup>  
11/20/2017 The claimant filed rebuttal comments.<sup>83</sup>  
03/17/2020 Commission staff issued the Draft Proposed Decision.<sup>84</sup>

## II. Background

### A. The Animal Adoption Program

The *Animal Adoption*, 98-TC-11 program arose from amendments to the Civil Code and Food and Agriculture Code made by Statutes 1998, chapter 752 (SB 1785).<sup>85</sup> The purpose of the test claim statute was to carry out the state policy that “no adoptable animal should be euthanized if it

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<sup>74</sup> Exhibit A, IRC, page 664 (2008-2009 Reimbursement Claim).

<sup>75</sup> Exhibit A, IRC, page 401 (2007-2008 Amended Reimbursement Claim). See also Exhibit A, IRC, page 293, FN 3 (Final Audit Report stating that the claimant submitted an amended claim on February 16, 2010, totaling \$878,735).

<sup>76</sup> Exhibit A, IRC, page 640 (2008-2009 Amended Reimbursement Claim).

<sup>77</sup> Exhibit B, Controller's Comments on the IRC, page 6 (Affidavit of Assistant Division Chief Jim L. Spano, page 2).

<sup>78</sup> Exhibit A, IRC, page 122.

<sup>79</sup> Exhibit A, IRC, page 337.

<sup>80</sup> Exhibit A, IRC, page 286; Exhibit B, Controller's Comments on the IRC, page 6 (Affidavit of Assistant Division Chief Jim L. Spano, page 2).

<sup>81</sup> Exhibit A, IRC, page 1.

<sup>82</sup> Exhibit B, Controller's Comments on the IRC, page 1.

<sup>83</sup> Exhibit C, Claimant's Rebuttal Comments, page 1.

<sup>84</sup> Exhibit D, Draft Proposed Decision.

<sup>85</sup> Sometimes referred to as the Hayden Bill.



can be adopted into a suitable home” and “no treatable animal should be euthanized.”<sup>86</sup>

Generally, the program increases the holding period to allow for the adoption and redemption of stray and abandoned dogs, cats, and other specified animals before the local agency can euthanize the animal, and requires:

- verification of the temperament of feral cats;
- posting of lost and found lists;
- maintenance of records for impounded animals; and
- “necessary and prompt veterinary care” for impounded animals.

On January 25, 2001, the Commission partially approved the Test Claim, for the increased costs in performing the following activities:

1. Providing care and maintenance during the increased holding period for impounded dogs and cats that are ultimately euthanized. The increased holding period shall be measured by calculating the difference between three days from the day of capture and four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment (Food & Agr. Code, §§ 31108, 31752);
2. Providing care and maintenance for four business days from the day after impoundment, as specified below in 3 (a) and 3 (b), or six business days from the day after impoundment, for impounded rabbits, guinea pigs, hamsters, pot-bellied pigs, birds, lizards, snakes, turtles, or tortoises legally allowed as personal property that are ultimately euthanized (Food & Agr. Code, § 31753);
3. For dogs, cats, and other specified animals held for four business days after the day of impoundment, either:
  - (a) Making the animal available for owner redemption on one weekday evening until at least 7:00 p.m., or one weekend day; or
  - (b) For those local agencies with fewer than three full-time employees or that are not open during all regular weekday business hours, establishing a procedure to enable owners to reclaim their animals by appointment at a mutually agreeable time when the agency would otherwise be closed (Food & Agr., Code §§ 31108, 31752, and 31753);
4. Verifying whether a cat is feral or tame by using a standardized protocol (Food & Agr. Code, § 31752.5);
5. Posting lost and found lists (Food & Agr. Code, § 32001);
6. Maintaining records on animals that are not medically treated by a veterinarian, but are either taken up, euthanized after the holding period, or impounded (Food & Agr. Code, § 32003); and

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<sup>86</sup> Civil Code section 1834.4, Penal Code section 559d, and Food and Agricultural Code section 17005 as added or amended by Statutes 1998, chapter 752.

7. Providing “necessary and prompt veterinary care” for abandoned animals, other than injured cats and dogs given emergency treatment, that are ultimately euthanized (Civ. Code, §§ 1834 and 1846).<sup>87</sup>

The Commission adopted the Parameters and Guidelines for this program on February 28, 2002.<sup>88</sup> The 2002 Parameters and Guidelines, in addition to the activities identified in the Test Claim Statement of Decision, provided reimbursement for one-time activities of developing policies and procedures; training; and developing or procuring computer software for maintaining records; as well as:

- Acquiring additional space by purchase or lease and/or construction of new facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.<sup>89</sup>
- Remodeling/renovating existing facilities to provide appropriate or adequate shelter necessary to comply with the mandated activities during the increased holding period for impounded stray or abandoned dogs, cats, and other animals.<sup>90</sup>

Section VI. of the Parameters and Guidelines required the claimants to provide source documents that show the evidence of the validity of claimed costs and their relationship to the mandate. The supporting documentation must be kept on file by the agency during the audit period required by Government Code section 17558.5. In this respect, claimants are required to provide documentation evidencing the determination and specific findings by the governing board that acquiring additional space by purchase or lease and/or constructing new facilities, or remodeling existing facilities is necessary for the increased holding period required by the test claim statute.<sup>91</sup>

On March 12, 2003, the Joint Legislative Audit Committee authorized an audit of the *Animal Adoption* mandate, which was completed by the Bureau of State Audits on October 15, 2003. The audit report recommended that the Legislature direct the Commission to amend the Parameters and Guidelines to correct the formula for determining the reimbursable portion of acquiring additional shelter space, and to detail the documentation necessary to support

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<sup>87</sup> Exhibit B, Controller’s Comments on the IRC, pages 72-73 (Statement of Decision, *Animal Adoption*, 98-TC-11, adopted January 25, 2001).

<sup>88</sup> See Exhibit A, IRC, page 257 (2006 Parameters and Guidelines Amendment); Exhibit X, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002.

<sup>89</sup> Exhibit X, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, page 23.

<sup>90</sup> Exhibit X, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, page 25.

<sup>91</sup> Exhibit X, Staff Analysis and Proposed Parameters and Guidelines, *Animal Adoption*, 98-TC-11, Item 4, February 28, 2002, pages 24-26.

reimbursement claims. In 2004, AB 2224 (Stats. 2004, ch. 313) was enacted to direct the Commission to amend the Parameters and Guidelines for the *Animal Adoption* program to:

1. Amend the formula for determining the reimbursable portion of acquiring or building additional shelter space that is larger than needed to comply with the increased holding period to specify that costs incurred to address preexisting shelter overcrowding or animal population growth are not reimbursable.
2. Clarify how the costs for care and maintenance shall be calculated.
3. Detail the documentation necessary to support reimbursement claims under this mandate, in consultation with the Bureau of State Audits and the Controller's office.

On January 26, 2006, the Commission adopted the Parameters and Guidelines Amendment, *Animal Adoption*, 04-PGA-01 and 04-PGA-02, applicable to claims beginning July 1, 2005, in accordance with AB 2224, which apply to the reimbursement claims at issue in this case.<sup>92</sup> The amended Parameters and Guidelines require, among other things, contemporaneous source documents to show the validity of costs claimed and their relationship to the reimbursable activities, and clarify the formulas for claiming reimbursement for acquiring additional shelter space by purchase, lease and construction, and the increased costs for care and maintenance as explained in the analysis below.

#### **B. The Controller's Audit and Summary of the Issues**

The Controller determined, in its Final Audit Report, that out of the \$2,256,209 in total costs claimed for fiscal years 2007-2008 and 2008-2009, \$215,608 was allowable and \$2,040,601 was unallowable.<sup>93</sup> The audit report contains nine sections with findings and recommendations, titled "Finding 1" through "Finding 8," and one section, titled "Other Issue."<sup>94</sup>

Findings 1, 2, and 3 include reductions of the costs claimed; Findings 4, 5, 6, 7, and 8 identify allowable costs that were not separately claimed or identified under appropriate program components, but were recalculated by the Controller; and "Other Issue" disallows the claimant's request to add costs for necessary and prompt veterinary care that were not claimed on the reimbursement claim form, but were requested in response to the Draft Audit Report.<sup>95</sup>

The claimant challenges only the following findings: disallowance of costs for acquiring additional space by purchasing land and constructing a new facility (Finding 1);<sup>96</sup> the Controller's recalculation of total annual salaries and benefits as an element of the formula for

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<sup>92</sup> Exhibit A, IRC, page 257 (2006 Parameters and Guidelines Amendment).

<sup>93</sup> Exhibit A, IRC, page 286; see also Exhibit A, IRC, pages 401-407 (2007-2008 Amended Reimbursement Claim); Exhibit A, IRC, pages 640-645 (2008-2009 Amended Reimbursement Claim). The cover page of the IRC, however, states the total amount reduced during the audit period as \$2,105,792, exceeding the amount of reductions identified in the audit report by \$65,191. (Exhibit A, IRC, page 1.)

<sup>94</sup> Exhibit A, IRC, pages 295-335 (Final Audit Report).

<sup>95</sup> Exhibit A, IRC, pages 295-335 (Final Audit Report).

<sup>96</sup> Exhibit A, IRC, pages 3-4.

calculating the care and maintenance costs related to the mandate (Finding 2);<sup>97</sup> and the allowable amount of indirect costs (Finding 7).<sup>98</sup> In addition, the claimant alleges that the necessary and prompt veterinary care costs (addressed under “Other Issue”) were claimed in the composite cost per animal per day under the care and maintenance component and that the claimant should have been given an opportunity to provide support for these costs during the audit. Thus, the claimant alleges that reimbursement for necessary and prompt veterinary costs should have been allowed by the Controller.<sup>99</sup> The Controller’s findings with respect to the issues in dispute are described below.

**1. Finding 1 (Unallowable Costs for Acquiring Additional Space by Purchasing Land and Constructing a New Facility)**

In the fiscal year 2007-2008 reimbursement claim, the claimant requested reimbursement of \$745,135 for acquiring additional space by the purchase of land and construction of a new animal shelter facility.<sup>100</sup> The reimbursement claim explains that the land acquisition costs totaled \$865,000, and that facility construction costs totaled \$572,231, for total costs of \$1,437,231; but that the claimant was only requesting reimbursement of 51.8 percent of that amount, for a total claim for fiscal year 2007-2008 of \$745,135.<sup>101</sup>

In the fiscal year 2008-2009 reimbursement claim, the claimant requested reimbursement of \$1,233,364 for construction of the new facility.<sup>102</sup> The claim form identifies total facility costs of \$11,008,301, less the 2007-2008 costs of \$1,437,231, for total costs remaining of \$9,571,070; but that the claimant was only requesting reimbursement of 12.9 percent of that amount, for a total claim for fiscal year 2008-2009 of \$1,233,364.<sup>103</sup>

Thus, for fiscal years 2007-2008 and 2008-2009, total costs of \$1,978,499 were claimed for acquisition of additional space by the purchase of land and construction of a new facility.

The Controller disallowed the entire \$1,978,499 claimed on the ground that the claimant did not provide sufficient documentation establishing, in a manner required by the Parameters and Guidelines that acquiring additional space by purchasing land and constructing a new shelter facility was a direct result of the increased holding period established by the test claim

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<sup>97</sup> Exhibit A, IRC, pages 9-10. The claimant has not challenged the remaining findings with respect to the Controller’s recalculation of care and maintenance costs in Finding 2. These include overstated materials and supplies; incorrect reporting of animal census data; the number of eligible animals; and the number of reimbursable days representing the increased holding period. (Exhibit A, IRC, pages 294, 301, 307-312 (Final Audit Report))

<sup>98</sup> Exhibit A, IRC, pages 11-12.

<sup>99</sup> Exhibit A, IRC, pages 5-9.

<sup>100</sup> Exhibit A, IRC, page 403 (2007-2008 Amended Reimbursement Claim).

<sup>101</sup> Exhibit A, IRC, page 404 (2007-2008 Amended Reimbursement Claim).

<sup>102</sup> Exhibit A, IRC, pages 641-642 (2008-2009 Amended Reimbursement Claim).

<sup>103</sup> Exhibit A, IRC, page 642 (2008-2009 Amended Reimbursement Claim).

statutes.<sup>104</sup> Based on documentation provided by the claimant, the Controller determined that the claimant's animal shelter was constructed because of population growth, the temporary nature of the existing shelter, and the cost-effectiveness of taking on the project and the availability of redevelopment funds at that time.<sup>105</sup> The Controller also found that the claimant did not provide detailed calculations for determining the reimbursable portion of costs for acquiring additional shelter space attributable to the mandate and in accordance with the formula required by the Parameters and Guidelines, and that many of the expenses claimed were outside of the audit period.<sup>106</sup>

## **2. Finding 2 (Care and Maintenance; the Controller's Recalculation of Total Annual Salaries and Benefits)**

Costs of \$153,233 were claimed for care and maintenance for the audit period, but the Controller found that the claimant did not correctly apply the care and maintenance formula to calculate the costs, which included unallowable and misapplied costs, and found that \$119,649 is unallowable and only \$33,584 is allowable for the two-year audit period.<sup>107</sup>

The claimant elected to use the actual cost method to claim costs for care and maintenance. The actual cost method is a specific formula required by the Parameters and Guidelines and is designed to reimburse a proportion of total care and maintenance costs based on the incremental increase in service (the increased holding period) and the animals for which no fees can be collected (animals that are not adopted, redeemed, or released to a nonprofit animal rescue organization, but instead die during the increased holding period or are ultimately euthanized). The formula requires a claimant to calculate the total amount of eligible costs incurred to provide care and maintenance for animals housed in the shelter (which includes total labor, materials, supplies, indirect costs, and contract services) divided by the annual census of animals housed, to determine a cost per animal per day. The cost per animal per day is then multiplied by the number of impounded animals that die during the increased holding period or are ultimately euthanized, by each reimbursable day (which depends on the animal and when the animal was impounded).<sup>108</sup>

The claimant, however, calculated the total annual care and maintenance costs required by the formula by lumping together all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters and Guidelines that directly relate to the care and maintenance of animals. The claimant then divided the overall total by the annual census of animals to determine the cost per animal per day. The cost per animal per day was then multiplied by the number of animals

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<sup>104</sup> Exhibit A, IRC, pages 295-301 (Final Audit Report).

<sup>105</sup> Exhibit A, IRC, page 295 (Final Audit Report).

<sup>106</sup> Exhibit A, IRC, pages 295-301 (Final Audit Report).

<sup>107</sup> Exhibit A, IRC, page 301 (Final Audit Report). Note that the Controller recalculated the associated indirect costs separately under indirect costs.

<sup>108</sup> Exhibit A, IRC, pages 266-269 (Parameters and Guidelines); page 303 (Final Audit Report).

euthanized during the year, which was then multiplied by a factor of two or four to correspond to the number of extra days in the holding period.<sup>109</sup>

The Controller determined that the claimant’s methodology was incorrect, since the calculation assumes that all shelter costs (including animal licensing, adoption, education, training, meetings, conferences, office-related expenditures, and veterinary medical services) are related to the care and maintenance of animals.<sup>110</sup> The Controller recalculated the costs for care and maintenance and the claimant disputes the recalculation of annual labor costs.

The claimant did not claim salaries and benefits for the audit period for care and maintenance. Instead, the claimant misclassified those costs under the category of services and supplies.<sup>111</sup> To recalculate these costs, the Controller requested the duty statements of the employee classifications that provide care and maintenance to determine the percentage of the daily workload for each classification devoted to care and maintenance.<sup>112</sup>

The claimant’s animal shelter management provided a list of personnel who participate in the care and maintenance functions and information relating to the level of involvement of each classification according to the employee’s job duty description and staffing requirements during the audit period.<sup>113</sup> The Final Audit Report includes the following table to detail the percent of animal care and maintenance per employee classification “as determined by shelter management” and allowed by the Controller:

FY 2007-2008 and FY 2008-2009

Employee Classification:

Animal Shelter Attendant/Assistant	60%
Animal Control/Customer Service Technician	5%
Animal Control Officer	5%
Animal Control Supervisor	5%
Registered Veterinary Technician	20%
Animal Shelter Supervisor	<u>5%</u>
	100% <sup>114</sup>

The Controller also requested that the claimant provide actual salary amounts paid to the employee classifications directly involved with the care and maintenance function. Due to record retention and software issues, the claimant provided salary information for fiscal year

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<sup>109</sup> Exhibit A, IRC, pages 303-304 (Final Audit Report).

<sup>110</sup> Exhibit A, IRC, page 304 (Final Audit Report).

<sup>111</sup> Exhibit A, IRC, page 304 (Final Audit Report).

<sup>112</sup> Exhibit A, IRC, page 305 (Final Audit Report).

<sup>113</sup> Exhibit A, IRC, page 305 (Final Audit Report).

<sup>114</sup> Exhibit A, IRC, page 305 (Final Audit Report). The same information and findings were included in the Draft Audit Report. Exhibit A, IRC, pages 138-139 (Draft Audit Report).

2007-2008 only. The claimant agreed to use the fiscal year 2007-2008 salary amounts as a base for fiscal year 2008-2009, and then the Controller applied the 2008-2009 CPI index of 1.01 percent.<sup>115</sup>

In response to the Draft Audit Report, the claimant disagreed with the percentages of time attributed by the Controller for animal care and maintenance for the animal shelter attendant and the animal shelter supervisor, and contended that the animal shelter attendant's time devoted to care and maintenance should be 85 percent, rather than 60 percent; and that the animal shelter supervisor's time devoted to care and maintenance should be 10 percent, rather than 5 percent.<sup>116</sup> The claimant also contended that the Controller erroneously concluded that staff time for care and maintenance across positions had to total 100 percent, and that the "decision to restrict the allocation of time spent on the entire group of people to 100% is illogical and arbitrary."<sup>117</sup> The claimant states that "each position can spend varying amounts of time on an activity – to the maximum of 100% per person."<sup>118</sup>

The Controller's finding did not change and the Final Audit Report states the following:

The town did not claim salaries and benefits for the audit period. In the absence of supporting documentation for actual salary and benefit costs incurred for the care and maintenance of animals during the course of the audit, we requested duty statements for the employee classifications directly involved in care and maintenance activities in order to assist in determining the percentage of the daily workload that staff devoted to caring for and maintaining the animals. The duty statements are very detailed in the description of essential job functions for each classification. For example, the duty statement for the Animal Shelter Attendant classification lists 11 essential job functions, one of which describes care and maintenance activities. The duty statement for the Animal Shelter Supervisor classification lists 21 essential job functions, one of which describes care and maintenance activities. Contrary to what the town believes, it is not reasonable to apply 100% of any classification's workload solely to care and maintenance activities. Based on the detailed duty statements provided, these employees are also performing many activities that are reimbursable under other components of this mandated program (necessary and prompt veterinary care, maintaining non-medical records, lost and found lists), as well as various administrative activities and non-mandated activities.<sup>119</sup>

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<sup>115</sup> Exhibit A, IRC, pages 304-305 (Final Audit Report).

