



November 14, 2018

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

Ms. Jill Kanemasu
Division of Accounting and Reporting
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: Proposed Decision

Interagency Child Abuse and Neglect Investigation Reports (ICAN), 17-0022-I-01
Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7),
11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977,
Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982,
Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter
1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459;
Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990,
Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes
1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997,
Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000,
Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number
29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005,
2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, and
2012-2013
City of Palmdale, Claimant

Dear Ms. Chinn and Ms. Kanemasu:

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

Hearing

This matter is set for hearing on **Friday, November 30, 2018**, at 10:00 a.m., State Capitol,
Room 447, Sacramento, California. Please let us know in advance if you or a representative of
your agency will testify at the hearing, and if other witnesses will appear. If you would like to
request postponement of the hearing, please refer to section 1187.9(b) of the Commission's
regulations.

¹ Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

Ms. Chinn and Ms. Kanemasu

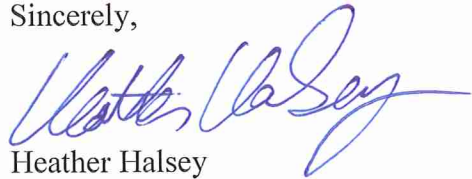
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Special Accommodations

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

Sincerely,



Heather Halsey
Executive Director

ITEM 4
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Interagency Child Abuse and Neglect Investigation Reports (ICAN)

Fiscal Years 1999-2000 through 2012-2013

17-0022-I-01

City of Palmdale, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims filed by the City of Palmdale (claimant) for costs incurred during fiscal years 1999-2000 through 2012-2013 (audit period) for the *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program.

The initial claiming period for this mandated program spans fiscal years 1999-2000 through 2012-2013, and therefore the Controller permitted the claimant to use a time study to support its claims, due to the likely difficulty of obtaining source documentation for the early part of the reimbursement period. The Controller reduced the claims for all fiscal years, finding that the time study used to calculate reimbursement for costs of investigating reports of suspected child abuse included within its sample one case that included unallowable activities. With that case removed, the Controller adjusted the average time increment for each investigation from 3.66 hours to 2.65 hours per case. The claimant objected to that adjustment and proposed additional activities and time be included in the allowable time, including time for report writing that the

¹ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

claimant asserted was inadvertently omitted from the time study. The Controller rejected those proposals and the Final Audit Report determined that 2.65 hours was the allowable total time increment per investigation pursuant to the time study and a time survey the Controller later conducted with the deputies who performed the mandate and already includes report writing.

The Controller also reduced indirect costs claimed, because the claimant did not claim in accordance with the Parameters and Guidelines. Specifically, the claimant calculated indirect costs using a 10 percent default rate applied to its contract costs, while the Parameters and Guidelines only provide for the default rate to be applied to direct labor costs, excluding fringe benefits. Because the claimant contracts with the County of Los Angeles for all law enforcement services, including this mandated program, it has no direct labor costs and the Controller found the 10 percent default rate is unavailable. Therefore, the Controller disallowed all indirect costs.

Staff recommends the Commission deny this IRC based on the following findings:

- The IRC was timely filed.
- The Commission does not have jurisdiction over other preliminary activities to the investigation asserted by the claimant for which there are no specific times or costs claimed, and for which there was no reduction.
- The Controller's reduction of the average time increment for each investigation based on the exclusion of one investigation containing unallowable activities is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
- The Controller's rejection of the claimant's proposal to add more time to complete an investigation to capture report writing time claimed to be omitted from the allowed time, is not arbitrary, capricious, or entirely lacking in evidentiary support.
- The Controller's disallowance of indirect costs, as claimed, for all fiscal years were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Procedural History

On December 6, 2007, the Commission adopted the Test Claim Decision.² On December 12, 2013, the Commission adopted the Parameters and Guidelines.³ On April 28, 2014 the Controller issued claiming instructions for the initial claiming period.⁴ On July 3, 2014, the City of Palmdale filed its initial reimbursement claim.⁵ On December 19, 2014 the Controller notified the claimant of an audit.⁶ On July 15, 2015 the claimant filed amended

² Exhibit I, Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22.

³ Exhibit A, IRC, page 233 [Parameters and Guidelines].

⁴ Exhibit A, IRC, page 229 [Controller's Claiming Instructions, Cover Letter].

⁵ Exhibit B, Controller's Comments on the IRC, page 30.

⁶ Exhibit B, Controller's Comments on the IRC, page 6.

claims for fiscal years 1999-2000 through 2012-2013.⁷ On March 30, 2016 the Controller issued the Draft Audit Report.⁸ On April 11, 2016, the claimant filed comments on the Draft Audit Report.⁹ On May 19, 2016, the Controller issued the Final Audit Report.¹⁰ The claimant filed the IRC on November 7, 2017.¹¹ The Controller filed comments on the IRC on February 22, 2018.¹² The claimant filed late rebuttal comments on May 7, 2018.¹³ Commission staff issued the Draft Proposed Decision on July 23, 2018.¹⁴ The claimant requested an extension of time to comment on the Draft Proposed Decision on July 27, 2018, which was granted on July 31, 2018. On August 8, 2018 the Controller filed comments on the Draft Proposed Decision, agreeing with the proposed findings.¹⁵ On August 24, 2018, the claimant filed comments on the Draft Proposed Decision, disputing the findings on indirect costs and on the time study reductions.¹⁶ On August 31, 2018, the Controller filed additional comments on the Draft Proposed Decision, which were late, challenging the claimant's declarations.¹⁷ On September 7, 2018, the claimant requested an extension of time to respond to the Controller's late comments on the Draft Proposed Decision filed August 31, 2018, and a postponement of the September 28, 2018 hearing, which was granted on September 10, 2018. On September 27, 2018, the claimant filed a response to the Controller's late comments on the Draft Proposed Decision.¹⁸

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

⁷ Exhibit A, IRC, pages 299-380 [Claim Documentation, Amended Claim Forms].