<sup>116</sup> Exhibit A, IRC, pages 314 (Final Audit Report), 362 (Claimant's Response to the Draft Audit Report).

<sup>117</sup> Exhibit A, IRC, pages 314 (Final Audit Report), 362 (Claimant's Response to the Draft Audit Report).

<sup>118</sup> Exhibit A, IRC, pages 314 (Final Audit Report), 362 (Claimant's Response to the Draft Audit Report).

<sup>119</sup> Exhibit A, IRC, page 314 (Final Audit Report).

### 3. Finding 7 (Reduction of Indirect Costs)

The Controller found that \$12,708 in indirect costs is allowable.<sup>120</sup> The claimant did not claim indirect costs as a separate item but incorporated indirect costs into the Care and Maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director.<sup>121</sup> The Controller found this approach to be incorrect and not in accordance with the Parameters and Guidelines. The Parameters and Guidelines allow claimants to use ten percent of direct labor, excluding fringe benefits, or preparing an indirect cost rate proposal (ICRP). The Controller recalculated indirect costs as a separate reimbursable cost item using the ten percent default rate.<sup>122</sup> The Controller did not consider an ICRP submitted by the claimant in April 2016, that was prepared in response to the Draft Audit Report. The Final Audit Report states the following:

With its response to the draft audit report, the town submitted calculations for an ICRP for both fiscal years of the audit period. Submitting an ICRP at this time would require us to re-open the audit and conduct further fieldwork to analyze and verify the indirect cost rates that the town is now proposing. However, the indirect costs that are allowable for the audit period were calculated using an acceptable methodology as prescribed in the parameters and guidelines. Further, the town agreed with this method as being the best option, in discussions that took place on April 12, 2016. Therefore, we are not considering the additional information provided for indirect cost rate calculations.<sup>123</sup>

### 4. Other Issue—Necessary and Prompt Veterinary Care Costs

Although the Controller made no finding relating to the necessary and prompt veterinary care in the Draft Audit Report issued on June 8, 2016, the Controller incorporated a section titled “Other Issue” in the Final Audit Report to address the claimant’s comments on the Draft Audit Report requesting reimbursement for necessary and prompt veterinary care costs. The claimant did not identify any veterinary care costs on its reimbursement claims.<sup>124</sup> However, in response to the Draft Audit Report the claimant requested reimbursement of \$10,608 for fiscal year 2007-2008 and \$10,298 for fiscal year 2008-2009 for wellness vaccine costs and for employee salary and benefit costs for the time to conduct the initial physical exam to determine the animal’s baseline health and to administer the wellness vaccine.<sup>125</sup> The Controller states that the claimant did not claim veterinary care costs in its reimbursement claims, and the belated claim would not be considered for the following reasons:

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<sup>120</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>121</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>122</sup> Exhibit A, IRC, pages 328-329 (Final Audit Report).

<sup>123</sup> Exhibit A, IRC, page 331 (Final Audit Report).

<sup>124</sup> Exhibit A, IRC, pages 401-407 (2007-2008 Amended Reimbursement Claim), 640-645 (2008-2009 Amended Reimbursement Claim).

<sup>125</sup> Exhibit A, IRC, pages 334-335 (Final Audit Report).



. . . The salary and benefit costs that the town is requesting reimbursement for are based on a two-day time study that the town conducted from May 18, 2016, to May 20, 2016.

The town did not claim any costs for this component for the audit period. We informed the town on numerous occasions (via email on July 13, 2015, October 14, 2015, February 29, 2016, and March 15, 2016, and by telephone on October 26, 2015, and October 29, 2015) that in order to determine allowable salary and benefit costs for the audit period, it would need to conduct a time study for this cost component. In addition, the results of a two-day time study that the town conducted post-exit conference do not appear adequate to determine allowable costs for the audit period. Similar to our comments above for the indirect cost rate information provided, examining the town's time study at this time would require us to re-open the audit and conduct additional fieldwork to analyze and verify the accuracy of the information provided.

Lastly, during fieldwork, we informed the town that in order to determine allowable materials and supplies costs for the purchase of wellness vaccines, the town would need to provide supporting documentation in the form of invoices in order to determine a unit cost per vaccine. Such information was not provided during the course of the audit or in the response to the draft audit report.<sup>126</sup>

### **III. Positions of the Parties**

#### **A. Town of Apple Valley**

The claimant specifically challenges only Findings 1, a portion of Finding 2 relating to salaries and benefits, and Finding 7 of the Final Audit Report. The claimant also challenges the Controller's determination that the claimant did not claim any costs for necessary and prompt veterinary care for the audit period and the Controller's decision not to consider documents to support costs under this component which were submitted to the Controller after the exit conference and after the Draft Audit Report was issued.

In regard to Finding 1, the claimant argues that the Controller's denial of reimbursement for the costs claimed for construction of the new animal shelter is incorrect, and that, contrary to the Controller's conclusion, the claimant did provide sufficient documentation to demonstrate "that the construction of a new facility was necessary to provide appropriate and adequate shelter space to comply with the mandated activities."<sup>127</sup> Specifically, the claimant relies on two particular statements contained in the items referred to by the claimant, as follows:

Page 2 of the April 2007, Request for Qualifications to Design the Animal Shelter Facility stated, "The Proposed Animal Control Shelter will be designed to increase the hold time for potentially adoptable animals..." (see Town of Apple Valley's June 17, 2016 Response to the Draft Audit - SCO website- beginning on page 63.  
[http://sco.ca.gov/Files-AUD/MandCosts/08\\_2016\\_applevalley\\_animal.pdf](http://sco.ca.gov/Files-AUD/MandCosts/08_2016_applevalley_animal.pdf))

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<sup>126</sup> Exhibit A, IRC, page 335 (Final Audit Report).

<sup>127</sup> Exhibit A, IRC, page 3.

Further, at the July 10, 2007 Council meeting audio recording (at 1:32:37 of the recording) contains Councilman Jasper's statement that the need to build a new animal shelter is because it is "Mandated by the State to take care of our animals."<sup>128</sup>

The claimant also points to a number of other documents, arguing that they show that the existing facilities were not properly configured, and that remodeling or contracting with existing private and public shelters was "not feasible."<sup>129</sup>

In addition, the claimant argues that "[t]he records shows that the Town did provide the calculations used to determine the percentage of facility costs claimed."<sup>130</sup> The claimant reiterates in its rebuttal comments that "the computation formulas were included as a part of the original claims" and that the claimant "also provided the SCO with another copy during the audit process."<sup>131</sup> However, the claimant also admits that it "had difficulty computing the Formula for Proportionate Share of Actual Costs . . . because the formula requires data from 1998 such as shelter square footages of facilities and animal populations . . . [and] these numbers were extremely difficult to obtain," and that claimant "deliberately left both [conflicting] computations as a part of the records so that when the SCO reviewed the claim for payment, we could discuss which computation was correct."<sup>132</sup> Finally, the claimant objects to the Controller's conclusion that "[m]any of the costs claimed occurred outside of the audit period" because "[c]ost incurred includes obligated and expended costs during the fiscal years claimed,"<sup>133</sup> and both of these categories of costs should qualify as "cost incurred" according to Federal Office of Management and Budget (OMB) A-87 guidelines.<sup>134</sup>

In regard to Finding 2, the claimant disagrees with the Controller's recalculation of salaries and benefits reimbursable under the Care and Maintenance cost component. The claimant disputes the Controller's conclusion in Finding 2 that the claimant did not claim salary and benefits costs for care and maintenance of animals, stating that these costs were claimed as part of the actual cost formula. The claimant then alleges that while recalculating salary and benefits under the care and maintenance component, the Controller wrongly and arbitrarily demanded that the claimant adjust the percentage of actual time spent by various shelter employees on care and maintenance of animals, so that care and maintenance staff time between all positions would total 100 percent.<sup>135</sup> The claimant maintains that the Controller did not provide any reasoning for this requirement.<sup>136</sup> Although according to the claimant the imposition of this requirement resulted in significant reduction of time for various employee classifications, the claimant

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<sup>128</sup> Exhibit A, IRC, page 3.

<sup>129</sup> Exhibit C, Claimant's Rebuttal Comments, pages 1-2.

<sup>130</sup> Exhibit A, IRC.

<sup>131</sup> Exhibit C, Claimant's Rebuttal Comments, page 2.

<sup>132</sup> Exhibit C, Claimant's Rebuttal Comments, page 2.

<sup>133</sup> Exhibit A, IRC, page 4.

<sup>134</sup> Exhibit C, Claimant's Rebuttal Comments, page 3.

<sup>135</sup> Exhibit A, IRC, pages 9-10.

<sup>136</sup> Exhibit A, IRC, page 10.

specifically disputes only the reduction of time allocated to the Animal Shelter Attendant for performance of his care and maintenance duties from 85 percent to 60 percent; and reduction of care and maintenance time allocated to the Animal Shelter Supervisor from 10 percent to 5 percent.<sup>137</sup> The claimant then requests that the allocation of time spent on care and maintenance be based on “actual amounts originally specified by the Shelter Manager, and the subsequent calculation of eligible care and maintenance costs be restored.”<sup>138</sup>

In its rebuttal comments, the claimant states that “[t]he Audit Report **falsely implies that the percentage allocations shown in the Final Audit report were determined by the town shelter management staff.**”<sup>139</sup> The claimant explains that upon the Controller’s request, the shelter staff performed an analysis of employee’s duty statements and provided an allocation of actual time spent by each shelter employee classification on animal care and maintenance and on other activities,<sup>140</sup> as follows:

Animal Shelter Supervisor = 10% time spent providing care to impounded animals, 90% other duties

Registered Veterinary Technician = 85% time spent caring/maintaining animals, 15% other duties

Animal Control Technician = 25% time spent maintaining shelter disinfecting kennels, 75% other duties

Animal Shelter Attendant = 80% time spent caring/maintaining the animals and 5% overseeing volunteer and work releases (who provide care and maintenance), 15% other duties

Animal Control Supervisor = 5% Shelter (morning cleaning/feeding dogs), 95% animal control duties

Animal Control Officer I = 10% Shelter (morning cleaning/feeding dogs), 90% animal control duties

Animal Control Officer II = 10% Shelter (morning cleaning/feeding dogs), 90% animal control duties<sup>141</sup>

However, because the total time spent on care and maintenance of animals among all of these employees added up to more than 100 percent, the Controller’s staff communicated to the claimant via phone and by email that it must reduce reported time so that all of the care and maintenance time would add up to 100 percent among all of the employee classifications.<sup>142</sup> As directed by the Controller, the claimant made artificial reductions in time allocations, which were

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<sup>137</sup> Exhibit A, IRC, page 9.

<sup>138</sup> Exhibit A, IRC, page 10.

<sup>139</sup> Exhibit C, Claimant’s Rebuttal Comments, page 9, emphasis in original.

<sup>140</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 8-10.

<sup>141</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 8-9.

<sup>142</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 8-9.

not based on the actual time spent by each category of employees on care and maintenance, but were necessary so that all of the care and maintenance time would add up to 100 percent, as required by the Controller.<sup>143</sup> As a result, the Final Audit Report reflects the following reduced allocation of time per employee classification during the audit period “[t]o make all employees time add to 100% per SCO request”:<sup>144</sup>

Animal Shelter Supervisor	5%
Registered Veterinary Technician	20%
Animal Control Technician	5%
Animal Shelter Attendant	60%
Animal Control Supervisor	5%
Animal Control Officer I	5%
Animal Control Officer II	0% <sup>145</sup>

The claimant argues that the Controller’s requests that the claimant make these reductions did not have a legitimate basis and “were incorrect and arbitrary and resulted in improper reductions of eligible Town costs.”<sup>146</sup> The claimant refutes the Controller’s argument that these reductions resulted from the Controller’s determination of what would be a reasonable allocation of care and maintenance time for each job classification based on the Controller’s analysis of job descriptions provided by the claimant. According to the claimant, such determination based on the reviewing job descriptions alone would be questionable because while some job duties take much more employee time than others, “[t]here is no indication of how much employee time is required to be spent on each activity on the Job Description documents.”<sup>147</sup> On the other hand, the claimant states that its initial allocation of time for each job classification is correct and based on the shelter staff analysis, as was requested by the Controller, describing specific care and maintenance activities performed by the employees in each classification and the percentage of their time spent on these activities.<sup>148</sup>

Finally, the claimant notes that the Controller did not require most other audited local agencies to limit their allocations of care and maintenance time among various employee classifications to 100 percent, and therefore it “is not the common methodology used” by the Controller.<sup>149</sup> According to the claimant’s analysis of the audit reports for other *Animal Adoption* programs, “Besides the Town of Apple Valley, only three other agencies (Antioch, Placer and Santa Barbara audits) of the over 43 audits were similarly forced to reduce their employee time

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<sup>143</sup> Exhibit C, Claimant’s Rebuttal Comments, page 9.

<sup>144</sup> Exhibit C, Claimant’s Rebuttal Comments, page 9.

<sup>145</sup> Exhibit C, Claimant’s Rebuttal Comments, page 9.

<sup>146</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 9-10.

<sup>147</sup> Exhibit C, Claimant’s Rebuttal Comments, page 10.

<sup>148</sup> Exhibit C, Claimant’s Rebuttal Comments, page 10.

<sup>149</sup> Exhibit C, Claimant’s Rebuttal Comments, page 10.

allocations to total to 100% between a group of employees.”<sup>150</sup> The claimant states that “All other agencies that used the ‘Actual Cost Method to compute Care and Maintenance Costs were allowed to use their actual allocations’”<sup>151</sup> For example, according to the claimant, the Town of Apple Valley, Contra Costa County was allowed to use the following allocation of time, exceeding the total of 100 percent:

Contra Costa Audit - Technicians = 91.667%  
Senior Technicians = 91.38%  
Utility Workers = 91.38%  
Special Services Workers = 55%<sup>152</sup>

The claimant also provided excerpts from several *Animal Adoption* program audits to show that similarly situated agencies were not required to balance the percentages of time devoted by various employee classifications to care and maintenance activities to 100 percent.<sup>153</sup>

In regard to Finding 7, the claimant disagrees with the Controller’s conclusion that the claimant did not claim indirect costs, and that therefore there was no reduction when the Controller recalculated allowable indirect costs.<sup>154</sup> The claimant argues that indirect costs were included in the computed cost per animal per day in accordance with the formula provided in the Parameters and Guidelines for actual costs under the care and maintenance cost component.<sup>155</sup>

Further, the claimant argues that the Controller incorrectly recalculated allowable indirect costs using ten percent indirect cost rate because actual indirect costs incurred by the claimant were higher than ten percent and that the claimant should have been given the opportunity to “support [its] costs with actual overhead (ICRP) rates” based on the ICRP prepared and submitted to the Controller with its formal response to the Draft Audit Report. The claimant states that the Controller wrongly denied the claimant’s request to consider its ICRP and to recalculate allowable indirect costs based on the ICRP rate during the audit.<sup>156</sup> The claimant admits that it did not prepare an ICRP to support its claim for indirect costs with its reimbursement claims, but insists that it was not required to do so, because the methodology that the claimant used to calculate costs for its reimbursement claims did not require preparation of an ICRP.<sup>157</sup> Finally, the claimant states that its submission of the ICRPs after the release of Draft Audit Report was timely because it was submitted “within the audit response period of time allotted to the Claimant,”<sup>158</sup> and argues that the Controller should have continued the audit in order to review

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<sup>150</sup> Exhibit C, Claimant’s Rebuttal Comments, page 10.

<sup>151</sup> Exhibit C, Claimant’s Rebuttal Comments, page 11.

<sup>152</sup> Exhibit C, Claimant’s Rebuttal Comments, page 11.

<sup>153</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 31-46.

<sup>154</sup> Exhibit C, Claimant’s Rebuttal Comments, page 13.

<sup>155</sup> Exhibit C, Claimant’s Rebuttal Comments, page 13.

<sup>156</sup> Exhibit A, IRC, page 11.

<sup>157</sup> Exhibit A, IRC, page 11.

<sup>158</sup> Exhibit A, IRC, page 12.

the claimant's two ICRPs because "[t]here was still at least another year in which the audit had to conclude statutorily."<sup>159</sup>

In regard to the "Other Issue—Necessary and Prompt Veterinary Care Costs," the claimant disagrees with the Controller's conclusion that the claimant did not claim any costs for the necessary and prompt veterinary care, because these costs were included in the composite cost per animal per day under the care and maintenance component.<sup>160</sup> The claimant further argues that because the Controller informed the claimant that if some of the costs were not properly supported, then the claimant would have an opportunity to support the incurred costs during the audit. The claimant argues that the Controller should not have later refused to consider the claimant's "Prompt and Necessary Veterinary Care" time study, conducted post-exit conference, to support the cost of labor for the initial physical examination and administration of the wellness vaccine.<sup>161</sup> In addition, the claimant argues that in the absence of actual invoices documenting the cost of wellness vaccines, the Controller should have allowed the claimant some other alternative to support these costs. The claimant alleges that the Controller offered and allowed other alternatives to other local agencies that could not locate the actual, old invoices to support the cost of the vaccine.<sup>162</sup> The claimant further argues that the Controller was not justified to disallow further time studies or to refuse further review of supporting documents on the ground that it would have to re-open audit field work to review them because, by law, the Controller had another year to complete the audit.<sup>163</sup>

#### **B. State Controller's Office**

With respect to the space and facilities acquisition costs (Finding 1), the Controller explains that the primary reason for the disallowance of the entire amount claimed was that "the town did not support, through a Board agenda or other similar supporting documentation that the construction was a direct result of the increased holding period requirements of this mandated program."<sup>164</sup> The Controller states that although the claimant provided some of the city council's documents related to the history of the shelter contractual arrangements from the late 1990s, and the documents pertaining to the city's decisions about construction of the new shelter, none of the documents in the record include "language stating that acquiring additional space and/or construction of new facilities is necessary for the increased holding period requirements of the mandated program," as required by Parameters and Guidelines.<sup>165</sup> The Controller disagrees with the claimant's argument that the statement made by then Mayor Pro Tem Jasper at a Town Council meeting held on July 10, 2007 "that a new animal shelter is needed because it is '[m]andated by the State to take care of our animals,'" provides evidence that the construction of

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<sup>159</sup> Exhibit A, IRC, page 11.

<sup>160</sup> Exhibit A, IRC, page 5.

<sup>161</sup> Exhibit A, IRC, pages 5-6.

<sup>162</sup> Exhibit A, IRC, pages 8-9.

<sup>163</sup> Exhibit A, IRC, page 7.

<sup>164</sup> Exhibit B, Controller's Comments on the IRC, page 13.

<sup>165</sup> Exhibit B, Controller's Comments on the IRC, pages 12-14.

a new shelter was undertaken in order to comply with the mandated activities.<sup>166</sup> Upon review of the recording of the July 10, 2007 Town Council meeting, the Controller concluded that, although Mr. Jasper made the alleged statement, “there was no discussion at that meeting concerning shelter overcrowding due to the increased holding period or any other topics related to the requirements of the mandated program,” and Mr. Jasper’s statement alone, relied upon by the claimant, does not address any specific requirements of the mandated program. It merely refers to a general obligation to take care of animals, which in itself “is not a new requirement resulting from the test claim legislation.”<sup>167</sup> In addition, the Controller states that the record does not include “a statement that ‘remodeling existing facilities is not feasible and/or is more expensive than acquiring additional space and/or constructing new facilities’ or that ‘contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals... is not feasible or is more expensive than acquiring additional space and/or constructing new facilities,” which is also required by the Parameters and Guidelines.<sup>168</sup>

In response to the claimant’s argument regarding its calculation of the reimbursable share of construction costs, the Controller notes that the mandated program allows reimbursement under this cost component only for a proportionate share of actual costs incurred, which must be calculated using a specific formula provided in the amended Parameters and Guidelines. The Controller argues that these required calculations, first provided by the claimant only in response to the Draft Audit Report, are incorrect and lack supporting documentation.<sup>169</sup>

Finally, the Controller addresses the claimant’s argument that all the costs claimed under the space and facilities acquisition component should be counted as incurred during the claimed period, 2007-2008 and 2008-2009 fiscal years. The Controller explains that upon review of the Transaction Detail Report representing total construction project costs of \$11,008,301, which was submitted by the claimant in support of its 2007-2008 and 2008-2009 claims, the records for the transactions corresponding to the alleged costs date between 2007 and 2010 as follows:

- FY 2007-08 - \$1,437,396
- FY 2008-09 - \$3,044,818
- FY 2009-10 - \$6,522,080
- FY 2009-10 - \$ 4,007<sup>170</sup>

Accordingly, the Controller argues that while the claimant correctly based its calculation of allegedly allowable costs for the 2007-2008 claim on \$1,437,396 of total costs incurred in 2007-2008 fiscal year, it incorrectly based its calculation of costs for the 2008-2009 claim on the full remaining amount of the project costs incurred between 2007 and 2010. The Controller claims that only the \$3,044,818 amount incurred in the 2008-2009 fiscal year, as supported by the

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<sup>166</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>167</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>168</sup> Exhibit B, Controller’s Comments on the IRC, page 15.

<sup>169</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>170</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

Transaction Detail Report, should have been used for calculation of allowable costs for the 2008-2009 claim.<sup>171</sup>

With respect to the recalculation of allowable salaries and benefits under the care and maintenance cost component (Finding 2), the Controller disagrees with the claimant's contention that the Controller "arbitrarily" reduced time for two employee classifications.<sup>172</sup> The Controller maintains that the claimant did not claim salary and benefits for this component because it misclassified costs, and did not have supporting documentation for actual salary and benefit costs incurred specifically for the care and maintenance of animals during audit period.<sup>173</sup> In the absence of required documentation "detailing the percentage of time various classifications of employees spent on care and maintenance or any other activities," the Controller determined allowable salaries and benefits for the care and maintenance component using "an appropriate and reasonable methodology" on the basis of "two items" provided by the claimant: "1) actual salary amounts paid to those employee classifications directly involved with care and maintenance function; and 2) the duty statements for the identified classifications to help determine approximately how much of their workload is devoted to care and maintenance functions," which "include activities such as feeding, watering, grooming, and cleaning the animals."<sup>174</sup>

The Controller acknowledges that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."<sup>175</sup> The Controller also states it reduced allocation of time originally proposed by the claimant because the Controller determined it to be unreasonable, based on its own analysis of the duty statements, which are "very detailed; and in this case, helped determine to what extent an employee classification's duties are directly related to care and maintenance activities."<sup>176</sup> Based on the analysis of the "essential job functions" listed in the duty statements of the two contested classifications, the Controller concluded that "the 60% allocation for the Animal Shelter Attendant classification and the 5% allocation for the Animal Shelter Supervisor classification are reasonable determinations of the actual time spent by these employees performing care and maintenance activities."<sup>177</sup>

With respect to the recalculation of indirect costs (Finding 7), the Controller maintains that the claimant did not directly claim reimbursement for indirect costs.<sup>178</sup> Instead, the claimant "computed a 40% overhead factor and included this in its alternative formula for claiming costs

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<sup>171</sup> Exhibit B, Controller's Comments on the IRC, page 16.

<sup>172</sup> Exhibit B, Controller's Comments on the IRC, pages 27-29.

<sup>173</sup> Exhibit B, Controller's Comments on the IRC, pages 27-29.

<sup>174</sup> Exhibit B, Controller's Comments on the IRC, pages 27-29.

<sup>175</sup> Exhibit B, Controller's Comments on the IRC, page 28.

<sup>176</sup> Exhibit B, Controller's Comments on the IRC, page 29.

<sup>177</sup> Exhibit B, Controller's Comments on the IRC, page 29.

<sup>178</sup> Exhibit B, Controller's Comments on the IRC, page 30.



using the Actual Cost Method reserved for Care and Maintenance costs.”<sup>179</sup> The Controller argues that “including a factor for overhead within a cost component is not an option outlined in the parameters and guidelines for claiming indirect costs,” which provide for two options: either using ten percent of direct labor, excluding fringe benefits, or preparing an ICRP pursuant to the OMB Circular A-87.<sup>180</sup> The Controller further explains that the claimant initially agreed with the Controller’s use of the ten percent default rate for indirect costs. However, the claimant later changed its mind in its response to the Draft Audit Report, requesting recalculation of indirect costs using an ICRP rate submitted by the claimant for both fiscal years of the audit period.<sup>181</sup>

As to the claimant’s argument that the Controller decided to end the audit a year before the statutory deadline, the Controller argues that it was not obligated to reopen audit fieldwork and to keep the audit open to consider a newly submitted ICRP.<sup>182</sup> The Controller states that it is the Controller’s responsibility to conduct an audit in the most efficient manner.<sup>183</sup> While “pursuant GC section 17558.5, subdivision (b), the SCO is required to complete an audit no later than two years after the date the audit commenced,” this is a limitation on the length of the audit and not a requirement that the Controller keep the audit open for the entire two years.<sup>184</sup>

With respect to the claimant’s request for reimbursement of necessary and prompt veterinary care costs (“Other Issue—Necessary and Prompt Veterinary Care Costs”), the Controller reiterates its conclusion in the Final Audit Report that these costs were not claimed for either fiscal year of the audit period.<sup>185</sup> The Controller explains that although the claimant used total shelter costs, including all veterinary costs, when it calculated the care and maintenance component, it would be impossible to correctly determine or segregate out which portion of these overall costs was attributable to the necessary and prompt veterinary care costs.<sup>186</sup> At the same time, the Controller acknowledges that it agreed to work with the claimant during the audit and advised the claimant on numerous occasions throughout the audit that it would need to conduct time studies (one for performing an initial physical exam and one for administering wellness vaccines), and to submit invoices to support any material and supplies costs.<sup>187</sup> However, the Controller argues that the claimant did not timely perform the time studies and did not submit the required documentation to support the cost of vaccines.<sup>188</sup> Furthermore, the Controller argues that the time study submitted by the claimant after the exit conference and in response to the

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<sup>179</sup> Exhibit B, Controller’s Comments on the IRC, page 30.

<sup>180</sup> Exhibit B, Controller’s Comments on the IRC, page 30.

<sup>181</sup> Exhibit B, Controller’s Comments on the IRC, page 30-32.

<sup>182</sup> Exhibit B, Controller’s Comments on the IRC, page 30-32.

<sup>183</sup> Exhibit B, Controller’s Comments on the IRC, page 32.

<sup>184</sup> Exhibit B, Controller’s Comments on the IRC, page 32.

<sup>185</sup> Exhibit B, Controller’s Comments on the IRC, pages 17, 21.

<sup>186</sup> Exhibit B, Controller’s Comments on the IRC, page 21.

<sup>187</sup> Exhibit B, Controller’s Comments on the IRC, page 17.

<sup>188</sup> Exhibit B, Controller’s Comments on the IRC, pages 24-27.

Draft Audit Report was inadequate and not supported by source documents.<sup>189</sup> The Controller argues that under these circumstances, the claimant is not entitled to reinstatement of costs that were never claimed.<sup>190</sup> The Controller also states that it is the claimant's sole responsibility to promptly provide supporting documents, including time studies, and the Controller is not responsible to ensure that the claimant completes the studies and submits all the supporting documents.<sup>191</sup> Nevertheless, the Controller states that it worked with the claimant and sent the claimant numerous reminders throughout the year to submit required documents and to conduct the time studies.<sup>192</sup> Further, the Controller asserts that it gave the claimant notice that it was planning to end the audit, and worked with the claimant to agree on the date for the exit conference.<sup>193</sup>

#### **IV. Discussion**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>194</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>195</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to

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<sup>189</sup> Exhibit B, Controller's Comments on the IRC, pages 24-25.

<sup>190</sup> Exhibit B, Controller's Comments on the IRC, page 21.

<sup>191</sup> Exhibit B, Controller's Comments on the IRC, page 21.

<sup>192</sup> Exhibit B, Controller's Comments on the IRC, pages 21-24.

<sup>193</sup> Exhibit B, Controller's Comments on the IRC, pages 17-24.

<sup>194</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>195</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>196</sup> Under this standard, the courts have found that

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”<sup>197</sup>

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>198</sup> In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>199</sup>

**A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received the Written Notice of Adjustment from the Controller, as Required by the Commission’s Regulations.**

California Code of Regulations, title 2, section 1185.1 provides for the period of limitation in which an IRC must be timely filed:

All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met.<sup>200</sup>

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<sup>196</sup> *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>197</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>198</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>199</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5

<sup>200</sup> California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

Here, the Final Audit Report is dated August 15, 2016.<sup>201</sup> The IRC was filed with the Commission less than three years later on August 1, 2017.<sup>202</sup> Accordingly, this IRC was timely filed within the period prescribed in Code of Regulations, title 2, section 1185.1.

**B. The Controller’s Reduction of All Costs Claimed for the Acquisition of Additional Space by Purchasing Land and Constructing a New Shelter Facility (Finding 1), Is Correct as a Matter of Law Because the Claimant Failed to Provide Adequate Supporting Documentation, as Required by the Parameters and Guidelines, Showing that the Costs Were Incurred as a Direct Result of the Mandate.**

In its 2007-2008 and 2008-2009 reimbursement claims, the claimant alleged that it incurred reimbursable state-mandated costs for acquiring additional space by purchasing land and constructing a new shelter, and claimed a percentage of overall acquisition costs, totaling \$1,978,499 for the audit period.<sup>203</sup>

The Controller found that “the entire amount” of \$1,978,499 claimed for the audit period is unallowable because the claimant “did not support, through a Board Agenda or other similar supporting documentation, that the construction was a direct result of the increased holding period requirements of this mandated program.”<sup>204</sup> The Controller explains in the Final Audit Report that this was the primary reason for the reduction.<sup>205</sup> The Controller also found that that the claimant’s documents did not include the following information required by the Parameters and Guidelines:

. . . a statement that ‘remodeling existing facilities is not feasible and/or is more expensive than acquiring additional space and/or constructing new facilities’ or that ‘contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals . . . is not feasible or is more expensive than acquiring additional space and/or constructing new facilities.’<sup>206</sup>

The claimant disputes the finding and requests “the allowable share of facility construction costs be restored.”<sup>207</sup> The claimant argues that it “provid[ed] material that shows that the construction of a new facility was necessary to provide appropriate and adequate shelter space to comply with the mandated activities,”<sup>208</sup> and that “the project was necessary and due in part to the requirements of the passage of the new State Mandate program which required increased space

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<sup>201</sup> Exhibit A, IRC, page 291 (Final Audit Report).

<sup>202</sup> Exhibit A, IRC, page 1.

<sup>203</sup> Exhibit A, IRC, pages 403-404 (2007-2008 Amended Reimbursement Claim), 641-642 (2008-2009 Amended Reimbursement Claim).

<sup>204</sup> Exhibit A, IRC, page 295 (Final Audit Report).

<sup>205</sup> Exhibit A, IRC, page 301 (Final Audit Report).

<sup>206</sup> Exhibit B, Controller’s Comments on the IRC, page 15.

<sup>207</sup> Exhibit A, IRC, pages 3-4.

<sup>208</sup> Exhibit A, IRC, page 3.

due the increased hold time for animals and also because the facility was not configured or equipped properly.”<sup>209</sup>

In its response to the Draft Audit Report, the claimant argued as follows:

Because the SCO is requesting specific wording to "prove" the facility construction was necessary due to increased space needed due to changes in State Law (Hayden Bill) we believe page two, Section E of the attached "Request For Qualifications/Request for Proposals (RFQ/RFP)" to Provide Architectural Design Services for New Municipal Services Animal Shelter Facility addresses this concern:

**"The Project: The project will include design of a purpose built Animal Shelter Facility including office space. The proposed Animal Control Shelter will be designed to increase the hold time for animals and improve customer service."**

This RFQ/RFP was released on April 2, 2007, resulting from the authorization by the Town Council following the special meeting in February 2007 and a meeting in March 2007.<sup>210</sup>

The claimant further stated

At the July 10, 2007 Town Council Meeting when the Town Council approved the Architectural Design Contract for the Animal Shelter Facility, the minutes do not reflect the entire conversation of the Town Council. If you listen to the discussion that led to the approval of the Notice to Proceed with Design of the Shelter, there was clearly discussion regarding the lack of space and need to expand the facility.

At 1:32:37 of the recording of the July 10, 2007 Town Council Meeting, Councilman Jasper makes the comment regarding the need of building a new animal shelter is because it is "Mandated by the State to take care of our animals."<sup>211</sup>

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<sup>209</sup> Exhibit A, IRC, page 4.

<sup>210</sup> Exhibit A, IRC, page 347 (Claimant's Response to the Draft Audit Report), emphasis in original; Exhibit A, IRC, page 299 (Final Audit Report); Exhibit A, IRC, page 3 (quoting this language from page two of the April 2007 RFQ in support of the argument that the new facility was necessary to comply with the mandate).

<sup>211</sup> Exhibit A, IRC, page 347 (Claimant's Response to the Draft Audit Report); Exhibit A, IRC, page 299 (Final Audit Report); Exhibit A, IRC, page 3; Exhibit C, Claimant's Rebuttal Comments, page 1 (stating that "audio discussion provided in our IRC supports [the] requirement" that the record include "language stating that acquiring additional space and or construction of a new facility is necessary for the increased holding period of the mandated program" and including links that appear to be to audio recordings).

In the IRC narrative, the claimant adds a brief overview of the town's animal sheltering arrangements from late 1990s through September 2008, when according to claimant, discussion and planning began to construct a new shelter facility:

In the late 1990s through almost the end of FY 2003-04 (May 2004), the Town contracted with Victor Valley Animal Protective League for their shelter services. This arrangement ended because of increased costs for sheltering services being presented by Victor Valley Animal Protective League without audited records to support the increased fee request. (See Appendix C)

In June of 2004, the Town contracted with the City of Hesperia to care and shelter their animals because the Town ended their contract with Victor Valley Animal Protective League and needed emergency animal sheltering services while the Town constructed a temporary animal shelter for Apple Valley animals. Sheltering with the City of Hesperia ended when the Town completed the renovation of an old residential dwelling and warehouse structure in March of 2005. The renovation provided a temporary animal sheltering facility within the Town's jurisdiction and eliminated the need for animal services staff to travel outside of their jurisdiction to place impounded animals into a contract shelter for housing and an easily accessible facility where town residents could look for their lost pets. (Appendix C)

It soon became evident that this facility was inadequate because the building was not purpose built and did not provide necessary, isolation, quarantine or kennel space for an increasing number of impounded animals or adequate rooms to provide necessary medical treatment. Discussion and planning began to construct a new Shelter Facility in September 2008, with specific consideration for increased kennel capacity, quarantine rooms, isolation facilities for sick/injured animals, increased holding times and a ventilation system to filter airborne diseased [sic] and minimize cross contamination of animals. (See Appendix C)<sup>212</sup>

In its rebuttal comments, the claimant further specifies that it satisfied the requirements that “[r]emodeling is not feasible” and “[e]xisting facilities are not properly configured,” because although it remodeled a small residential building and warehouse to temporarily care for animals after its sheltering contract with the City of Hesperia ended in 2005, “only two years later, the governing body found that facility was not ‘purpose built and did not provide necessary isolation, quarantine or kennel space for an increased number of impounded animals.’”<sup>213</sup> Finally, the claimant alleges that it contracted with existing private and public shelters through 2005, but found these arrangement “unsatisfactory (not feasible).”<sup>214</sup> Specifically, (1) “Council expressed concerns to the Victor Valley Animal Protective League because of increased costs

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<sup>212</sup> Exhibit A, IRC, page 3. Appendix C contains three documents: (1) Minutes of February 10, 2004 Town Council Regular Meeting; (2) Proposed agenda item for August 10, 2004 Council meeting; and (3) Proposed agenda item for September 9, 2008 Town Council meeting. See Exhibit A, IRC, pages 200-209.

<sup>213</sup> Exhibit C, Claimant's Rebuttal Comments, page 1.

<sup>214</sup> Exhibit C, Claimant's Rebuttal Comments, page 2.