⁸ Exhibit A, IRC, page 265 [Controller's Final Audit Report, page 4].

⁹ Exhibit A, IRC, page 292 [Claimant's Comments on the Draft Audit Report].

¹⁰ Exhibit A, IRC, page 259 [Controller's Final Audit Report, Cover Letter].

¹¹ Exhibit A, IRC.

¹² Exhibit B, Controller's Comments on the IRC.

¹³ Exhibit C, Claimant's Late Rebuttal Comments.

¹⁴ Exhibit D, Draft Proposed Decision.

¹⁵ Exhibit E, Controller's Comments on the Draft Proposed Decision.

¹⁶ Exhibit F, Claimant's Comments on the Draft Proposed Decision.

¹⁷ Exhibit G, Controller's Late Comments on the Draft Proposed Decision.

¹⁸ Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision.

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.¹⁹ 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.”²⁰

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.²¹

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.²² 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.²³

Claims

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

Subject	Description	Staff Recommendation
Was the IRC timely filed?	Section 1185.1 of the Commission’s regulations	<i>The IRC was timely filed.</i>

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

²⁰ *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.

²¹ *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.

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

²³ 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.

	required IRCs to be filed no later than three years after the Controller’s final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c).	The Controller’s Final Audit Report was issued May 19, 2016, and the IRC was filed November 7, 2017, less than three years from the date of the Controller’s Final Audit Report.
Does the Commission have jurisdiction over the claimant’s assertion that certain preliminary investigative activities that were not specifically claimed or disallowed should be subject to reimbursement?	<p>The claimant argued for additional activities and time to augment the results of the time study, and filed amended reimbursement claims, alleging that certain preliminary investigative activities, such as making phone calls to schedule interviews, were not accounted for in the time study.²⁴</p> <p>The revised time study documentation supporting the amended claims, however, does not specifically identify additional time for preliminary investigative activities. In addition, as indicated in the Final Audit Report, the only reductions taken by the Controller related to the exclusion of the one investigation that went beyond the scope of the mandate, and the rejection of the additional report writing time claimed.</p>	<p><i>No, the Commission does not have jurisdiction over this issue because it is not the subject of a reduction.</i></p> <p>These activities were neither specifically claimed nor specifically disallowed, they are not the subject of a reduction and the Commission does not have jurisdiction over these issues raised in the IRC because its jurisdiction is limited to a claim by a local government that “the Controller has incorrectly <i>reduced</i> payments to the local agency.”²⁵ There can be no <i>reduction</i> of a cost that was never the subject of a reimbursement claim.</p> <p>The claimant’s most recent comments concur with this conclusion.²⁶</p>
Were the Controller’s reductions to the claimant’s time study based on	The Controller determined that one of the 14 investigations sampled for	<i>The reduction was correct as a matter of law, and not arbitrary, capricious, or</i>

²⁴ See Exhibit A, IRC, pages 3 [IRC Narrative]; 285 [Final Audit Report, page 24].

²⁵ Government Code section 17551(d), emphasis added.

²⁶ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

<p>excluding one unallowable investigation correct as matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>the time study included unallowable activities, and excluded it from the average time increment calculation for that reason. This reduced the time to complete an investigation in order to prepare a report for the Department of Justice (DOJ) from 3.66 hours to 2.65 hours per investigation.</p>	<p><i>entirely lacking in evidentiary support.</i></p> <p>The evidence in the record supports the Controller’s determination that one investigation included unallowable activities and the Controller therefore correctly excluded that investigation from the time study sample.</p> <p>The claimant’s most recent comments state that the claimant is no longer pursuing this issue.²⁷</p>
<p>Was the Controller’s rejection of claimant’s proposal to add more time to complete an investigation to capture report writing time claimed to be omitted from the allowed time arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>The Controller rejected the claimant’s proposal to add an additional thirty minutes of report writing time claimed to be omitted from the allowed 2.65-hour time increment to complete an investigation, finding that the activities and time requested were already accounted for in the Controller’s findings.</p>	<p><i>The Controller’s rejection of claimant’s request to add more time to complete an investigation was not arbitrary, capricious, or entirely lacking in evidentiary support.</i></p> <p>The claimant submitted evidence that indicated report writing time for unfounded cases was inadvertently omitted from several investigations included in the claimant’s time study log.</p> <p>However, there is no evidence of the actual time to complete these reports. The claimant relies on the time log it generated, which only serves to show <i>an absence of report writing being documented</i> and does not indicate any times per activity. The claimant also relies on the Controller’s 2015 time <i>survey</i> with two of</p>

²⁷ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

		<p>the deputies performing the mandate, which <i>estimates</i> the time for report writing for unfounded cases between 15 and 20 minutes. The claimant’s reliance on the Controller’s survey only shows that the survey already captures the time for report writing for unfounded cases. In addition, the time survey, which includes report writing time for all cases, resulted in overall times ranging from 2.29 hours to 2.71 hours to complete an investigation for purposes of preparing a report for DOJ. Thus, the 2.65-hour time increment allowed by the Controller falls near the top of that range, and includes time for report writing for unfounded cases.</p> <p>When reviewing the audit findings of the Controller, the Commission is required to defer to the Controller’s presumed expertise.”²⁸ The Commission may not reweigh the evidence or substitute its judgement for that of the Controller. The Commission’s review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between</p>
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²⁸ See generally, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837.

		those factors, and the choices made. ²⁹
Was the Controller's reduction of indirect costs, as claimed, correct as matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support?	The Controller disallowed all indirect costs, as claimed, because the claimant contracts for all law enforcement services within the city, and the Parameters and Guidelines do not permit claiming indirect costs using a 10 percent flat rate applied to contract costs.	<i>The reduction was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.</i> The claimant has the burden to establish its actual costs, both direct and indirect, and indirect costs must be claimed in accordance with the Parameters and Guidelines and claiming instructions. The claimant failed to comply with the Parameters and Guidelines, and therefore the Controller's reduction was correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Analysis

A. The Claimant Timely Filed this IRC Within Three Years from the Date 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.”³⁰ Here, the final audit report is dated May 19, 2016.³¹ The IRC was filed with the Commission on November 7, 2017.³² Less than three years having elapsed between the issuance of the Final Audit Report and the filing of the

²⁹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

³⁰ California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

³¹ Exhibit A, IRC, page 259 [Controller's Final Audit Report].

³² Exhibit A, IRC, page 1.

IRC, this IRC was filed within the period prescribed in Code of Regulations, title 2, section 1185.1(c).

B. The Commission Does Not Have Jurisdiction to Determine Whether Other Preliminary Investigative Activities Were Accounted for in the Time Study Because There Has Been No Reduction Relating to Preliminary Investigative Activities.

The claimant argued for additional activities and time to augment the results of the time study, and filed amended reimbursement claims, alleging that certain preliminary investigative activities, such as making phone calls to schedule interviews, were not accounted for in the time study.³³

The revised time study documentation supporting the amended claims, however, does not specifically identify additional time for preliminary investigative activities. In addition, the evidence in the record does not show that at any point these preliminary activities were ever specifically claimed, or specifically disallowed, either in the original time study and reimbursement claims, or in the amended reimbursement claims filed July 15, 2015. As indicated in the Final Audit Report, the only reductions taken by the Controller related to the exclusion of the one investigation that went beyond the scope of the mandate, and the rejection of the additional report writing time claimed.

Pursuant to Government Code section 17551, the Commission only has jurisdiction over reductions taken in the context of an audit. Therefore the Commission does not have jurisdiction to consider these issues in the context of an IRC. The claimant now concurs with this finding.³⁴

C. The Controller's Reduction of Costs Based on the Exclusion of One Investigation from the Claimant's Time Study that Included Activities that Are Beyond the Scope of the Mandate Is Correct as a Matter of Law, and not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The initial claiming period for this mandated program spans fiscal years 1999-2000 through 2012-2013, and therefore the Controller permitted the claimant to use a time study to support its claims, due to the likely difficulty of obtaining source documentation for the early part of the reimbursement period. The first of two time studies conducted by the claimant was not contemporaneous, and was therefore rejected, but the Controller accepted the claimant's second time study, except that it included an investigation "with unallowable hours that accounted for activities following the determination of a substantiated status of child abuse."³⁵ The Controller reduced reimbursement based on excluding from the claimant's time study a single investigation that included unallowable activities occurring subsequent to the determination whether the case was substantiated, inconclusive, or unfounded. The Controller concluded "[t]he average time per case, using the second time study results (less the unallowable hours of one case), totaled 2.65

³³ Exhibit A, IRC, pages 3 [IRC Narrative]; 285 [Final Audit Report, p. 24].

³⁴ Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 3.

³⁵ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

hours.”³⁶ The Controller conducted a time *survey* with the deputies to verify the results of the claimant’s time study, which yielded a range of 2.29 to 2.71 hours per investigation.³⁷ Since the 2.65 hours resulting from the time study fell within that range, the Controller determined that the time study result was reasonable, and accepted the 2.65-hour average time increment.³⁸

The claimant argues that even though that investigation was an outlier in terms of the time spent by deputies performing the mandate, it should be included in the time study sample because it reflects the fact that some cases require more time and resources than others.³⁹

Staff finds that the reduction of costs based on the exclusion of one investigation from the claimant’s time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission’s Decision adopting the Parameters and Guidelines reasoned that the requirement to investigate reports of suspected child abuse or neglect derives from the reporting requirement to DOJ; it is not a reimbursable state mandate to investigate reports of child abuse or neglect for purposes of prosecuting crimes.⁴⁰ The Decision also analyzed at length the idea that the express goal of the Child Abuse and Neglect Reporting Act (CANRA) is to protect children from abuse or neglect, not to investigate and prosecute criminal child abuse, sexual assault, neglect, or other crimes.⁴¹ The Parameters and Guidelines therefore include an express disclaimer that reimbursement is not required for: “Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded...including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.”⁴²

Here, the Controller determined that one of the 14 investigations sampled for the time study included activities occurring after the determination the report of child abuse was not unfounded.⁴³ The evidence in the record shows that this determination was based on conversations with the deputies at the Palmdale station.⁴⁴ Following those discussions, the Controller correctly determined that any further investigation subsequent to that determination is

³⁶ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³⁷ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³⁸ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³⁹ Exhibit C, Claimant’s Late Rebuttal Comments, page 34 [email discussion between the claimant’s representatives and the Controller’s audit staff].