‘without audited records to support the increased fee request,’” and (2) “[l]ater when the Town contracted with the City of Hesperia, the Town Council wished to ‘eliminate the need for residents to travel outside of their jurisdiction to place impounded animals...’”<sup>215</sup> The claimant argues that this record “demonstrates that the governing body of the Town of Apple Valley did attempt to find alternative animal housing arrangements, but for various reasons found these arrangements not feasible.”<sup>216</sup>

As described below, the Commission finds that the Controller’s reduction is correct as a matter of law because the claimant failed to provide adequate supporting documentation required by the Parameters and Guidelines that the costs were incurred as a direct result of the increased holding period mandated by the test claim statutes; that constructing new facilities was necessary for the increased holding period because the existing facilities did not reasonably accommodate impounded stray or abandoned dogs, cats and other specified animals that are ultimately euthanized; that the existing facilities were not appropriately configured or equipped to comply with the increased holding period; and that remodeling existing facilities or contracting with existing private or public shelters was not feasible or is more expensive than acquiring additional space by purchasing land and constructing new facilities to comply with the increased holding period.

**1. The Parameters and Guidelines Require the Claimant to Show, with Contemporaneous Supporting Documentation, that the Governing Board Determined that the New Facilities Were Necessary for the Increased Holding Period Mandated by the Test Claim Statutes Because the Existing Facilities Did Not Reasonably Accommodate Impounded Stray or Abandoned Dogs, Cats and Other Specified Animals that Are Ultimately Euthanized; that Existing Facilities Are Not Appropriately Configured or Equipped to Comply with the Increased Holding Period; and that Remodeling Existing Facilities or Contracting with Existing Private or Public Shelters Is Not Feasible or Is More Expensive than Acquiring Additional Space by Purchasing Land and Constructing New Facilities to Comply with the Increased Holding Period Mandated by the Test Claim Statutes.**

The Parameters and Guidelines authorize reimbursement for the acquisition of additional space “by purchase, lease and/or construction” of new facilities to comply with the increased holding period mandated by the state, beginning January 1, 1999. The Parameters and Guidelines authorize reimbursement for the proportionate share of actual costs (based on a specified formula) required to plan, design, acquire, and build facilities in a given year based on the pro rata representation of impounded stray or abandoned dogs, cats, and other animals specified in the test claim statutes that are held during the increased holding period and die during the increased holding period or are ultimately euthanized, to the total population of animals housed in the facility during the entire holding period required by law.<sup>217</sup> The Parameters and Guidelines also state, in

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<sup>215</sup> Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>216</sup> Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>217</sup> Exhibit A, IRC, pages 260-262 (2006 Parameters and Guidelines Amendment).

accordance with Statutes 2004, chapter 313, that costs incurred to address preexisting shelter overcrowding or animal population growth are *not* reimbursable.<sup>218</sup>

To be eligible for reimbursement, the claimant must show that the costs incurred for the acquisition of additional space by the purchase of land and construction of a new facility were required as a direct result of the mandate.<sup>219</sup> Under the Parameters and Guidelines, the costs are reimbursable *only* to the extent that an eligible claimant submits, with its reimbursement claim, contemporaneous documentation reflecting a “determination by the governing board that acquiring additional space and/or constructing new facilities is necessary for the increased holding period mandated by Statutes of 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats, and other specified animals that are ultimately euthanized.”<sup>220</sup> The Parameters and Guidelines describe the supporting documentation and findings required for reimbursement of these costs:

Acquiring additional space and/or construction of new facilities is reimbursable only to the extent that an eligible claimant submits, with the initial and/or subsequent reimbursement claim, documentation reflecting the following:

A determination by the governing board that acquiring additional space and/or constructing new facilities is necessary for the increased holding period required by Statutes 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats, and other specified animals that are ultimately euthanized. The determination by the governing board shall include all of the following findings:

- The average daily census of impounded stray or abandoned dogs, cats, and other animals specified in Statutes of 1998, Chapter 752 that were impounded in 1998. For purposes of claiming reimbursement under section IV.B.1, average Daily Census is defined as the average number of impounded stray or abandoned dogs, cats, and other animals specified in Statutes of 1998, Chapter 752 housed on any given day, in a 365-day period;
- The average daily census of impounded stray or abandoned dogs, cats, and other animals specified in Statutes of 1998, Chapter 752 that were impounded in a given year under the holding periods required by Food and Agriculture Code sections 31108, 31752, and 31753, as added or amended by Statutes of 1998, Chapter 752;
- Existing facilities are not appropriately configured and/or equipped to comply with the increased holding period required by Statutes of 1998, Chapter 752;

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<sup>218</sup> Exhibit A, IRC, page 261 (2006 Parameters and Guidelines Amendment).

<sup>219</sup> Exhibit A, IRC, page 259 (2006 Parameters and Guidelines Amendment).

<sup>220</sup> Exhibit A, IRC, page 262 (2006 Parameters and Guidelines Amendment).



- Remodeling existing facilities is not feasible or is more expensive than acquiring additional space and/or constructing new facilities to comply with the increased holding period required by Statutes 1998, chapter 752; and
- Contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 is not feasible or is more expensive than acquiring additional space and/or constructing new facilities to comply with the increased holder [sic] period required by Statutes 1998, chapter 752. This finding should include the cost to contract with existing shelters.<sup>221</sup>

The Parameters and Guidelines further clarify that the documentation requirements may be satisfied in whole or in part by the following:

- staff agenda items,
- staff reports,
- minutes of governing board meetings,
- transcripts of governing board meetings,
- certification by the governing board describing the findings and determination, and/or
- a resolution adopted by the governing board pursuant to Food and Agriculture Code section 31755, as added by Statutes of 1999, Chapter 81 (Assembly Bill 1482).<sup>222, 223</sup>

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<sup>221</sup> Exhibit A, IRC, pages 262-263 (2006 Parameters and Guidelines Amendment).

<sup>222</sup> Section 31755 of the Food and Agricultural Code was an urgency statute to postpone compliance with the longer holding periods required by the test claim statute for one year, until July 1, 2000, for some public agencies, if they met all the conditions prescribed in Section 31755. One of these conditions was a resolution adopted by the local agency that the agency's animal shelter provider could not reasonably comply with the longer holding periods because of the lack of sufficient facilities. The resolution adopted pursuant to Food and Agriculture Code section 31755 required public notice and specific findings of fact, including "the number of animals impounded in the prior year [1998], the number of animals expected to be impounded under the holding periods required by Sections 31108, 31752, 31752.5, and 31754, as amended or added by Chapter 752 of the Statutes of 1998," and "the percentage of cage space predicted to be needed in order to comply with the [increased] holding periods," as the basis for the determination that the agency's "animal shelter provider, independently of, or in conjunction with, other animal pounds or animal shelters, cannot reasonably comply with the longer holding periods . . . because of the lack of sufficient facilities." (Food & Ag. Code, § 31755(a).)

<sup>223</sup> Exhibit A, IRC, page 263 (2006 Parameters and Guidelines Amendment).

## **2. The Claimant's Supporting Documentation Does Not Comply with the Parameters and Guidelines.**

The IRC record contains thirteen documents relevant to the issue at hand.<sup>224</sup> These are documents in the record consisting of the governing board meeting minutes, proposed agenda items, proposed documents for review/action by the governing board, staff correspondence describing decisions of the governing board, and a link to the recording of the governing board meeting. These documents are analyzed below in chronological order.

The Commission finds, however, that these documents do not provide evidence required by the Parameters and Guidelines that the governing board determined that acquiring additional space by purchasing land and constructing a new facility is necessary to comply with increased holding period mandated by the state; that the existing facilities are not appropriately configured or equipped to comply with the increased holding period mandated by the state; that remodeling existing facilities is not feasible or is more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period; and that contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 is not feasible or is more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period.

Rather, as explained below, the documents show that the claimant acquired additional space and constructed a new facility because of the availability of redevelopment agency funds; an overall increase in population in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate.

### **a. Minutes of the February 10, 2004 Town Council Regular Meeting**

This is the earliest-dated document submitted by the claimant in support of its IRC, and it is unclear whether it was provided to the Controller.<sup>225</sup> It relates to the sheltering services contract between the claimant and the Victor Valley Animal Protection League (VVAPL), which housed the claimant's animals from "the late 1990s through almost the end of FY 2003-04 (May 2004)."<sup>226</sup>

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<sup>224</sup> The rest of the documents included in the record are either documents completely unrelated to the issue of construction of the new shelter facility, or are the types of documents that could not reflect a requisite determination by the governing board that would satisfy the documentation requirements set forth in the Parameters and Guidelines, such as accounting documents or documents prepared by the consultant in relation to the reimbursement claims.

<sup>225</sup> Exhibit A, IRC, pages 200-207.

<sup>226</sup> Exhibit A, IRC, page 3.

The Parameters and Guidelines require that in order for the claimant to show that it was mandated to incur construction costs, its supporting documentation must reflect, among other things, a finding by the governing board as follows:

- Contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 is not feasible or is more expensive than acquiring additional space and/or constructing new facilities to comply with the increased holder period required by Statutes 1998, chapter 752. This finding should include the cost to contract with existing shelters.<sup>227</sup>

The claimant alleges that this document reflects such a finding by the governing board “because of increased costs ‘without audited records to support the increased fee request.’”<sup>228</sup>

The section of the document, titled Agenda item # 6 “Agreement for Small Animal Sheltering Services with Victor Valley Animal Protective League, Inc.,” reflects a discussion of the following:

- VVAPL proposed increase of the shelter services fee.
- Several Council members expressed concerns regarding the shelter’s financial accountability and transparency.
- Councilman Burgnon expressed an opinion that “the Town should search for their own animal control facility” and “recommended that the possibility of an Apple Valley owned facility be discussed at the April 2, 2004 workshop.”<sup>229</sup>

The Council ultimately decided not to entertain the shelter’s request for increased fees until the shelter provided requested financial information, and, thus, the claimant continued under the existing contract with VVAPL. The Council also authorized staff to consider other entities for sheltering services.<sup>230</sup>

Although, the document reflects that the governing board was dissatisfied with the proposed increase in sheltering fees, no specific findings or mention of either the current or proposed cost to contract with the shelter is reflected in the document. In addition, as discussed further below, the decision to build the new shelter was not made until February 16, 2007,<sup>231</sup> three years after this meeting. Accordingly, a finding that it is not feasible to contract with an existing private or public shelter in the area to house impounded animals to comply with the increased holding period, or that it is more expensive to contract than to construct new facilities, must also relate to the decision to build in 2007.

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<sup>227</sup> Exhibit A, IRC, pages 262-263 (2006 Parameters and Guidelines Amendment, pages 6-7).

<sup>228</sup> Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>229</sup> Exhibit A, IRC, page 205. The claimant did not submit any records from the April 2, 2004 workshop.

<sup>230</sup> Exhibit A, IRC, page 205.

<sup>231</sup> Exhibit A, IRC, page 445.

Furthermore, not at any point during the meeting was it determined or even suggested that existing facilities were not appropriately configured or equipped to comply with the increased holding period, or that new facilities were needed to comply with the increased holding period.<sup>232</sup> On the contrary, the conspicuous absence of any notice of inadequacy of the VVAPL facilities during the discussion documented in these minutes suggests that the claimant had not experienced difficulty in complying with increased holding periods due to inadequate shelter facility space contracted through the VVAPL. In addition, there are no other documents in the record addressing the issue of the increased holding period or inadequacy of shelter facilities between 1999 and 2004. Nor did the claimant's governing board adopt a resolution pursuant to Food and Agriculture Code section 31755 to postpone compliance with the test claim statutes until July 1, 2000, in order to build new shelter facilities to meet the longer holding period requirement.<sup>233</sup> A section 31755 resolution would completely satisfy documentation requirements demonstrating that the construction was necessary to comply with the increased holding period as provided in the Parameters and Guidelines.

Accordingly, the Minutes of February 10, 2004 Town Council Regular Meeting, do not reflect a finding by the governing board that contracting with existing private or public shelters in the area to house impounded animals to comply with the increased holding period, was not feasible or was more expensive than acquiring additional space by the purchase of land and construction of a new facility undertaken in 2007. In addition, the 2004 minutes do not reflect a determination or any findings by the governing board required by the Parameters and Guidelines to show that the existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility would be necessary to comply with the increased holding period mandated by the test claim statutes.

b. Proposed Agenda Item for August 8, 2004 Town Council Meeting

This proposed agenda item is the only document provided by the claimant with respect to its contracting arrangement with the City of Hesperia.

The text of the Proposed Agenda Item for August 8, 2004 Town Council Meeting states as follows:

On March 31, 2004 the Victor Valley Animal Protective League ceased to provide shelter services for the Town of Apple Valley. With concurrence of Town Council, Town staff negotiated an emergency animal sheltering arrangement for use of the Animal Shelter at the City of Hesperia. The Town has continued to use the Hesperia Shelter since that date.<sup>234</sup>

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<sup>232</sup> Exhibit A, IRC, pages 204-205.

<sup>233</sup> It appears that as a supporter of AB 1482, the claimant was aware of the opportunities afforded by Food and Agriculture Code section 31755. See Exhibit X, Senate Judiciary Committee Analyses of AB 1482 as amended May 17, 1999, page 8. <http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml> (listing Town of Apple Valley as a supporter of the bill).

<sup>234</sup> Exhibit A, IRC, page 208.

The text further recommends approval of the attached shelter servicing agreement with the Animal Shelter at the City of Hesperia, which “establishes the terms, and establishes fees associated with the Town's use of the Hesperia Shelter.”<sup>235</sup>

Nothing in this document supports the claimant’s assertion that the animal sheltering services arrangement with the City of Hesperia was not feasible as a long-term solution because it required the “residents to travel outside of their jurisdiction to place impounded animals...”<sup>236</sup>

In addition, this document does not support any other assertion made by the claimant with regard to the construction of the “temporary animal sheltering facility within the Town's jurisdiction,” such as the following:

Sheltering with the City of Hesperia ended when the Town completed the renovation of an old residential dwelling and warehouse structure in March of 2005. The renovation provided a temporary animal sheltering facility within the Town's jurisdiction and eliminated the need for animal services staff to travel outside of their jurisdiction to place impounded animals into a contract shelter for housing and an easily accessible facility where town residents could look for their lost pets. (Appendix C).<sup>237</sup>

None of the above facts alleged to be supported by this agenda item in the IRC are mentioned in this agenda item. And, the record contains no other documents that support the above assertions.

Furthermore, the document provides no specific facts or findings regarding the adequacy of available shelter space in view of the increased holding period. And the proposed sheltering agreement was not included with this agenda item for the record on this IRC. Finally, the proposed agenda item is not accompanied by any other documents showing that the Town Council in fact considered and acted on this item.

Thus, this document only reflects that the claimant’s staff arranged for sheltering services with the City of Hesperia sometime in 2004, after the VVAPL stopped providing these services; and based on the information contained in the Minutes of February 10, 2004 Town Council Regular Meeting discussed above,<sup>238</sup> it could be inferred that the animal sheltering arrangement with VVAPL was discontinued at that time because of disagreements about fee increases and financial disclosure policies.

Accordingly, the Proposed Agenda Item for August 8, 2004 Town Council Meeting, does not reflect any determination or specific findings required by the Parameters and Guidelines; and is neither sufficient in substance, nor in form to satisfy the documentation requirements of the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility would be necessary to comply with the increased holding period mandated by the test claim statutes.

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<sup>235</sup> Exhibit A, IRC, page 208.

<sup>236</sup> Exhibit C, Claimant’s Rebuttal Comments, page 2.

<sup>237</sup> Exhibit A, IRC, page 3.

<sup>238</sup> Exhibit A, IRC, pages 200-207.

c. Minutes of February 16, 2007 Special Meeting (Workshop)

The claimant filed a one-page excerpt from the minutes of February 16, 2007 Special Meeting (Workshop) with its IRC.<sup>239</sup> This document is the first document that discusses specific plans to build a new shelter. The pertinent section of the document, quoted below in its entirety, indicates that “Apple Valley has experienced a population growth;” that the town is in need of new office space; that “existing animal shelter was always a temporary solution;” that the shelter can be designed and constructed using RDA funds on the lot previously occupied by the public works facility; and that “we like to build facilities with a 20 year life that will provide for expansion”, as follows:

2. Public Facilities Priorities

Patty Saady, Deputy Town Manager, gave a power point presentation and stated that Apple Valley has experienced a population growth. Construction of Town Hall was completed in 2002. It was intended to house all existing staff and the police department, but is nearing capacity. Municipal Services has been relocated to the newly completed Police and Code Enforcement building. At the end of the calendar year, we anticipate that there will be no room for growth. The Town owns 2.2 acres at the southwest corner of Civic Center Park, stated Ms. Saady. The existing animal shelter was always a temporary solution. On Tuesday, the Council approved purchase of 7 acres of industrial property on Navajo Road that staff is considering for a new public works facility, and then we can use the existing public works for an animal shelter. Both the existing public works and animal shelter are located in RDA 2. The new land (public works facility) is in close proximity to RDA 2. Both facilities could be designed and constructed using RDA funds. It is critical to begin the Town Hall expansion process now and include funding in the 2007/08 budget cycle, or we will have to rent space. Financially, it makes sense to begin the process. Mayor Pro-Tem Jasper asked, and Ms. Saady replied, that we like to build facilities with a 20 year life that will provide for expansion. Staff would like to bring plans forward to the Council, prior to July 1, for adoption. Councilman Sagona asked, and Ms. Saady replied, that expansion of the existing Town Hall is not efficient. The building was not constructed with the idea of building up. Once we have hired an architect and are in the planning stage, Mayor Pro- Tern Jasper suggested setting up a Council ad hoc committee *to* provide guidance.

There is no funding currently available for a new Community Center, but there are plans on the shelf for a combined Community Center and Aquatics Center. Staff recommends combining into one multi-use building for savings in both construction and operation.

**CONSENSUS:** Council directed staff to proceed with an RFP for architectural design of Town Hall expansion, Public Works, Animal Shelter,

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<sup>239</sup> Exhibit A, IRC, page 445.

Community/Aquatics Multi-Use Center and discuss formation of an ad hoc Council committee.<sup>240</sup>

At this February 16, 2007 special meeting, following a presentation by staff about the opportunity to construct new shelter using RDA funds, the “Council directed staff to proceed with an RFP for architectural design” and “discuss formation of an ad hoc Council committee.”<sup>241</sup> However, this document reflects neither a determination by the town council, nor any discussion that “constructing new facilities is necessary for the increased holding period required by Statutes of 1998, Chapter 752 because the existing facilities do not reasonably accommodate impounded stray or abandoned dogs, cats and other specified animals that are ultimately euthanized,”<sup>242</sup> and reflects no findings required for such a determination. There is no discussion of the increased holding period, the inadequacy of prior facilities to comply with the increased holding period, or a cost analysis of various options for complying with the increased holding period. Rather, this document demonstrates that the decision to build was motivated by an overall human population increase in the town, the city’s need for additional office space, the city’s plans for expansion of public facilities, the temporary nature of the existing animal shelter, and the availability of RDA funds.

Accordingly, the minutes from the February 16, 2007 Special Meeting (Workshop), do not reflect any determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing animal shelter facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility would be necessary to comply with the increased holding period mandated by the state.

d. RFQ/RFP to Design New Animal Shelter Facility, Issued April 2, 2007

On April 2, 2007, the claimant’s staff issued a Request for Qualifications/Request for Proposals (RFQ/RFP) to design the “New Shelter and Offices.”<sup>243</sup> The claimant argues that page two of this RFQ/RFP reflects that the construction of the new animal shelter was necessary for the mandated increased holding period, as follows:

"The Project: The project will include design of a purpose built Animal Shelter Facility including office space. The proposed Animal Control Shelter will be designed to increase the hold time for animals and improve customer service."<sup>244</sup>

The claimant asserts that “[t]his RFQ/RFP was released on April 2, 2007, resulting from the authorization by the Town Council following the special meeting in February 2007 and a meeting in March 2007.”<sup>245</sup> However, the document submitted by the claimant in relation to February 2007 meeting discussed above, does not include a determination by the Town Council

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<sup>240</sup> Exhibit A, IRC, page 445.

<sup>241</sup> Exhibit A, IRC, page 445.

<sup>242</sup> Exhibit A, IRC, page 262 (2006 Parameters and Guidelines Amendment).

<sup>243</sup> Exhibit A, IRC, page 351.

<sup>244</sup> Exhibit A, IRC, page 299 (Final Audit Report). See also Exhibit A, IRC, page 3 (quoting this language in part).

<sup>245</sup> Exhibit A, IRC, page 299 (Final Audit Report).

that the construction of the shelter was needed to comply with the increased holding period, and does not address the terms to be included in the RFQ/RFP to accommodate such a need. Moreover, the claimant has provided no documents relating to the March 2007 Council meeting.

The RFQ/RFP provides some background information on current shelter facilities, detailing the size of the facilities totaling approximately 8000 square feet, and suggests that the new facility will be designed to increase the hold time for potentially adoptable animals. However, the RFQ/RFP does not provide animal census data before and after the mandate or indicate that the existing facilities were in some way inadequate to comply with the mandated holding period requirements. Nor does the document indicate that the proposal to design the facility to increase the hold time for adoptable animals, was based on a governing board determination that construction was necessary to comply with the mandated increased holding periods. The RFQ/RFP states as follows in pertinent part:

The current Animal Control Shelter is located on approximately 3 acres of land and shares buildings and parking with the Public Works Facility. Office space along with cat adoption, dog quarantine, and small dog adoption is housed in a 2400 sq. ft. renovated residential dwelling unit. An additional 5000 square feet of warehouse area is utilized for indoor dog runs and a cat observation area. A 600 square foot outbuilding is used as a euthanasia room and animal treatment room. Animal food and supplies are stored in a freestanding shed. Other buildings located on site are the Public Works offices and warehouse.

The Municipal Services Department is currently located in approximately 4000 square feet of office space at the Civic Center. This space will eventually be needed for expansion of the Police Department.

**The Project:** The project will include design of a purpose built Animal Shelter Facility including office space. The proposed Animal Control Shelter will be designed to increase the hold time for potentially adoptable animals and improve customer service. Public education programs related to animal care and behavior modification will also be a priority.<sup>246</sup>

In addition, the RFQ/RFP reveals project requirements and considerations that appear to be more consistent with the priorities identified at the February 2007 special meeting (to build facilities with a twenty-year life that will provide for expansion for city services generally), than with the alleged need to comply with the increased holding period mandated by the test claim statutes. For example, the RFQ/RFP states the following:

The Project will construct an Animal Control Shelter, with adequate office space for staff, reception area and animal intake/adoption rooms with adequate communication systems such as intercoms and paging capabilities; buildings to house indoor/outdoor kennels and runs for large dogs, indoor small dog/puppy kennels, intake cat cages, cat adoption room, get acquainted areas, outside runs, tortoise habitat, aviary, reptile cages, shaded corrals and a barn for keeping horses, goats, pigs, and other livestock. The facility should include wellness and exercise room, education/wildlife training room and conference room(s) including

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<sup>246</sup> Exhibit A, IRC, pages 352-353, emphasis in original.



audio-visual capability, outdoor break and lunch area with windbreak and shade cover, separate outdoor area for work release inmate arrival, check-in and assignment, an examination room, grooming room/facility, quarantine room, isolation facilities for incoming animals (separate buildings for dogs and cats to minimize stress on the animals), veterinary office/surgery suite, sally port, secured parking for 100 vehicles including two horse trailers and paved public parking.

This project should include the following considerations:

- Identify office, kennel and storage space necessary to accommodate growth needs over the twenty (20) year planning horizon.
- Identify a cleaning system and location of chemical room to reduce noise of these systems which tend to be very noisy.
- The new building will include separate locker rooms and restrooms with showers for male and female employees and a break area for employees.
- The new Animal Shelter Facility shall be designed and constructed in conformance with all State and local codes, and shall conform to the Town of Apple Valley Development Code and Americans with Disabilities Act requirements, latest addition.
- The new facility will utilize skylights and other design elements to provide natural lighting to all possible areas, air conditioning in office spaces, evaporative cooling and air conditioning capability in kennel areas, heating, alarm and sprinkler systems. Additionally, green technology, such as alternative heating, ice-cooling, solar and/or photovoltaic power generation capabilities shall be considered and addressed.
- The ventilation system should be designed to filter airborne diseases and minimize the cross contamination of animals.
- The installation of parking lot light standards, security gate and lighting and landscaping shall be provided in conformance with the Town of Apple Valley Development Code. Future water supply, sewer service, irrigation, telephone, internet, radio communication, and electrical conduit stubs shall be provided for future phased areas, including installation of purple irrigation pipe for future conversion to reclaimed water uses.<sup>247</sup>

The RFQ/RFP also indicates that the plan should be designed for a 20 year timeframe and account for growth in staff as follows: “Preliminary Design - Provide supporting materials that outline proposed conceptual design of the Animal Shelter Facility and Offices. Services shall include forecasting required growth in staffing for facilities for a twenty (20) year timeframe . . .”<sup>248</sup>

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<sup>247</sup> Exhibit A, IRC, pages 352-353.

<sup>248</sup> Exhibit A, IRC, page 354.

Thus, the RFQ/RFP to design new animal shelter facility, issued April 2, 2007, does not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing animal shelter facilities were inadequate to hold the animals, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

- e. Proposed Agenda Item for the Redevelopment Agency Meeting (May 8, 2007 Council Meeting) and Proposed Resolution No. 2007-02 to Issue Tax Allocation Bonds to Fund Projects, Including an Animal Care/Control Shelter.

The summary statement for the proposed agenda item states as follows:

[T]he tax increment generated by the Town's portion of the Redevelopment Agency of the Town of Apple Valley Project Area No. 2 is sufficient to provide funding for the improvements as outlined by the Deputy Town Manager at the February 16<sup>th</sup> Town Council Meeting. The proposed bonding is for a total not to exceed \$43,500,000 to be repaid by the aforementioned tax increment. Projects to be funded with the bond proceeds include an animal care/control shelter and a public works facility.<sup>249</sup>

The recommended action is to adopt Resolution No. 2007- 02, authorizing the issuance, sale, and delivery of the Agency's Tax Allocation Bonds, and approving bond documents.<sup>250</sup> The text of the proposed Resolution No. 2007- 02,<sup>251</sup> states that the Agency proposes to issue tax allocation bonds “the proceeds of which, among other things, will be used to finance certain redevelopment activities benefiting the Project Area, including the furtherance of the Agency's low and moderate income housing program...” The proposed resolution does not mention the construction of an animal shelter.

These documents simply provide that in order to fund the claimant’s expansion program consisting of construction projects outlined at the February 16th Town Council Meeting discussed earlier, the town plans to issue and sell bonds which will be authorized for a total principal amount not to exceed \$33,500,000. These documents do not provide evidence that the Town Council determined that the construction of an animal shelter is necessary for the increased holding period mandated by the test claim statutes.

Accordingly, the proposed agenda item for the redevelopment agency meeting (May 8, 2007 Council Meeting) and the proposed resolution No. 2007-02 to issue tax allocation bonds do not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

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<sup>249</sup> Exhibit A, IRC, page 440.

<sup>250</sup> Exhibit A, IRC, page 440.

<sup>251</sup> Exhibit A, IRC, pages 441-444.

- f. Proposed Agenda Item for July 10, 2007: Council Meeting to Award Contract to WR&D Architects in the Amount of \$670,000 to Design the Animal Shelter Facility.

The summary statement for this proposed agenda item recaps that (1) at the 2007 edition of the Council/Staff strategic planning and goal-setting workshop, the Council received a presentation from staff regarding the Town's *future space needs* and, after extensive discussion, authorized staff to develop and issue an RFP/RFQ for the design of a Town Hall Expansion Facility, Public Works/Corporate Yard and new Animal Shelter Facility and to commence the process of issuing redevelopment tax allocation bonds; (2) on May 8, 2007, the Town Council/Agency Board approved issuance of redevelopment tax allocation bonds, including \$13,500,000 for the public works and animal shelter facilities, which had to be used in three years; (3) staff received a number of responses to the RFP/RFQ issued on April 2, 2007, including eight responses proposing design services for the animal shelter facility; (4) and that a Review Panel consisting of the Deputy Town Manager, the Director of Public Services, the Director of Finance, the Director of Municipal Services, and the Director of Economic and Community Development reviewed and evaluated each proposal, and conducted interviews and negotiation sessions with selected firms.<sup>252</sup>

The action recommended for the Town Council in the proposed agenda item is to award professional services agreements for design services to selected firms, including WR&D Architects LLC<sup>253</sup> for design of the Animal Shelter Facility in the amount of \$670,000, and authorize execution of the contracts.<sup>254</sup>

The proposed agenda item does not contain any facts or indication that the governing board determined that the construction of an animal shelter was necessary to comply with the mandate.

Accordingly, the proposed agenda item for July 10, 2007 Council meeting to award the contract to an architectural firm to design the animal shelter facility does not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary for increased holding period mandated by the test claim statutes.

- g. Proposed Agreement with WR&D Architects to Design the Animal Shelter Facility, Including Exhibit A –WR&D Architects Proposal Dated April 26, 2007, Exhibit B –Cost Estimate, Exhibit C –Insurance Requirements.

The preliminary recitals in the proposed agreement describe the purpose of the WR&D Architects' engagement with the claimant as twofold: (1) to design a new animal shelter facility pursuant to the RFP/RFQ; and (2) design an expansion of the shelter facility to provide outside sheltering services, based on potential contracts with other governmental agencies. The text of the agreement states as follows:

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<sup>252</sup> Exhibit A, IRC, pages 446-447.

<sup>253</sup> The proposed agreement with WR&D Architects is discussed below.

<sup>254</sup> Exhibit A, IRC, pages 446-447.

WHEREAS, Town, desires to retain Consultant for the purpose of the design of a new purpose built Municipal Services Animal Shelter pursuant to a Request for Proposals/Request for Qualifications (RFP/RFQ) defined in the request for Proposals/Request for Qualifications issued by Town; and

WHEREAS, in addition, the Town desires to retain Consultant for the design of an expansion of the Municipal Services Animal Shelter Facility based on potential contracts with outside government agencies as part of this Agreement.<sup>255</sup>

Exhibit A describes the project as “[t]he planning and design of a new animal shelter of approximately 20,000 square feet located in Apple Valley, CA.”<sup>256</sup> Exhibit B provides a detailed explanation of costs, including the “Needs Assessment” service, described as “Forecasting facility needs for 5, 10 and 20 year planning horizons.”<sup>257</sup> A note to the cost estimate for the project clarifies that “[c]urrent cost is based on 20,000 square feet but will include up to 23,000 square feet shelter size” and “Shelter In Excess of 23,000 square feet” is “NOT INCLUDED IN THE COST ESTIMATE.”<sup>258</sup>

Neither the text of the agreement nor the exhibits identify the increased holding period mandated by the state as a reason for construction or as a consideration for the design criteria. In fact, the task of “[d]eveloping a clear definition of the program, design criteria, program objectives”<sup>259</sup> is left up to WR&D Architects. The only consideration for the needs assessment spelled out in the agreement includes forecasting “[f]acility needs for 5, 10 and 20 year planning horizons.”

Thus, the agreement anticipates a 20,000 to 23,000 square feet shelter facility, which is a 15,000 square feet increase from previous 8,000 square feet facility. The increase in size includes an increase in new office space [based on the RFP/RFQ requirement] and accounting for growth needs over the twenty (20) year planning horizon.

In addition, the agreement anticipates further expansion of the new facility to accommodate “potential contracts with outside government agencies.”<sup>260</sup> It could be inferred that these expansion plans were in fact realized, based on information obtained by the Controller on the claimant’s website,<sup>261</sup> announcing new state-of-the art 36,000 square feet animal shelter facility,<sup>262</sup> instead of the 20,000 to 23,000 square feet facility originally anticipated under the contract with WR&D Architects pursuant to the RFP/RFQ issued on April 2, 2007. The

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<sup>255</sup> Exhibit A, IRC, page 495.

<sup>256</sup> Exhibit A, IRC, page 505.

<sup>257</sup> Exhibit A, IRC, page 510.

<sup>258</sup> Exhibit A, IRC, page 512.

<sup>259</sup> Exhibit A, IRC, page 510.

<sup>260</sup> Exhibit A, IRC, pages 495.

<sup>261</sup> Exhibit B, Controller’s Comments on the IRC, pages 2, 13, 121-123.

<sup>262</sup> Exhibit B, Controller’s Comments on the IRC, pages 121-122.

claimant's calculation of reimbursable state-mandated costs claimed for the construction of the new shelter is also based on the costs for the entire 36,000 square foot facility.<sup>263</sup>

Yet, the claimant's demonstrated determination to build a new state-of-the art shelter facility that would increase available office space, accommodate growth needs over the twenty-year planning horizon, and allow for expansion to accommodate "potential contracts with outside government agencies," does not show that the old facility was inadequate to accommodate the increased holding period mandated by the state, or that the new construction was the only feasible alternative to comply with the mandate.

Accordingly, neither the agreement or WR&D Architects' proposal reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

h. Minutes of July 10, 2007 Council Meeting Awarding Contract to WR&D Architects in the Amount of \$670,000 to Design the Animal Shelter Facility.

The July 10, 2007 Council meeting minutes reflect that the Council considered agenda Item #15 concerning an award of professional services agreements to design the Town Hall expansion, public works facility, and animal shelter facility, and awarded the contract to design the animal shelter facility to WR&D Architects.<sup>264</sup> The minutes do not reflect any determination by the governing board that the existing facilities were inadequate to comply with the increased holding period mandated by the state; or the alternatives to building the new shelter. The only brief mention of the "immediate need" for the new animal shelter along with the public works facility appeared in the context of a discussion on a motion to continue the item until the next Council meeting, which focused on the need of meeting the construction timeframe in order to avoid a negative financial impact if the proceeds of bonds were not spent within three years.<sup>265</sup>

Accordingly, the minutes of the July 10, 2007 meeting do not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

i. July 10, 2007 Council Meeting Audio Recording<sup>266</sup>

The claimant argues that the minutes of July 10, 2007 Town Council meeting, discussed above, do not reflect the entire conversation of the Town Council and that "there was clearly discussion

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<sup>263</sup> See several documents submitted by the claimant titled "State Formula", showing calculation of eligible percentage of acquisition/construction costs for 36,000 square feet facility. Exhibit A, IRC, pages 349-350, 671.

<sup>264</sup> Exhibit B, Controller's Comments on the IRC, pages 116-118.

<sup>265</sup> Exhibit B, Controller's Comments on the IRC, page 117.

<sup>266</sup> Exhibit A, IRC, page 347 (Claimant's Response to Draft Audit Report) (providing the following links to the July 10, 2007 Town Council meeting audio recording:

regarding the lack of space and need to expand the facility” during “the discussion that led to the approval of the Notice to Proceed with Design of the Shelter,” which is captured in the audio recording of the meeting.<sup>267</sup> Specifically, the claimant refers to the statement made by Councilman Jasper during that discussion as follows:

[T]he July 10, 2007 Council meeting audio recording (at 1:32:37 of the recording) contains Councilman Jasper's statement that the need to build a new animal shelter is because it is "Mandated by the State to take care of our animals."<sup>268</sup>

The Controller notes that:

A review of that recording confirms that Mr. Jasper made that statement, although there was no discussion at that meeting concerning shelter overcrowding due to the increased holding period or any other topics related to the requirements of the mandated program.<sup>269</sup>

The claimant did not submit a transcript of this audio recording with the IRC; instead, it simply identified a web address for the electronic audio recording of the July 10, 2007 Council meeting.<sup>270</sup> This does not comply with the Commission’s regulations. Section 1185.1(h) of the Commission’s regulations require that all accompanying documents be filed with the Commission in accordance with section 1181.3 of the regulations, which instructs that all electronic documents be in legible and searchable PDF format that allows Commission staff to append additional pages for posting on the Commission’s website with proof of service. Here, the contents of the audio recording at issue were not submitted in PDF format and, therefore, were not included in the IRC record posted on the website or properly served. In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations requires that any assertion of fact by the parties to an IRC must be supported by documentary evidence.

Nevertheless, the assertion about the statement made by Councilman Jasper “that the need to build a new animal shelter is because it is "Mandated by the State to take care of our animals,”” is not disputed by the Controller. However, even if this statement was supported by evidence, it would not in any way help to establish that the claimant’s governing board made a requisite determination that the existing facilities did not reasonably accommodate the increased holding period for impounded stray or abandoned animals that are ultimately euthanized, and that constructing new facilities was necessary to comply with the mandate. As correctly noted by the Controller, Councilman Jasper’s statement, as quoted by the claimant, is not on point because it does not address any specific requirements of the mandated program; it merely refers to the preexisting obligation to take care of animals, which in itself “is not a new requirement resulting

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<http://www.applevalley.org/government/view-meetings-online>; [http://applevalley.granicus.com/Medialayer.php?view\\_id=19&clip\\_id=471](http://applevalley.granicus.com/Medialayer.php?view_id=19&clip_id=471)).

<sup>267</sup> Exhibit A, IRC, pages 298 (Final Audit Report) and 347 (Claimant’s Response to Draft Audit Report).