⁴⁰ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 25.

⁴¹ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 34.

⁴² Exhibit A, IRC, page 241 [Parameters and Guidelines, p. 9].

⁴³ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

⁴⁴ Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [email discussion between the claimant’s representatives and the Controller’s audit staff].

beyond the scope of the mandate, in accordance with the Parameters and Guidelines. Therefore, the Controller excluded that investigation from the sample used for the time study, and recalculated the average time increment based on the other thirteen investigations sampled.⁴⁵

Then, as noted above, the Controller verified the reasonableness of the time study results after removing that case from the sample, by conducting a time survey, and the 2.65-hour average time increment fell squarely within the results of the time survey.⁴⁶ The claimant's argument that the 660 minute case should have been included in the sample because "[t]hese types of more involved cases do occur and their lengthier investigation time should also be factored into the average time per case,"⁴⁷ ignores the fact that the case was not excluded because of its length, but because it exceeded the scope of the mandate, based on discussions with the officers performing the mandate.

The claimant's most recent comments state that the claimant is no longer pursuing this issue.⁴⁸

Accordingly, the Controller's exclusion of one sample investigation that included unallowable activities from the time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Rejection of the Claimant's Proposal to Add More Time to Complete an Investigation to Capture Report Writing Time Claimed To Be Omitted From the Allowed Time Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller rejected the request for additional report writing time, concluding that report writing was already accounted for in the average time increment, maintaining its finding that a 2.65-hour average time increment was reasonable.

As noted above, audit fieldwork revealed a single investigation within the time study that included unallowable activities and time, and the Controller determined that that investigation should be removed from the time study.⁴⁹ In response, the claimant argued for additional activities and time to augment the results of the time study, and filed amended reimbursement claims, based on a 3.66-hour average time increment per investigation.⁵⁰ The 3.66 hours

⁴⁵ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

⁴⁶ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

⁴⁷ Exhibit C, Claimant's Late Rebuttal Comments, page 34 [email discussion between the claimant's representatives and the Controller's audit staff].

⁴⁸ Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 3.

⁴⁹ Exhibit G, Controller's Late Comments on the Draft Proposed Decision, page 11 [Controller's Fieldwork Notes, Week 2, April 7, 2015 through April 9, 2015]; Exhibit C, Claimant's Late Rebuttal Comments, pages 37-38 [August 19, 2015 Email from Douglas Brejnak to Annette Chinn].

⁵⁰ Exhibit A, IRC, pages 299-380 [Amended Claim Forms]; Exhibit B, Controller's Comments on the IRC, page 169 [Additional Time Added to Time Study #2].

included not only the investigation that the Controller had determined to remove, but also an additional thirty minutes of report writing time for 11 of the 14 investigations, which were determined to be unfounded cases of child abuse. The claimant asserted that report writing time for unfounded cases had been inadvertently omitted from the time study.⁵¹ The Controller rejected the additional time for report writing, and in the Final Audit Report determined a 2.65-hour average time increment for each investigation is allowable from the claimant's time study.⁵²

Staff finds that the Controller's rejection of the claimant's proposed additional time for report writing for unfounded cases was not arbitrary, capricious, or entirely lacking in evidentiary support.

First, there is no dispute that the time study requested the deputies to log time to "prepare a written report for *every case* investigated of known or suspected child abuse or severe neglect." (Emphasis added.) This would include cases determined to be unfounded.

Second, although the claimant has shown with evidence in the record that report writing for unfounded cases was inadvertently not identified in the time log for several of the investigations in the time study sample, the claimant relies only on estimated time to perform the activity and does not provide any evidence of the actual time to write these reports. The claimant relies on its time study log, which only serves to show *an absence of report writing being documented* for unfounded investigations and does not indicate any times for this activity.⁵³ For its request to increase the total allowable time increment, the claimant relies on the Controller's 2015 time survey, with two of the deputies performing the mandate, which *estimates* the time for report writing for unfounded cases between 15 and 20 minutes.⁵⁴

The time survey, however, provides only an estimate, and is not contemporaneous. The Controller used this survey to *verify the reasonableness* of the claimant's time study to complete an investigation. The survey also shows that the estimated hours to complete an investigation already captures the time for report writing for unfounded cases. The time survey, which includes estimates of report writing time, resulted in overall times ranging from 2.29 hours to 2.71 hours to complete an investigation for purposes of preparing a report for DOJ.⁵⁵ The 2.65-hour time increment allowed by the Controller falls near the top of that range, and thus the Controller concluded that 2.65 hours includes time for report writing for all cases.

⁵¹ Exhibit C, Claimant's Late Rebuttal Comments, pages 12-21 [Amended Time Study Documentation].

⁵² Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

⁵³ Exhibit B, Controller's Comments on the IRC, page 162 [TIME LOG]; Exhibit C, Claimant's Late Rebuttal Comments, page 12. [2013 TIME STUDY].

⁵⁴ Exhibit C, Claimant's Late Rebuttal Comments, pages 18 [Time Survey Questionnaire, with Deputy Deschamps' Responses], 21 [Time Survey Questionnaire, with Deputy Porter's Responses].