<sup>268</sup> Exhibit A, IRC, page 3; see also Exhibit A, IRC, pages 298-299 (Final Audit Report).

<sup>269</sup> Exhibit B, Controller’s Comments on the IRC, page 14.

<sup>270</sup> Exhibit A, IRC, page 347.

from the test claim legislation.”<sup>271</sup> In addition, a statement made by an individual board member is only an expression of his or her individual opinion, and is not a determination made by the governing board as a body.<sup>272</sup> The Parameters and Guidelines require that requisite determination and findings be made by the governing board.<sup>273</sup> However, there is no evidence that the Town Council analyzed the issue and made the required determination.

Accordingly, while it is not disputed that Councilman Jasper made a statement that it is "Mandated by the State to take care of our animals," this statement does not constitute a determination by the governing board that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

- j. January 06, 2009 Email Stating that the Town Council Approved the Purchase of Land for Animal Shelter for \$865,000 during May 13, 2008 Closed Session and June 17, 2008 Escrow Closing Statement for the Purchase of Land for \$865,000.

These two items reflect that about a year after the design of the new shelter facility began, the claimant acquired a plot of land for the new shelter for \$865,000, which was approved by the Town Council during closed session a month earlier.<sup>274</sup> No transcripts, agenda items, or minutes from the closed session that would reflect any findings or determination by the board were submitted by the claimant.

Thus, nothing in these documents suggests that the claimant’s governing board made a determination or any specific findings required by the Parameters and Guidelines that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

- k. Proposed Agenda Item for September 9, 2008 Town Council Meeting to Review and Approve Construction Plans for the New Animal Shelter Facility.

The claimant alleges that discussion and planning began to construct a new Shelter Facility in September 2008, and refers to the proposed agenda item for the September 9, 2008 Town Council meeting to show that planning included “specific consideration for increased kennel capacity, quarantine rooms, isolation facilities for sick/injured animals, increased holding times and a ventilation system to filter airborne diseases and minimize cross contamination of animals,” which were necessary, according to the claimant’s narrative, because “soon it became

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<sup>271</sup> Exhibit B, Controller’s Comments on the IRC, page 14. See also Exhibit B, Controller’s Comments on the IRC, page 46 (Statement of Decision, *Animal Adoption*, 98-TC-11, adopted January 25, 2001, page 11, stating that “Since 1991, Penal Code section 597.1 has required peace officers and animal control officers employed by local agencies to take possession of any stray or abandoned animal, and provide care and treatment for the animal.”).

<sup>272</sup> *Citizens for Responsible Open Space v. San Mateo County Local Agency Formation Com.* (2008) 159 Cal.App.4th 717, 729; 45 Cal.Jur.3d (2016) Municipalities, section 326 (stating that “legislative body must function as a body, and not by its members separately”).

<sup>273</sup> Exhibit A, IRC, page 262 (2006 Parameters and Guidelines Amendment).

<sup>274</sup> Exhibit A, IRC, pages 437-439.

evident that this facility [the renovated facility where the shelter was relocated in 2005] was inadequate because the building was not purpose built and did not provide necessary, isolation, quarantine or kennel space for an increasing number of impounded animals or adequate rooms to provide necessary medical treatment.”<sup>275</sup>

The document, referred to by the claimant, is a half-page proposed agenda item for the September 2008 Council meeting, taking place a year and a half after the initial decision to build the shelter was made, after the bonds to fund the construction were issued, and after the contract to design the shelter was awarded.

The summary statement of the proposed agenda item briefly lists a number of features of the facility, and further states that: “The design of the purpose built shelter will increase holding time for animals to increase adoption rates, create holding areas to isolate animals at intake, and provide a ventilation system designed to filter airborne diseases and minimize cross contamination of animals.”<sup>276</sup> The document further states that the plans are available in the Town Council’s office for review by the Council.<sup>277</sup> The recommended action for this item was to “[r]eview and approve the construction plans for Apple Valley Animal Shelter Facility and direct staff to proceed with the project.”<sup>278</sup> This proposed agenda item was not accompanied by any other documents showing that the Town Council in fact considered and acted on this item.

While there is a general statement in the staff proposed agenda item that “the design . . . will increase holding time,”<sup>279</sup> the agenda item does not refer to the mandate and does not reflect any relevant findings by the governing board indicating that the existing facility is inadequate to comply with the increased holding period mandated by the state and that constructing the new facility is the only feasible or the most cost effective option for complying with the required increased holding period.

Finally, despite the claimant’s mischaracterization of the timing of this item as the beginning of the discussion and planning to construct a new shelter facility, this agenda item was prepared well after the initial decisions to build the facility were already made. However, no documents were provided by the claimant in relation to those earlier decisions to reflect a determination by the governing board that existing facilities were inadequate to comply with the increased holding period and that the construction was necessary to comply with the mandate.

Accordingly, the proposed agenda item for the September 9, 2008 Town Council meeting does not reflect a determination by the governing board or any specific findings required by the Parameters and Guidelines to show that existing facilities were inadequate, and that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with the increased holding period mandated by the test claim statutes.

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<sup>275</sup> Exhibit A, IRC, page 3.

<sup>276</sup> Exhibit A, IRC, page 209, handwritten underline in original.

<sup>277</sup> Exhibit A, IRC, page 209.

<sup>278</sup> Exhibit A, IRC, page 209.

<sup>279</sup> Exhibit A, IRC, page 209, emphasis omitted.



### **3. The Controller's Reduction of Costs in Finding 1 Is Correct as a Matter of Law.**

The documents discussed above indicate that the claimant acquired additional space by purchasing land and constructing a new facility because of the availability of redevelopment agency funds; an overall population increase in the Town of Apple Valley; the need for additional office space; its plan to accommodate growth needs over the twenty-year planning horizon; its plan to expand the shelter facility to accommodate potential contracts with outside government agencies; and the temporary nature of the existing animal shelter where the animals were housed because long-term contracting arrangements with other shelters were terminated by the claimant for reasons unrelated to the mandate. The claimant has provided none of the evidence required by the Parameters and Guidelines that the governing board determined that acquiring additional space by purchasing land and constructing a new facility was necessary to comply with increased holding period mandated by the state; that the existing facilities were not appropriately configured or equipped to comply with the increased holding period mandated by the state; that remodeling existing facilities was not feasible or was more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period; and that contracting with existing private or public shelters in the area to house the increase of impounded stray or abandoned dogs, cats, or other animals specified in Statutes 1998, chapter 752 was not feasible or was more expensive than acquiring additional space by purchasing land and constructing a new facility to comply with the increased holding period.

Based on the foregoing, the Commission finds that the Controller's reduction of costs claimed for acquisition of additional space and construction of a new facility is correct as a matter of law.

Since the Controller's finding reduced the claims for acquiring additional space and construction of a new facility to zero, the Commission makes no findings on the other conclusions made by the Controller in Finding 1; namely, that the claimant failed to provide detailed calculations for determining the reimbursable portion of costs due to the mandate, and that some construction expenses were incurred outside of the audit period.<sup>280</sup>

#### **C. The Controller's Disallowance of Care and Maintenance Costs as Claimed (Finding 2), Is Correct as a Matter of Law. However, the Controller's Recalculation of Annual Labor Costs to Determine Reimbursable Costs for Care and Maintenance Is Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Parameters and Guidelines authorize reimbursement for the care and maintenance costs of impounded stray or abandoned animals that die during the increased holding period or are ultimately euthanized after the increased holding period, which can be claimed either by an actual cost method or by performing a time study.<sup>281</sup> The actual cost method is a specified formula in the Parameters and Guidelines designed to reimburse a proportion of total costs incurred specifically for care and maintenance activities based on the incremental increase in service (the increased holding period) and the animals for which no fees can be collected (animals that are not adopted, redeemed, or released to a nonprofit animal rescue organization;

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<sup>280</sup> Exhibit A, IRC, pages 295-301 (Final Audit Report).

<sup>281</sup> Exhibit A, IRC, pages 265-269 (2006 Parameters and Guidelines Amendment).

but instead die during the increased holding period or are ultimately euthanized). Under this formula the costs for the care and maintenance of dogs and cats must be calculated as follows:

Actual Cost Method – Under the actual cost method, actual reimbursable care and maintenance costs per animal per day are computed for an annual claim period.

a) Determine the total annual cost of care and maintenance for all dogs and cats impounded at a facility. Total cost of care and maintenance includes labor, materials, supplies, indirect costs, and contract services.

b) Determine the average daily census of dogs and cats.

c) Multiply the average daily census of dogs and cats by 365 = yearly census of dogs and cats.

d) Divide the total annual cost of care by the yearly census of dogs and cats = cost per animal per day.

e) Multiply the cost per animal per day, by the number of impounded stray or abandoned dogs and cats that die during the increased holding period or are ultimately euthanized, by each reimbursable day (the difference between three days from the day of capture, and four or six business days from the day after impoundment).<sup>282</sup>

For “other animals,” the actual cost formula is essentially the same, except that the number of reimbursable days is not counted as “the difference between three days...and four or six business days.” Because there was no holding period required under prior law for “other animals,” the “reimbursable days” multiplier is simply “four or six business days.”<sup>283</sup>

In addition, the costs must be traceable and supported by contemporaneous source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>284</sup>

The claimant elected to use the actual cost method to claim its care and maintenance costs.<sup>285</sup>

The claimant, however, did not identify the costs allowable under the first step of the actual cost method formula, such as labor costs, which were incurred specifically for the care and maintenance component during each year of the audit period.<sup>286</sup> Instead, the claimant used a different formula to calculate total annual care and maintenance costs by taking a total unsegregated amount of all shelter expenditures (with the exclusion of the Spay/Neuter Program expenditures) and adding a 40 percent overhead factor for the Municipal Services Director, instead of adding up only those categories of expenditures that are specified in the Parameters

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<sup>282</sup> Exhibit A, IRC, pages 266-267 (2006 Parameters and Guidelines Amendment).

<sup>283</sup> Exhibit A, IRC, pages 268-269 (2006 Parameters and Guidelines Amendment).

<sup>284</sup> Exhibit A, IRC, page 259 (2006 Parameters and Guidelines Amendment).

<sup>285</sup> Exhibit A, IRC, page 302 (Final Audit Report).

<sup>286</sup> Exhibit A, IRC, pages 405-406 (2007-2008 Amended Reimbursement Claim), 643-644 (2008-2009 Amended Reimbursement Claim).

and Guidelines formula that directly relate to the care and maintenance of animals.<sup>287</sup> The claimant then applied the rest of the steps of care and maintenance formula to this unsegregated amount of total shelter costs to arrive at the amount that it claimed as its actual care and maintenance costs.<sup>288</sup>

The Controller concluded that the claimant's methodology did not comply with the Parameters and Guidelines for a number of reasons and recalculated the costs for care and maintenance, reducing the claims for care and maintenance during the audit period from \$153,233 to \$33,584.<sup>289</sup>

The claimant challenges *only* the Controller's recalculation of annual labor costs, which is part of the first step in the formula required by the Parameters and Guidelines for calculating care and maintenance costs.

Based on the analysis herein, the Commission finds that the Controller's disallowance of care and maintenance costs as claimed is correct as a matter of law because the claimant did not comply with the Parameters and Guidelines. However, the Controller's recalculation of annual labor costs is arbitrary, capricious, and entirely lacking in evidentiary support.

**1. The Controller's Disallowance of Care and Maintenance Costs as Claimed Is Correct as a Matter of Law and Supported by Evidence in the Record Because the Claimant Did Not Comply with the Parameters and Guidelines.**

The Controller found that the claimant's methodology used to claim care and maintenance was incorrect and did not comply with the Parameters and Guidelines for the following reasons:

The methodology is incorrect for a number of reasons. First, using the total of costs incurred within the animal shelter less costs for the spay and neuter program assumes that all of the remaining costs were 100% related to the care and maintenance of animals. This is an incorrect assumption, as certain non-reimbursable activities take place within the animal shelter, such as animal licensing and adoption. In addition, certain activities take place that are not related to care and maintenance, such as employee education and training, meetings and conferences, office-related expenditures, and costs for veterinary medical services. Allowable costs for these activities are claimable under a different cost component. There is no language in the parameters and guidelines permitting claimants the option to claim costs for multiple cost components using the Actual Cost Method option prescribed for care and maintenance activities. In addition, the factors unique to claiming costs for care and maintenance are not found within the other cost components.<sup>290</sup>

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<sup>287</sup> Exhibit A, IRC, page 303 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, pages 27-28.

<sup>288</sup> Exhibit A, IRC, pages 303-304 (Final Audit Report).

<sup>289</sup> Exhibit A, IRC, pages 294, 301 (Final Audit Report).

<sup>290</sup> Exhibit A, IRC, page 304 (Final Audit Report).

The Commission finds that the Controller's disallowance of care and maintenance costs as claimed, is correct as a matter of law and supported by evidence in the record since the claimant did not comply with the Parameters and Guidelines.

The Parameters and Guidelines are regulatory in nature and, once adopted and issued are final and binding on the parties.<sup>291</sup> The Parameters and Guidelines require the application of a specific formula in order to detail the care and maintenance costs under the actual cost method. The formula first requires a claimant to calculate the total annual costs incurred to provide care and maintenance for all animals housed in its shelter(s) by adding up pertinent labor, materials, supplies, indirect costs, and contract services costs. While the Parameters and Guidelines use inclusive language to describe costs for this component ("total cost of care and maintenance includes labor, materials, supplies...") the care and maintenance costs cannot be interpreted beyond the reasonable scope of the approved activity, to include labor, materials, supplies, indirect costs, and contract services costs incurred for all other activities conducted by the shelter beyond *care and maintenance*.

Here, the claimant, by its own admission, used total unsegregated shelter division expenditures to arrive at its total care and maintenance costs. While the claimant excluded from the total shelter costs non-reimbursable expenditures for the Spay/Neuter Program, the Controller found that remaining total shelter division costs included expenditures for activities not related to care and maintenance (licensing and adoption; activities that are not eligible for reimbursement), and activities that could be reimbursable under other program components (such as activities related to employee training, office-related expenditures, providing veterinary medical services).<sup>292</sup>

Accordingly, the Commission finds that the Controller's disallowance of costs for care and maintenance as claimed is correct as a matter of law and supported by evidence in the record.

## **2. The Controller's Recalculation of Annual Labor Costs to Determine Reimbursable Costs for Care and Maintenance Is Arbitrary, Capricious, and Entirely Lacking in Evidentiary Support.**

The Controller recalculated care and maintenance costs, allowing reimbursement of \$33,584 for the audit period (reduced from \$153,233).<sup>293</sup>

The recalculation involved many steps.<sup>294</sup> However, the claimant challenges *only* the Controller's recalculation of annual labor costs, which is part of the first step in the formula required by the Parameters and Guidelines for calculating care and maintenance costs.<sup>295</sup> The claimant contends that the Controller's reduction of actual time for various employees for the care and maintenance calculation was "illogical, incorrect, and arbitrary," and that it results in a reduction of actual costs incurred, does not allow the *actual time* for employees to perform the

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<sup>291</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

<sup>292</sup> Exhibit A, IRC, pages 302-304 (Final Audit Report).

<sup>293</sup> Exhibit A, IRC, pages 294, 301 (Final Audit Report).

<sup>294</sup> Exhibit A, IRC, pages 301-314 (Final Audit Report).

<sup>295</sup> Exhibit A, IRC, pages 9-10; Exhibit C, Claimant's Rebuttal Comments, pages 8-12.

care and maintenance calculation and erroneously concluded that staff time between all positions had to total 100 percent.<sup>296</sup> The underlying facts as described in the documentation provided by the parties are as follows.

During the audit, the Controller “noted that a significant portion (around 75%) of annual costs incurred by the animal shelter were for employee salaries and benefits.”<sup>297</sup> However, the claimant did not identify any salaries and benefits for the audit period for the care and maintenance component on the reimbursement claim forms.<sup>298</sup> Thus, the Controller worked with the claimant to determine annual labor costs for care and maintenance.

An email dated November 10, 2015, from the Controller’s auditor to the claimant asks the claimant to assign a percentage to the five employee classifications involved in the care and maintenance activity and to provide a brief description explaining the percentage as follows:

During my visit, you provided duty statements (job descriptions) for the various employee classifications that comprised the shelter staff during the audit period . . .

Classifications in which care and maintenance activities are mentioned in the Class Characteristics or elsewhere in the duty statement:

1. ANIMAL SHELTER SUPERVISOR
2. REGISTERED VETERINARY TECHNICIAN
3. ANIMAL CONTROL TECHNICIAN
4. ANIMAL SHELTER ATTENDANT
5. ANIMAL SHELTER ASSISTANT

Classifications in which care and maintenance activities are NOT mentioned in the Class Characteristics or elsewhere in the duty statement:

6. ANIMAL CONTROL SUPERVISOR
7. ANIMAL CONTROL OFFICER I
8. ANIMAL CONTROL OFFICER II

From this analysis, it appears that five out of eight classifications were involved in care and maintenance activities to varying degrees. For these five classifications, please assign a percentage of care and maintenance involvement and provide a brief description as to why you assigned that percentage. If you believe that the remaining three classifications were also involved in care and maintenance

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<sup>296</sup> Exhibit A, IRC, pages 9-10.

<sup>297</sup> Exhibit B, Controller’s Comments on the IRC, page 86 (March 15, 2016 email from Jim Venneman of the State Controller’s Office to the claimant).

<sup>298</sup> Exhibit A, IRC, page 304 (Final Audit Report).

activities to a certain extent, please explain their involvement that is not currently reflected in the duty statement and also provide a percentage of involvement.<sup>299</sup>

The Controller's auditor explained the purpose of requesting the duty statements as follows:

The purpose of requesting duty statements is to assist us in determining the percentage of the daily workload that each classification devoted to caring for and maintaining the animals (cleaning, feeding and grooming). The goal is to assign a pro-rata percentage to those classifications involved in care and maintenance activities, where the sum of all percentages equal to 100%.<sup>300</sup>

An email from the Controller's auditor to the claimant with an attachment describing the status of the audit, dated March 15, 2016,<sup>301</sup> indicates that the claimant provided duty statements for the animal shelter supervisor, registered veterinary technician, animal control technician, animal shelter attendant, and animal shelter assistant, which "indicate that shelter staff perform certain activities that are outside the scope of animal care and maintenance activities."<sup>302</sup> The email again requests the claimant to provide the "percentage involvement of the various employee classifications within the animal shelter in animal care and maintenance activities," and salary information.<sup>303</sup>

On April 12, 2016, the claimant provided by email the "percent of care and maintenance per employee classification," with the following percentages:

Classifications in which care and maintenance activities are mentioned in the Class Characteristics or elsewhere in the duty statement:

Animal Shelter Supervisor = 10% time spent on providing care to impounded animals . . .