⁵⁵ Exhibit B, Controller's Comments on the IRC, page 173 [Analysis of Time Survey].

When reviewing the audit findings of the Controller, the Commission is required to defer to the Controller's presumed expertise.⁵⁶ The Commission may not reweigh the evidence or substitute its judgement for that of the Controller. The Commission's review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, and the choices made.⁵⁷

Accordingly, the Controller's rejection of the claimant's proposal to add more time to complete an investigation to capture report writing time claimed to be omitted is not arbitrary, capricious, or without evidentiary support.

E. The Controller's Reduction of Indirect Costs Is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The indirect cost rate claiming methods described in the Parameters and Guidelines provide claimants the option of either claiming 10 percent of direct labor costs, excluding fringe benefits, or developing an indirect cost rate proposal if indirect costs exceed the 10 percent rate.

The original reimbursement claims listed the direct costs of the mandate as salaries and benefits, and sought indirect costs using a 10 percent flat rate applied to direct salaries and benefits, in accordance with the Parameters and Guidelines. But the Controller reclassified those costs as contract services, because none of the claimant's city employees perform the requirements of the mandate; all law enforcement services for the claimant are provided under contract with the County of Los Angeles. After reclassifying the direct costs as contract services, the Controller denied all indirect costs because the 10 percent flat rate is not applicable to contract services under the Parameters and Guidelines. The claimant disputes this reduction, asserting that it is entitled to all costs mandated by the state and that it has additional overhead costs within the contract and outside the contract that far exceed the 10 percent flat rate.

The claimant did not follow the Parameters and Guidelines and, thus, the Controller's reduction is correct as a matter of law. In addition, the record supports the Controller's findings that the claimant's indirect cost rate proposals to justify a 10 percent rate include unallowable costs in the calculations, including a donation of real property; and the claimant has not established that it established an allowable distribution basis for the indirect cost rates proposed. Therefore, staff concludes that it was not arbitrary, capricious, or entirely lacking in evidentiary support for the Controller to reject the proffered documentation and to deny reimbursement of indirect costs.

Accordingly, the Controller's reduction is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Conclusion

Based on the forgoing analysis, staff finds that the Controller's reduction of costs is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

⁵⁶ See generally, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837.

⁵⁷ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

Staff Recommendation

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

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9⁵⁸, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Fiscal Years 1999-2000 through 2012-2013

Filed on November 7, 2017

City of Palmdale, Claimant

Case No.: 17-0022-I-01

Interagency Child Abuse and Neglect Investigation Reports (ICAN)

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

(Adopted November 30, 2018)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on November 30, 2018. [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.

⁵⁸ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

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:

Member	Vote
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Keely Bosler, Director of the Department of Finance, Chairperson	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller	

Summary of the Findings

This IRC addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims filed by the City of Palmdale (claimant) for costs incurred during fiscal years 1999-2000 through 2012-2013 (audit period) for the *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program. The claimant disputes reductions totaling \$2,552,314 for the audit period.

The Commission denies this IRC, finding that reductions related to the claimant’s time study, and disallowance of indirect costs, as claimed, for all fiscal years were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Specifically, the Controller adjusted the results of the claimant’s time study for the investigation and reporting to the Department of Justice (DOJ) mandate component, based on excluding one investigation from the sample that included unallowable activities after the case was determined to be substantiated, and rejecting an additional thirty minutes of report writing time that the claimant alleged in its amended claims to be omitted from the allowed time. In addition, the Controller disallowed all indirect costs claimed, based on the claimant’s failure to comply with the Parameters and Guidelines and claiming instructions. The Commission finds these reductions to be correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant also asserted a number of preliminary investigative activities that should be subject to reimbursement, and argued they were not, but should have been, accounted for in the time study. These activities, however, were neither specifically claimed nor specifically disallowed. Therefore, they are not the subject of a reduction and the Commission does not have jurisdiction over these issues.

COMMISSION FINDINGS

I. Chronology

12/06/2007 The Commission adopted the Test Claim Decision.

12/16/2013	The Commission adopted the Parameters and Guidelines.
04/28/2014	The Controller issued claiming instructions for the initial claiming period, fiscal years 1999-2000 through 2012-2013, to be filed by July 15, 2014. ⁵⁹
07/03/2014	The claimant filed its initial reimbursement claim. ⁶⁰
12/19/2014	The Controller notified the claimant of the audit. ⁶¹
07/15/2015	The claimant filed amended claims for fiscal years 1999-2000 through 2012-2013. ⁶²
03/30/2016	The Controller issued the Draft Audit Report. ⁶³
04/11/2016	The claimant filed comments on the Draft Audit Report. ⁶⁴
05/19/2016	The Controller issued the Final Audit Report. ⁶⁵
11/07/2017	The claimant filed the IRC. ⁶⁶
02/22/2018	The Controller filed comments on the IRC. ⁶⁷
05/07/2018	The claimant filed late rebuttal comments. ⁶⁸
07/23/2018	Commission staff issued the Draft Proposed Decision. ⁶⁹
07/27/2018	The claimant requested an extension of time to file comments on the Draft Proposed Decision.
07/31/2018	The claimant was granted an extension until August 24, 2018 to file comments on the Draft Proposed Decision.
08/08/2018	The Controller filed comments on the Draft Proposed Decision. ⁷⁰

⁵⁹ Exhibit A, IRC, page 229 [Controller’s Claiming Instructions, Cover Letter].