Registered Veterinary Technician = 85% time spent caring/maintaining animals . . .

Animal Control Technician = 25% time spent maintaining shelter disinfecting kennels . . .

Animal Shelter Attendant = 80% time spent caring/maintaining the animals and 5% overseeing volunteer and work releases (who provide care and maintenance) . . .

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<sup>299</sup> Exhibit A, pages 366-367 (Claimant's Response to Draft Audit Report); Exhibit C, Claimant's Rebuttal Comments, page 21.

<sup>300</sup> Exhibit A, page 366 (Claimant's Response to Draft Audit Report); Exhibit C, Claimant's Rebuttal Comments, page 21.

<sup>301</sup> Exhibit B, Controller's Comments on the IRC, pages 84-89 (March 15, 2016 email from Jim Venneman of the State Controller's Office to the claimant).

<sup>302</sup> Exhibit B, Controller's Comments on the IRC, page 86 (March 15, 2016 email from Jim Venneman of the State Controller's Office to the claimant).

<sup>303</sup> Exhibit B, Controller's Comments on the IRC, pages 86-87 (March 15, 2016 email from Jim Venneman of the State Controller's Office to the claimant).

Animal Shelter Assistant = 80% time spent caring/maintaining the animals and 5% overseeing volunteer and work releases (who provide care and maintenance) .

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Classifications in which care and maintenance activities are NOT mentioned in the Class Characteristics or elsewhere in the duty statement:

Animal Control Supervisor = 5% Shelter (morning cleaning/feeding dogs) . . .

Animal Control Officer 1 = 10% Shelter (morning cleaning/feeding dogs) . . .

Animal Control Officer II = 10% Shelter (morning cleaning/feeding dogs) . . .<sup>304</sup>

After the April 12, 2016 email was sent, the claimant alleges that the Controller “made several phone calls to Town staff and emails requesting that now ALL employee percentage allocations above be reduced so all their time allocations between them all added together totaled to not exceed 100[%].”<sup>305</sup> The claimant provides an email from the Controller dated April 13, 2016, which states the following:

For the Animal Shelter Supervisor, I see you have 5% administering medications, first aid, etc. highlighted rather than the 10% providing care to impounded animals. If we correctly use the 10% providing care to impounded animals, that will make the grand total 105%. Could you revise the numbers one last time so that the grand total is 100%?<sup>306</sup>

The audit report reduces the percentages of the employee classifications performing care and maintenance activities to 100 percent, and includes the following “table [which] details the percent of animal care and maintenance per employee classification for the town’s animal shelter as determined by shelter management.”<sup>307</sup>

FY 2007-2008 and FY 2008-2009

Employee Classification:

Animal Shelter Attendant/Assistant	60%
Animal Control/Customer Service Technician	5%
Animal Control Officer	5%
Animal Control Supervisor	5%
Registered Veterinary Technician	20%
Animal Shelter Supervisor	<u>5%</u>

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<sup>304</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 8-9, 20 (April 12, 2016 email from the claimant to the Controller).

<sup>305</sup> Exhibit C, Claimant’s Rebuttal Comments, page 9.

<sup>306</sup> Exhibit C, Claimant’s Rebuttal Comments, page 19 (April 13, 2016 email from Amy Arghestani of the State Controller’s Office to the claimant).

<sup>307</sup> Exhibit A, IRC, page 305 (Final Audit Report, emphasis added).

The audit report further states as follows:

*Calculation*

Based on our inquiries, we concurred with the above percentages of employee classification involvement as determined by the town. Once we determined the employee classifications involved in the care and maintenance of animals and *the extent of their involvement*, we calculated allowable costs for labor, including the applicable percentages of actual salaries and benefits costs incurred by the town for this cost component.<sup>309</sup>

The Controller's recalculation of annual labor costs for care and maintenance of animals totaled \$210,000 for fiscal year 2007-2008 and \$155,101 for fiscal year 2008-2009.<sup>310</sup>

Since receiving the Draft Audit Report, the claimant has contended that the Controller's "demands" to reduce percentages of care and maintenance time for several employee classifications were incorrect and resulted in a reduction that does not reflect "actual reimbursable time and cost spent on Care and Maintenance activities."<sup>311</sup> First, the claimant contends that the animal shelter attendant's time devoted to care and maintenance should be 85 percent, rather than 60 percent; and that the animal shelter supervisor's time devoted to care and maintenance should be 10 percent, rather than 5 percent, as originally provided by the claimant.<sup>312</sup> The claimant states as follows:

***SCO did not allow actual time allotment for various employees for Care and Maintenance calculation and erroneously concluded that staff time between all positions had to total 100%. This is incorrect and actual staff time should be allowed as originally requested by the Town and not reduced arbitrarily as required by the auditor:***

**Animal Shelter Attendant's time** should be classified as 85% directly related to care and maintenance activities as originally identified by the Shelter representative before the SCO auditor required that the Town reduce their time spend on care and maintenance activities to 60%.

**Animal Shelter Supervisor's time** should be classified as 10% directly related to care and maintenance instead of the 5% allowed. The original allocation of 10% had to be arbitrarily cut back to satisfy the SCO auditors demand to reduce allocations.<sup>313</sup>

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<sup>308</sup> Exhibit A, IRC, page 305 (Final Audit Report).

<sup>309</sup> Exhibit A, IRC, page 306 (Final Audit Report), emphasis added.

<sup>310</sup> Exhibit A, IRC, page 306 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, page 29.

<sup>311</sup> Exhibit A, IRC, pages 9-10, 313 (Final Audit Report).

<sup>312</sup> Exhibit A, IRC, pages 10, 312-313 (Final Audit Report).

<sup>313</sup> Exhibit A, IRC, page 9, emphasis in original.



While the claimant agrees with the Controller that only a portion of salaries and benefits for certain shelter employee classifications should be counted towards care and maintenance costs,<sup>314</sup> the claimant argues that

We question how the SCO auditor can determine, just by looking at the Job Descriptions, how much time is spent on each job duty. There is no indication of how much employee time is required to be spent on each activity on the Job Description documents. Clearly some job duties take much more employee time than others. For example, activity bullet point #10 in the Job Description statement for the Animal Shelter Attendant . . . states, “Assists in evacuation of animals during local emergencies or disasters.” This may never occur, however, bullet #1, “Maintains animal facilities, including cleaning and disinfecting kennels”, and Bullet point 2, “Provides care to impounded animals,” may take most of their time. Reviewing job descriptions alone cannot provide allocation of time per activity as the SCO suggests.<sup>315</sup>

Second, the claimant alleges that the Controller erroneously concluded that staff time between all positions had to total 100 percent.<sup>316</sup> The claimant states that “[w]hile it is logical that the total time allotted for each individual on various activities must total to 100% - there is no reason why the total time spent by a GROUP of different individuals on a mandated activity must add to 100% between all of them. We asked the SCO to examine this finding and to explain their reasoning, but the SCO did not respond either formally or informally and provided no explanation.”<sup>317</sup>

The claimant further alleges that “[t]he Audit Report falsely implies that the percentage allocations shown in the Final Audit report were determined by the town shelter management staff.”<sup>318</sup> The claimant asserts that

This statement and the percentages are false and misleading because those were NOT the percentages of daily workload devoted to caring for and maintaining animals as determined by town staff, but rates that were artificially created to satisfy the demands of the SCO auditor. Twice the auditor came back to Town staff and asked them to reduce their allocation of time between all the employee classifications to balance to 100%.<sup>319</sup>

Finally, the claimant points to the audits of other animal shelters stating that:

Upon examining other State Audits of the same Animal Adoption program we discovered inconsistent computational methodologies used by the auditor. In most audits, the SCO did NOT require that all staff time spent on care and maintenance be limited to 100%. The SCO did not require arbitrary reduction of

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<sup>314</sup> Exhibit C, Claimant’s Rebuttal Comments, page 8.

<sup>315</sup> Exhibit C, Claimant’s Rebuttal Comments, page 10.

<sup>316</sup> Exhibit A, IRC, page 9, 313 (Final Audit Report).

<sup>317</sup> Exhibit A, IRC, page 10; see also, Exhibit C, Claimant’s Rebuttal Comments, page 8.

<sup>318</sup> Exhibit C, Claimant’s Rebuttal Comments, page 9, emphasis omitted.

<sup>319</sup> Exhibit C, Claimant’s Rebuttal Comments, page 9.

staff time for almost all of the other Audits conducted. Therefore, the statement that “we view the activity as a whole where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%” is not the common methodology used.<sup>320</sup>

In response to the IRC, the Controller contends that its methodology is not arbitrary and that the “60% allocation for the Animal Shelter Attendant classification and the 5% allocation for the Animal Shelter Supervisor classification are reasonable determinations of the actual time spent by these employees performing care and maintenance activities” as follows:

For the Animal Shelter Attendant classification, the town states that employees in this position spend 85% of their total time on animal care and maintenance. However, it did not provide any analysis to support this conclusion. We analyzed the duty statement for Animal Shelter Attendants (Tab 10) and found that the 85% allocation preferred by the town is not supported. The duty statement lists a total of 11 bulleted “essential job functions.” Only the second bullet qualifies as being mostly directly related to care the maintenance activities. That bullet states: “[p]rovides care to impounded animals by providing food, water, and comfort; observes animal behavior and health; isolates sick, quarantined, or injured animals; notifies supervisor or other staff members if an animal needs immediate veterinary care.” The remaining bullets describe activities such as “cleans office areas, reviews adoption applications, assists in screening calls and visitors, takes photographs of the animals, maintains shelter and office supplies, updates and modifies impound records, oversees volunteers and work release orders, assists Registered Veterinary Technician and other staff with medical exams,” etc. Based on these descriptions, this classification is also performing many other activities, some of which are reimbursable under other components of this mandated program (e.g., necessary and prompt veterinary care, maintaining non-medical records, lost and found lists), as well as various administrative activities and non-mandated activities. We believe the 60% allocation to care and maintenance [sic] activities is more representative of this classification’s daily duties. In fact, it is possible that the allocation is actually lower than 60%.

For the Animal Shelter Supervisor classification, the town states that the employee in this position spends 10% of their total time on animal care and maintenance. However, it did not provide an analysis to support this conclusion. We also analyzed this position’s duty statement (Tab 11) and found that a 5% allocation is reasonable. The “Class Characteristics” section of the duty statement says, “[w]hile the incumbents may respond to calls for service or become involved with animal care activities, the primary responsibilities are supervisory and administrative, including the coordination of activities with those of other Town departments.” The duty statement lists a total of 21 bulleted “essential job functions,” one of which includes care and maintenance activities. Most of the remaining activities are supervisory in nature while others are reimbursable under other components of this mandated program. Therefore, we believe that the

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<sup>320</sup> Exhibit C, Claimant’s Rebuttal Comments, page 10.

5% allocation of care and maintenance activities is more representative of this classification's duties.

We believe the 60% allocation for the Animal Shelter Attendant classification and the 5% allocation for the Animal Shelter Supervisor classification are reasonable determinations of the actual time spent by these employees performing care and maintenance activities. Further, the allocations were not assigned or determined arbitrarily, but rather are based on information detailed in the town's own duty statements.<sup>321</sup>

With respect to the 100 percent allocation of time allocated across the employee classifications performing care and maintenance, the Controller simply states that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."<sup>322</sup>

Based on this record, the Commission finds that the Controller's recalculation of annual labor costs is arbitrary, capricious, and entirely lacking in evidentiary support.

With respect to the Controller's audit decisions, the Commission's review is limited to determining whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>323</sup> Under this standard, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. The Commission's review is limited to "ensur[ing] that [the Controller] has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."<sup>324</sup>

Here, neither the Final Audit Report nor the Controller's comments on the IRC fully explain the methodology used to adjust and reduce the percentages allocated to the classifications performing care and maintenance services. On the one hand, the Controller asserts that the percentages were reduced based on its review of the duty statements.<sup>325</sup> On the other hand, it appears from the record that the Controller's allocation of percentages, including those for the animal shelter attendant and the animal shelter supervisor, were reduced in order for the allocation of percentages to simply add up to 100 percent.<sup>326</sup>

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<sup>321</sup> Exhibit B, Controller's Comments on the IRC, page 29.

<sup>322</sup> Exhibit B, Controller's Comments on the IRC, page 28.

<sup>323</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>324</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>325</sup> Exhibit A, IRC, page 314 (Final Audit Report).

<sup>326</sup> Exhibit A, IRC, pages 305 (Final Audit Report), 363-366 (Claimant's Response to Draft Audit Report).

However, if the methodology used by the Controller estimates percentages of *time* spent by the claimant's employees on care and maintenance, then adding these percentages across all employee classifications to a limit of 100 percent does not make sense and is arbitrary, capricious, and entirely lacking in evidentiary support. For example, employees in five different classifications could each spend 60 percent of their time on care and maintenance, which clearly exceeds 100 percent if added together. And, in this case, the claimant's April 12, 2016 email suggests that the time spent by the classifications identified to provide care and maintenance services clearly exceeds 100 percent when added together.

Moreover, if the Controller used a factor or methodology *other than time* to calculate annual labor costs, then the record provides no explanation of that methodology. The Final Audit Report refers to "*the extent of*" and "*percentages of employee classification involvement*" and "*applicable percentages of actual salaries and benefits costs*," but does not explain how the extent of involvement and the applicable percentages were determined and applied with respect to individual employee classifications and balanced across classifications to 100 percent.<sup>327</sup> The Controller simply states that "[w]hen considering care and maintenance, we view the activity as a whole, where the responsibilities are divided among various employee classifications, and the sum of the responsibilities performed by the employees equals 100%."<sup>328</sup> This statement does not explain what is being calculated, or how the Controller came up with annual labor costs of \$210,000 for fiscal year 2007-2008 and \$155,101 for fiscal year 2008-2009 for all care and maintenance activities of the shelter (prior to segregating out the reimbursable portion of all annual care and maintenance costs for the increased holding period which was only found to be \$33,584 for the entire audit period).<sup>329</sup> As the claimant states, "[w]e asked the SCO to examine this finding and to explain their reasoning, but the SCO did not respond either formally or informally and provided no explanation."<sup>330</sup>

Accordingly, the Commission finds that to the extent that the Controller's adjustments to the percentages allocated to the classifications performing annual care and maintenance services during the audit period result in a reduction of care and maintenance costs, that reduction is arbitrary, capricious, and entirely lacking in evidentiary support.

**D. The Controller's Disallowance of the Indirect Costs Included in the Claimant's Calculation of Care and Maintenance Costs, the Controller's Refusal to Consider the Indirect Cost Rate Proposal (ICRP) Submitted by the Claimant in 2016 to Support Indirect Costs for Fiscal Years 2007-2008 and 2008-2009, and the Recalculation of Indirect Costs at the Ten Percent Default Rate Provided in the Parameters and Guidelines (Finding 7), Are Correct as a Matter of Law.**

The Parameters and Guidelines authorize reimbursement for indirect costs, and provide claimants the option of using ten percent of direct labor costs, excluding fringe benefits, or

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<sup>327</sup> Exhibit A, IRC, page 306 (Final Audit Report), emphasis added.

<sup>328</sup> Exhibit B, Controller's Comments on the IRC, page 28.

<sup>329</sup> Exhibit A, IRC, page 306 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, page 29.

<sup>330</sup> Exhibit A, IRC, page 10; see also, Exhibit C, Claimant's Rebuttal Comments, page 8.

preparing an Indirect Cost Rate Proposal (ICRP) pursuant to the Office of Management and Budget (OMB) Circular A-87 to support higher rate. When preparing an ICRP, the distribution base may be total direct costs for the mandated program (excluding capital expenditures), direct salaries and wages, or another base that results in equitable distribution.<sup>331</sup>

The claimant did not claim indirect costs as a separate item, but incorporated overhead costs into the care and maintenance cost component by adding in a 40 percent overhead factor for the Municipal Services Director when computing total annual shelter costs incurred for care and maintenance activities.<sup>332</sup> The Controller found this approach to be incorrect and not in accordance with the Parameters and Guidelines.<sup>333</sup> The Controller recalculated indirect costs for all program components using the ten percent default rate applied to all allowable direct labor costs, excluding fringe benefits, and found that \$12,708 is reimbursable.<sup>334</sup> While the claimant first agreed with the Controller's use of the ten percent rate to recalculate indirect costs during the audit,<sup>335</sup> in response to the Draft Audit Report on June 17, 2016, the claimant for the first time submitted an ICRP for a higher rate (between 67% and 78.9%, based on salaries and wages)<sup>336</sup> for both fiscal years of the audit period.<sup>337</sup>

The Controller did not consider this proposal.<sup>338</sup> The Final Audit Report states the following:

With its response to the draft audit report, the town submitted calculations for an ICRP for both fiscal years of the audit period. Submitting an ICRP at this time would require us to re-open the audit and conduct further fieldwork to analyze and verify the indirect cost rates that the town is now proposing. However, the indirect costs that are allowable for the audit period were calculated using an acceptable methodology as prescribed in the parameters and guidelines. Further, the town agreed with this method as being the best option, in discussions that took

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<sup>331</sup> Exhibit A, IRC, pages 274-275 (2006 Parameters and Guidelines Amendment).

<sup>332</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>333</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>334</sup> Exhibit A, IRC, page 328-329 (Final Audit Report).

<sup>335</sup> Exhibit A, IRC, pages 328-329 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, pages 30 and 111 (Tab 6 - Phone Log, stating that during the April 12, 2016 telephone call discussion of regarding indirect costs, the claimant's Assistant Director of Finance "Kofi decided that due to the town's record retention issues and unavailability of supporting documentation, that using the flat 10% would be the best option.").

<sup>336</sup> Exhibit A, IRC, page 370 ("ICRP Input Screen", provided with the Claimant's Response to the Draft Audit Report).

<sup>337</sup> Exhibit A, IRC, pages 331 (Final Audit Report); Exhibit A, IRC, pages 369-399 (Claimant's Response to the Draft Audit Report).