⁶⁰ Exhibit B, Controller’s Comments on the IRC, page 30.

⁶¹ Exhibit B, Controller’s Comments on the IRC, page 6.

⁶² Exhibit A, IRC, pages 299-380 [Claim Documentation, Amended Claim Forms].

⁶³ Exhibit A, IRC, page 265 [Controller’s Final Audit Report, page 4].

⁶⁴ Exhibit A, IRC, page 292 [Claimant’s Comments on the Draft Audit Report].

⁶⁵ Exhibit A, IRC, page 259 [Controller’s Final Audit Report, Cover Letter].

⁶⁶ Exhibit A, IRC, page 1.

⁶⁷ Exhibit B, Controller’s Comments on the IRC, page 1.

⁶⁸ Exhibit C, Claimant’s Late Rebuttal Comments, page 1.

⁶⁹ Exhibit D, Draft Proposed Decision.

⁷⁰ Exhibit E, Controller’s Comments on the Draft Proposed Decision.

- 08/24/2018 The claimant filed comments on the Draft Proposed Decision.⁷¹
- 08/31/2018 The Controller filed late comments on the Draft Proposed Decision.⁷²
- 09/07/2018 The claimant requested an extension to respond to the Controller’s late comments and a postponement of the September 28, 2018 hearing, which was approved.
- 09/27/2018 The claimant filed a response to the Controller’s late comments.⁷³

II. Background

A. The *Interagency Child Abuse and Neglect Investigation Reports (ICAN) Program*

The *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program addresses statutory amendments to California’s mandatory child abuse reporting laws. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed “mandated reporters”), and in 1980, California reenacted and amended the law, entitling it the “Child Abuse and Neglect Reporting Act,” or CANRA.

As part of this program, the DOJ maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The act provides rules and procedures for local agencies, including law enforcement, receiving such reports. The act provides for cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys’ offices. The act requires reporting to DOJ when a report of suspected child abuse is “not unfounded.” The act requires an active investigation before a report can be forwarded to DOJ. As of January 1, 2012, the act no longer requires law enforcement agencies to report to DOJ, and now requires reporting only of “substantiated” reports by other agencies.⁷⁴ The act imposes additional cross-reporting and recordkeeping duties in the event of a child’s death from abuse or neglect. The act requires agencies and DOJ to keep records of investigations for a minimum of 10 years, and to notify suspected child abusers that they have been listed in the Child Abuse Central Index. The act also imposes certain due process protections owed to persons listed in the index, and provides certain other situations in which a person would be notified of his or her listing in the index.

⁷¹ Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

⁷² Exhibit G, Controller’s Late Comments on the Draft Proposed Decision.

⁷³ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision.

⁷⁴ See Exhibit A, IRC, page 240 [Parameters and Guidelines, p. 8 (citing amendment to Penal Code section 11169(b), enacted by Statutes 2011, chapter 468)].

On December 19, 2007, the Commission approved the Test Claim for cities and counties (specifically city and county police or sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorneys' offices, and county licensing agencies) to perform the following categories of reimbursable activities:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters;
- Receive reports from mandated reporters of suspected child abuse; refer those reports to the correct agency when the recipient agency lacks jurisdiction; cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices; report to licensing agencies; and make additional reports in the case of a child's death from abuse or neglect;
- Investigate reports of suspected child abuse to determine whether to report to the Department of Justice (DOJ);
- Notify suspected abusers of listing in the Child Abuse Central Index;
- Retain records, as specified; and
- Provide due process procedures to those individuals reported to the DOJ's Child Abuse Central Index.⁷⁵

The Parameters and Guidelines were adopted on December 6, 2013, with a period of reimbursement beginning fiscal year 1999-2000.⁷⁶

At issue in this IRC is the scope of the investigative activities of suspected child abuse performed by the claimant's law enforcement agency necessary to determine whether to report to DOJ and to complete the report.

As discussed at length in the Parameters and Guidelines and Test Claim Decisions, "reimbursement is not required for the full course of investigative activities performed by law enforcement agencies [when they receive a report of suspected child abuse], but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ."⁷⁷ From July 1, 1999, through December 31, 2011, child abuse reports determined by law enforcement agencies to be substantiated or inconclusive shall be reported to DOJ. Unfounded reports shall not be filed with DOJ.⁷⁸ Thus, the Commission found that the mandate

⁷⁵ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 41-47.

⁷⁶ Exhibit A, IRC, page 233 [Parameters and Guidelines, page 1].

⁷⁷ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 28. See also, Exhibit I, Test Claim Statement of Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 31.

⁷⁸ See Exhibit A, IRC, page 241 [Parameters and Guidelines, p. 9 (citing Penal Code section 11169(a))].

only requires enough information to determine whether to file a Form SS 8583 with DOJ, or subsequent designated form, and enough information to render the Form SS 8583 a “retainable report,” under California Code of Regulations, title 11, section 903.⁷⁹ As indicated above, beginning January 1, 2012, local law enforcement agencies are no longer mandated to report to DOJ.⁸⁰

The Decision adopting the Parameters and Guidelines also reasoned that the underlying Act, CANRA, was not a mandate focused on criminal investigation and prosecution, but was focused on the protection of children and early intervention in abusive or neglectful situations, and that the investigation mandate specifically arises in the context of early reporting requirements.⁸¹ As such, the Decision concluded that investigative activities in connection with the criminal investigation and prosecution of abuse or neglect are not within the scope of the mandate.

Accordingly, the Parameters and Guidelines define and specify the scope of the investigation activities necessary to satisfy the DOJ reporting requirement to include:

- Review of the initial Suspected Child Abuse Report (SCAR) Form adopted by DOJ;
- Conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and
- Making a report of the findings of those interviews, which may be reviewed by a supervisor.⁸²

The Parameters and Guidelines also make clear that reimbursement is not required for:

- Investigative activities conducted by a mandated reporter to complete the SCAR;
- In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement; and
- Investigative activities undertaken subsequent to the determination whether the report is substantiated, inconclusive, or unfounded for purposes of preparing the report for DOJ (Form 8583), including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.

Section IV. of the Parameters and Guidelines requires reimbursement for those costs actually incurred to implement the mandated activities, which must be traceable and supported by

⁷⁹ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 29.

⁸⁰ Exhibit A, IRC, page 240 [Parameters and Guidelines, p. 8 (citing amendment to Penal Code section 11169(b), enacted by Statutes 2011, chapter 468)].

⁸¹ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 34-35. See also, Exhibit I, Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 31.

⁸² Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pages. 8-9].

contemporaneous source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.⁸³ As noted, in this case the Controller allowed the use of a time study for the initial claiming period due to the likely unavailability of documentation, so the contemporaneous source document rule is not in issue in this IRC.

Section V. defines direct costs to include contract services costs, which must be claimed as follows:

Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.⁸⁴

And Section V. provides with regard to indirect cost claiming:

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

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using *10% of direct labor*, excluding fringe benefits, *or preparing an Indirect Cost Rate Proposal (ICRP)* if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through

⁸³ Exhibit A, IRC, page 235 [Parameters and Guidelines, pages 3].

⁸⁴ Exhibit A, IRC, pages 246-247 [Parameters and Guidelines, pages 14-15].

funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.⁸⁵

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

The reimbursement claims for fiscal years 1999-2000 through 2012-2013 totaled \$5,600,497. The Controller found that \$2,961,652 was allowable, and \$2,638,845 was unallowable.⁸⁶ The following two findings are in dispute:

1. Finding 2, Unallowable Contract Costs for Investigation and Reporting to DOJ

In Finding 2, the Controller found that the claimant reported in its reimbursement claims \$4,956,296 under the "Reporting to the California Department of Justice" component,⁸⁷ which, as discussed above, includes the activities to "Complete an investigation for purposes of preparing the report;" and "Forward reports to the Department of Justice."⁸⁸

The claimant contracts with the County of Los Angeles Sheriff's Department to perform all law enforcement activities, including investigating cases of suspected child abuse.⁸⁹ The claimant purchases various staff positions (Deputy and Sergeant) each fiscal year and pays the Los Angeles County Sheriff's Department contract rates for the purchased positions. None of the claimant's staff members performed any of the reimbursable activities under the ICAN program.⁹⁰

Thus, costs were claimed to complete an investigation for purposes of preparing the report to DOJ by multiplying the number of SCAR investigations performed, by the *estimated* time increment to complete the investigation, by the respective Los Angeles County Sheriff's Department contract hourly rates.⁹¹ The estimated time, as originally claimed, was based on two time studies conducted by the Los Angeles County Sheriff's Department, Palmdale Station, before the Parameters and Guidelines were adopted on December 6, 2013; the first one conducted between September 2010 and June 2011, provided to the Controller in October 2011, and the second one conducted between September 4, 2013 and September 30, 2013, which

⁸⁵ Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15 (emphasis added)].

⁸⁶ Exhibit A, IRC, pages 265; 277-284 [Controller's Final Audit Report, pp. 4; 16-22]. The claimant does not dispute the reduction of \$86,531 under the Cross-Reporting Between Departments component, or the finding that the number of investigations conducted during the audit period was overstated. The Controller identifies the remaining disputed reduction as \$1,132,337. [See Exhibit B, Controller's Comments on the IRC, page 15].

⁸⁷ Exhibit A, IRC, page 276 [Controller's Final Audit Report, p. 15]; Exhibit B, Controller's Comments on the IRC, page 16.

⁸⁸ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 87-90.

⁸⁹ Exhibit A, IRC, page 277 [Final Audit Report, p. 16].

⁹⁰ Exhibit A, IRC, page 277 [Final Audit Report, p. 16]; Exhibit B, Controller's Comments on the IRC, page 16.

⁹¹ Exhibit A, IRC, page 277 [Final Audit Report, p. 16].

recorded the amount of time needed to perform each SCAR investigation.⁹² The time studies recorded time for the following four main activities:

1. Initial response to begin documentation of case and to contact County Welfare.
2. Complete an investigation to determine whether a report is unfounded, substantiated, or inconclusive.
3. Prepare a written report for every case investigated of known or suspected child abuse.
4. Review and approval of report.⁹³

The first time study showed an average time increment of 3.93 hours per SCAR investigation, and the second time study indicated 3.27 hours per SCAR investigation, based on 14 SCAR investigations.⁹⁴ The claimant analyzed the results of both time studies and determined that 3.67 hours per SCAR investigation were needed to perform the claimed activities under this cost component.⁹⁵

On July 3, 2014, the claimant filed initial reimbursement claims covering fiscal years 1999-2000 through 2012-2013.⁹⁶ The Controller began the audit on December 19, 2014.⁹⁷

The Controller states that “[d]uring audit fieldwork, we reviewed both time studies performed by the city.”⁹⁸ The Controller rejected the first time study because it was not performed contemporaneously, was performed by the deputies who did not complete the actual investigation activities claimed, used a sample of cases that were not representative of the total population of SCAR investigations, thus, was not appropriate to support actual costs.⁹⁹ The second time study was performed contemporaneously by the same deputies who performed the reimbursable activities, and the Controller accepted that time study, which resulted in an average time increment of 3.27 hours.¹⁰⁰ However, the Controller found that the second time study

⁹² See Exhibit B, Controller’s Comments on the IRC, pages 156-163.