<sup>338</sup> Exhibit A, IRC, pages 331 (Final Audit Report).

place on April 12, 2016. Therefore, we are not considering the additional information provided for indirect cost rate calculations.<sup>339</sup>

In the IRC, the claimant asserts that the Controller's refusal to consider the claimant's ICRP "was an unfair decision since 'actual costs' are allowable for reimbursement and the request to provide that additional support material was made during the required audit response period."<sup>340</sup> The claimant asserts that it did not separately claim indirect costs because it used a different methodology to claim care and maintenance costs, which incorporated all indirect costs:

Town calculated cost of care and maintenance by taking all of the actual Shelter Division expenditures, and dividing it by total animal days of service to derive a cost per animal per day. Because this method took into account all departmental costs, it was inappropriate to include additional departmental overhead (other than other Town wide administrative overhead).<sup>341</sup>

The claimant also states that it was not required to file an ICRP with its reimbursement claims because its original calculation of care and maintenance costs "was based on aggregate costs which did not require preparation of an ICRP."<sup>342</sup>

The claimant argues that because the claimant's methodology was not accepted by the Controller, the claimant should be given an opportunity to recalculate its indirect costs using an ICRP rate,<sup>343</sup> and requests that the Commission "have the SCO consider the actual ICRPs that were prepared and submitted."<sup>344</sup>

The Commission finds that the Controller's disallowance of indirect costs included in the claimant's calculation of care and maintenance costs, the Controller's refusal to consider the ICRP submitted in 2016 in support of indirect costs for fiscal year 2007-2008 and 2008-2009, and the recalculation of indirect costs at the ten percent default rate are correct as a matter of law.

Government Code section 17564(b) provides that "[c]laims for direct and indirect costs pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines . . . and claiming instructions." As indicated above, the claimant incorporated indirect costs into the care and maintenance cost component by adding a 40 percent overhead factor for the Municipal Services Director.<sup>345</sup> This does not comply with the Parameters and Guidelines. The Parameters and Guidelines provide only two options for calculating indirect costs: (1) using ten percent of direct labor costs, excluding fringe benefits, or (2) if indirect costs exceed ten percent, then preparing an ICRP for approval by the Controller.<sup>346</sup> The claiming instructions applicable to the

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<sup>339</sup> Exhibit A, IRC, page 331 (Final Audit Report).

<sup>340</sup> Exhibit A, IRC, page 11.

<sup>341</sup> Exhibit A, IRC, page 11.

<sup>342</sup> Exhibit A, IRC, pages 330 (Final Audit Report).

<sup>343</sup> Exhibit A, IRC, pages 330 (Final Audit Report).

<sup>344</sup> Exhibit A, IRC, page 12.

<sup>345</sup> Exhibit A, IRC, page 328 (Final Audit Report).

<sup>346</sup> Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment).

claimant's 2007-2008 and 2008-2009 reimbursement claims specify that if the claimant's indirect cost rate is greater than ten percent of direct salaries, the claimant is required to prepare an ICRP and include it with the reimbursement claim.<sup>347</sup> Without preparing an ICRP proposal, indirect costs may only be computed as ten percent of direct labor costs, excluding fringe benefits.<sup>348</sup>

The claimant's argument that it used a different methodology to claim indirect costs, which did not require submission of an ICRP,<sup>349</sup> is unpersuasive. The Parameters and Guidelines do not provide for any alternative methodology that does not require an ICRP for indirect costs exceeding ten percent of direct labor costs. While Section IV. of the Parameters and Guidelines contains a formula for calculating care and maintenance costs, and requires an initial determination of total annual costs including indirect costs for that component, that section neither provides for a separate method for calculating indirect costs, nor is it controlling when claiming indirect costs for the entire mandated program. Section V of the Parameters and Guidelines is controlling and clearly states that indirect costs must be calculated at either ten percent of direct labor costs, or if indirect costs exceed the ten percent rate, then at an ICRP rate approved by the Controller. Thus, the Controller's disallowance of any indirect costs in excess of ten percent of direct labor costs that were not supported by an ICRP, including the 40 percent overhead factor for the Municipal Services Director incorporated in care and maintenance cost component, is correct as a matter of law.

The Commission further finds that the Controller's refusal to consider the claimant's ICRP submitted in 2016 in response to the Draft Audit Report, is correct as a matter of law. The claimant never submitted an ICRP with its annual reimbursement claims to support those costs. The claimant's submittal of an ICRP in 2016 for fiscal years 2007-2008 and 2008-2009 is too late. Although the claimant alleges that it was not appropriate to claim indirect costs separately because its method for claiming care and maintenance costs took into account all departmental costs, including indirect costs, the claimant had the responsibility to identify all actual costs with specificity, including indirect costs when filing the reimbursement claims and to follow the directions in the Parameters and Guidelines and the claiming instructions. Government Code

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<sup>347</sup> Exhibit X, Excerpt of 2007-2008 State Mandated Cost Claiming Instructions No. 2006-11, revised February 6, 2009, page 1 ("In order for a claim to be considered properly filed, it must include the Indirect Cost Rate Proposal (ICRP) if the indirect cost rate exceeds 10%."), page 27 ("Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim."); Exhibit A, IRC, page 280 (2008-2009 State Mandated Cost Claiming Instructions No. 2006-11, revised October 26, 2009, "Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.").

<sup>348</sup> Exhibit A, IRC, page 274 (2006 Parameters and Guidelines Amendment); Exhibit X, Excerpt of 2007-2008 State Mandated Cost Claiming Instructions No. 2006-11, revised February 6, 2009, pages 1, 27; Exhibit A, IRC, page 280 (Claiming Instructions No. 2006-11, revised October 26, 2009).

<sup>349</sup> Exhibit A, IRC, page 330 (Final Audit Report).

section 17560 permits a claimant by February 15 following a fiscal year, to “file an annual reimbursement claim *that details the costs actually incurred* for that fiscal year.” Thus, the claimant has the burden to timely establish its actual costs, both direct and indirect, and, as discussed above, is required by the Government Code section 17564(b) to claim these costs in accordance with the Parameters and Guidelines and claiming instructions. Accordingly, if claimant’s indirect costs allegedly incorporated into the care and maintenance component amounted to more than ten percent of direct labor costs, the claimant was required, but failed to submit ICRPs with its reimbursement claims for fiscal years 2007-2008 and 2008-2009. The deadlines for filing amended claims for these years have expired in February 2010 and 2011, respectively.<sup>350</sup> Accordingly, the claimant’s request for recalculating indirect costs for fiscal year 2007-2008 and 2008-2009 costs based on an ICRP submitted in 2016 is untimely, and the Controller’s refusal to consider the 2016 ICRP is correct as a matter of law.

Finally, the Controller’s allowance of indirect costs at the ten percent default rate is correct as a matter of law. Since the claimant did not prepare and submit ICRPs with its reimbursement claims, it was only entitled to the ten percent default rate under the Parameters and Guidelines and claiming instructions.

Accordingly, the Commission finds that the Controller’s reduction and recalculation of indirect costs is correct as a matter of law.

**E. The Commission Does Not Have Jurisdiction to Determine Whether the Claimant Is Entitled to Reimbursement for Necessary and Prompt Veterinary Costs Because There Has Been No Reduction of Necessary and Prompt Veterinary Costs.**

The Parameters and Guidelines permit reimbursement for necessary and prompt veterinary care for stray or abandoned animals, other than injured cats and dogs given emergency treatment, that die during the increased holding period or are ultimately euthanized.<sup>351</sup> Necessary and prompt veterinary care means all reasonably necessary medical procedures performed by a veterinarian or someone under the supervision of a veterinarian to make stray or abandoned animals adoptable,” including an initial physical examination; a wellness vaccine administered to adoptable or treatable animals; care to stabilize or relieve the suffering of a treatable animal; and veterinary care intended to remedy an injury or disease of a treatable animal.<sup>352</sup> However, the

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<sup>350</sup> Government Code section 17568. See also Exhibit X, Excerpt of 2007-2008 State Mandated Cost Claiming Instructions No. 2006-11, revised February 6, 2009, page 1 (“An actual claim may be filed by February 15 following the fiscal year in which costs were incurred. . . Since the 15th falls on a weekend in 2009 claims for fiscal year 2007-08 will be accepted without penalty if postmarked or delivered on or before February 17, 2009. . . A claim filed more than one year after the deadline cannot be accepted for reimbursement.”); Exhibit A, IRC, page 254 (2008-2009 State Mandated Cost Claiming Instructions No. 2006-11, revised October 26, 2009, “An actual claim may be filed by February 15 following the fiscal year in which costs were incurred. Claims for fiscal year 2008-09 will be accepted without penalty if postmarked or delivered on or before February 16, 2010. A claim filed more than one year after the deadline cannot be accepted for reimbursement.”).

<sup>351</sup> Exhibit A, IRC, page 271 (2006 Parameters and Guidelines Amendment).

<sup>352</sup> Exhibit A, IRC, page 271 (2006 Parameters and Guidelines Amendment).



Parameters and Guidelines provide for a number of exclusions. Eligible claimants are *not* entitled to reimbursement for providing “necessary and prompt veterinary care” to the following population of animals:

- Animals that are irremediably suffering from a serious illness or severe injury (Food & Agr. Code, § 17006);
- Newborn animals that need maternal care and have been impounded without their mothers (Food & Agr. Code, § 17006);
- Animals too severely injured to move or where a veterinarian is not available and it would be more humane to dispose of the animal. (Pen. Code, §§ 597.1(e), 597f(d));
- Owner relinquished animals; and
- Stray or abandoned animals that are ultimately redeemed, adopted, or released to a nonprofit animal rescue or adoption organization.<sup>353</sup>

In addition, eligible claimants are *not* entitled to reimbursement for providing the following veterinary procedures:

- Emergency treatment given to injured cats and dogs (Pen. Code, § 597f(b));
- Administration of rabies vaccination to dogs (Health & Saf. Code, § 121690);
- Implantation of microchip identification;
- Spay or neuter surgery and treatment;
- Euthanasia.<sup>354</sup>

The reimbursement claims filed by the claimant do not identify any costs for necessary and prompt veterinary care. The amended reimbursement claims filed for fiscal years 2007-2008 and 2008-2009 request reimbursement for “acquiring space/facilities”, “care of dogs and cats”, “care of other animals”, and “holding period.”<sup>355</sup> The line item for “veterinary care” was left blank in both reimbursement claims.<sup>356</sup>

In its June 17, 2016 response to the Draft Audit Report, however, the claimant “questioned why the SCO did not allow any reimbursement for the Necessary and Prompt Veterinary Care component as these costs are eligible for reimbursement.”<sup>357</sup> The claimant’s response to the Draft Audit Report requests reimbursement for necessary and prompt veterinary costs of \$10,608 for fiscal year 2007-2008 and \$10,298 for fiscal year 2008-2009, consisting of wellness vaccine costs and employee salary and benefit costs for the time to conduct the initial physical exam to

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<sup>353</sup> Exhibit A, IRC, pages 271-272 (2006 Parameters and Guidelines Amendment).

<sup>354</sup> Exhibit A, IRC, page 272 (2006 Parameters and Guidelines Amendment).

<sup>355</sup> Exhibit A, IRC, pages 401-407 (2007-2008 Amended Reimbursement Claim), 640-645 (2008-2009 Amended Reimbursement Claim).

<sup>356</sup> Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

<sup>357</sup> Exhibit A, IRC, pages 337-338 (Claimant’s Response to Draft Audit Report).

determine the animal's baseline health and to administer the wellness vaccine.<sup>358</sup> The claimant's IRC states that veterinary care costs were included as part of the care and maintenance component, and argues that the Controller incorrectly refused to accept supporting documents for veterinary costs, including time study results, after the exit conference.<sup>359</sup>

The Final Audit Report reiterates that the claimant did not claim any costs for this component.<sup>360</sup> The Final Audit Report further states that the Controller could not fully examine the time study submitted by the claimant after the exit conference because it would have to reopen the audit and conduct additional fieldwork, and that the claimant never provided supporting documentation for the cost of the wellness vaccines, as follows:

. . . The salary and benefit costs that the town is requesting reimbursement for are based on a two-day time study that the town conducted from May 18, 2016, to May 20, 2016.

The town did not claim any costs for this component for the audit period. We informed the town on numerous occasions (via email on July 13, 2015, October 14, 2015, February 29, 2016, and March 15, 2016, and by telephone on October 26, 2015, and October 29, 2015) that in order to determine allowable salary and benefit costs for the audit period, it would need to conduct a time study for this cost component. In addition, the results of a two-day time study that the town conducted post-exit conference do not appear adequate to determine allowable costs for the audit period. Similar to our comments above for the indirect cost rate information provided, examining the town's time study at this time would require us to re-open the audit and conduct additional fieldwork to analyze and verify the accuracy of the information provided.

Lastly, during fieldwork, we informed the town that in order to determine allowable materials and supplies costs for the purchase of wellness vaccines, the town would need to provide supporting documentation in the form of invoices in order to determine a unit cost per vaccine. Such information was not provided during the course of the audit or in the response to the draft audit report.<sup>361</sup>

The claimant's IRC alleges that the Controller incorrectly refused to consider the claimant's supporting documentation, including time studies, for the necessary and prompt veterinary care costs which "[a]fter seeing the Preliminary Audit Finding, the Town decided that they wished to pursue,"<sup>362</sup> and argues that the Controller should have re-opened the audit to consider the time studies submitted by the claimant in response to the Draft Audit Report.<sup>363</sup> The claimant asserts

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<sup>358</sup> Exhibit A, IRC, pages 334 (Final Audit Report); 337-338 (Claimant's Response to Draft Audit Report).

<sup>359</sup> Exhibit A, IRC, pages 5-7.

<sup>360</sup> Exhibit A, IRC, pages 334-335 (Final Audit Report).

<sup>361</sup> Exhibit A, IRC, page 335 (Final Audit Report).

<sup>362</sup> Exhibit A, IRC, page 6.

<sup>363</sup> Exhibit A, IRC, pages 5-7; Exhibit C, Claimant's Rebuttal Comments, pages 4-6.

that “this denial of opportunity to have their additional documentation supporting allowable costs considered was arbitrary and capricious.”<sup>364</sup> In addition, the claimant argues that in the absence of actual invoices documenting the purchase of wellness vaccines, the Controller should have allowed the claimant some other alternatives to support these costs, because in some cases the Controller offered and allowed such alternatives to other agencies.<sup>365</sup> The claimant requests that the costs for the necessary and prompt veterinary care be restored, that its time studies and any additional material necessary to support the costs be reviewed, that its documentation of costs for vaccine purchases should be reexamined, and that allowable costs be computed in a similar method allowed for other agencies be reimbursed.<sup>366</sup>

The parties go to great lengths disputing the factual allegations, including whether the Controller was willing to work with the claimant on a time study and the timeline of events.<sup>367</sup> The Commission, however, does not need to resolve those factual issues. Pursuant to Government Code section 17551(d), the Commission only has jurisdiction over *reductions* taken in the context of an audit, and there has been no reduction of necessary and prompt veterinary care costs in this case. Despite the claimant’s argument that it claimed necessary and prompt veterinary care costs by including all unsegregated costs for veterinary care in its formula for calculating care and maintenance, necessary and prompt veterinary care costs were not identified or claimed on the reimbursement claims for the audit period. Thus, there were no costs to reduce.

To receive reimbursement for state-mandated costs, local agencies are required to file reimbursement claims “*in the manner prescribed in the parameters and guidelines,*”<sup>368</sup> and must *detail the costs* actually incurred for each fiscal year.<sup>369</sup> The plain language of the Parameters and Guidelines for this program authorizes reimbursement of the costs incurred for necessary and prompt veterinary care and care and maintenance under *separate* program components, and require separate claiming for each activity, different cost computation methods, and different supporting documents. For example, the costs eligible for reimbursement for necessary and prompt veterinary care must be computed as specified to properly account for the activities and costs that are *not* reimbursable. Activities and costs that are expressly excluded from reimbursement include veterinary care procedures involving emergency treatment, rabies vaccination for dogs, implantation of microchips, and euthanasia.<sup>370</sup> In addition, reimbursement for care and maintenance is based on a specific formula to determine the care and maintenance costs for the increased holding period mandated by the test claim statutes and that formula does

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<sup>364</sup> Exhibit A, IRC, page 7.

<sup>365</sup> Exhibit A, IRC, pages 8-9.

<sup>366</sup> Exhibit A, IRC, pages 5-7.

<sup>367</sup> Exhibit B, Controller’s Comments on the IRC, pages 20-27.

<sup>368</sup> Government Code section 17564(b), emphasis added.

<sup>369</sup> Government Code section 17560(a), emphasis added.

<sup>370</sup> In this respect, the Controller found that it would be “impossible” to segregate potentially reimbursable necessary and prompt veterinary care costs from the claimed care and maintenance costs. (Exhibit B, Controller’s Comments on the IRC, page 21).

not apply to necessary and prompt veterinary care. Thus, the alleged inclusion of all unsegregated and unidentified veterinary costs in the computation of the care and maintenance component, would not have resulted in a correct claim amount for the care and maintenance component and does not indicate that a claim is being made for necessary and prompt veterinary care.

The reimbursement claims filed by the claimant do not identify *any* costs for necessary and prompt veterinary care. The line item for “veterinary care” was left blank on both reimbursement claims.<sup>371</sup> Therefore, there was no claim for reimbursement of necessary and prompt veterinary care for the Controller to reduce and thus there is no reduction for this activity.

Accordingly, since there were no costs claimed or reduced, the Commission does not have jurisdiction over the alleged reduction of prompt and necessary veterinary care.

## **V. Conclusion**

Based on the foregoing analysis, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission regulations, that the Controller reinstate the following costs which were incorrectly reduced:

- To extent the Controller’s recalculation of care and maintenance costs in Finding 2, which adjusted the percentages allocated to the classifications performing annual care and maintenance services during the audit period, results in a reduction of care and maintenance costs.

All other reductions made by the Controller are correct as a matter of law.

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<sup>371</sup> Exhibit A, IRC, pages 403 and 641 (Claim Summaries for Amended Reimbursement Claims for Fiscal Years 2007-2008 and 2008-2009).

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 17, 2020, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued March 17, 2020**

*Animal Adoption, 17-9811-I-04*

Civil Code Sections 1834 and 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003;

As Added or Amended by Statutes 1998, Chapter 752 (SB 1785)

Fiscal Years: 2007-2008 and 2008-2009

Town of Apple Valley, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 17, 2020 at Sacramento, California.



Jill L. Magee

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

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/17/20

**Claim Number:** 17-9811-I-04

**Matter:** Animal Adoption

**Claimant:** Town of Apple Valley

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

**Kofi Antobam**, Finance Director, *Town of Apple Valley*

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