⁹³ Exhibit A, IRC, page 284-285 [Final Audit Report, pp. 23-24]; See also Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 4 and 7, confirming the four stated activities included in the time study.

⁹⁴ Exhibit B, Controller’s Comments on the IRC, pages 16, 169.

⁹⁵ Exhibit A, IRC, page 278 [Controller’s Final Audit Report, p. 17].

⁹⁶ Exhibit B, Controller’s Comments on the IRC, page 30.

⁹⁷ Exhibit B, Controller’s Comments on the IRC, page 6 (Declaration of Lisa Kurokawa, Division Chief, Division of Audits).

⁹⁸ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, page 23]; Exhibit B, Controller’s Comments on the IRC, page 16.

⁹⁹ Exhibit A, IRC, pages 278, 284 [Controller’s Final Audit Report, pages 17, 23].

¹⁰⁰ Exhibit B, Controller’s Comments on the IRC, page 161; See also Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 20 [email from the Controller’s auditor

included one investigation “with unallowable hours that accounted for activities following the determination of a substantiated status of child abuse.”¹⁰¹ The Controller discussed the case with a detective, and “[i]t appeared that ineligible activities performed after SVU was contacted were included in the time, which lead to the decision to remove the case from the average time calculation.”¹⁰² Therefore, the Controller accepted the second time study results, “less the one case that included the unallowable time,” which then brought the average time increment to 2.65 hours per SCAR investigation, and used that figure for further analysis.¹⁰³

To verify the 2.65-hour time increment, the Controller conducted a time survey over the phone with Deputies Porter and Deschamps, the deputies who performed the mandate, on July 8, 2015 and July 20, 2015, respectively.¹⁰⁴ Those surveys sought to capture estimates of the time spent to review incoming child abuse reports, and review associated information on the home, prior calls, and prior criminal history.¹⁰⁵ In addition, those surveys asked deputies to estimate the amount of time spent conducting interviews with victims, parents and witnesses, and writing reports for both an unfounded case (15-20 minutes, according to Deputy Megan Deschamps), and a substantiated or inconclusive case (45-50 minutes).¹⁰⁶ Deputy Porter estimated 20 minutes to write the report for an unfounded case and 40 minutes for a substantiated or inconclusive case.¹⁰⁷

The time survey resulted in overall times ranging from 2.29 hours to 2.71 hours per SCAR investigation.¹⁰⁸ Thus, the 2.65-hour time increment (the claimant’s second time study less the unallowable investigation) fell within that range and was allowed by the Controller.

The claimant objected to the exclusion of the single investigation, but also asserted that the average time resulting from the second time study should be increased to add report writing time and some preliminary investigative time, such as checking records for prior reports of abuse or

Brejnak to Annette Chinn, which states the following: “The 2nd time study was performed contemporaneously and included a proper sample of investigations, however, it did not follow SCO time study guidelines as well. Therefore, further review and employee interviews were needed to verify the time within the time study.”]

¹⁰¹ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

¹⁰² Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [August 19, 2015 email between the claimant’s representative and the Controller’s audit staff].

¹⁰³ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23]; Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁰⁴ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, page 23]; Exhibit B, Controller’s Comments on the IRC, pages 174-179 [Time Survey Questionnaire].

¹⁰⁵ Exhibit B, Controller’s Comments on the IRC, pages 174-179 [Time Survey Questionnaire].

¹⁰⁶ Exhibit B, Controller’s Comments on the IRC, page 176 [Time Survey Questionnaire, Deschamps].

¹⁰⁷ Exhibit B, Controller’s Comments on the IRC, page 179 [Time Survey Questionnaire, Porter].

¹⁰⁸ Exhibit B, Controller’s Comments on the IRC, page 173 [Analysis of Time Survey].

neglect and making phone calls to schedule interviews with witnesses or suspects.¹⁰⁹ The claimant filed amended reimbursement claims, dated July 15, 2015, which sought reimbursement based on an average time increment of 3.66 hours per SCAR investigation.¹¹⁰ That figure not only included the investigation that the Controller intended to exclude from the sample, but also included an additional thirty minutes of report writing time for 11 of the 14 investigations in which the claimant asserted that report writing had been omitted from the time study.¹¹¹ The claimant stated the 30 minute figure was “a conservative amount of time...”¹¹² and that “an additional 30 mins – 1 hrs on average was spent on this activity based on our first time study & staff interviews.”¹¹³ The claimant also relied on the Controller’s time surveys, which stated 15-20 minutes to prepare a report for an unfounded case, and 45-50 minutes to prepare a report for a substantiated or inconclusive case. The claimant found that the average was closer to 35-37 minutes, and then claimed 30 minutes on the amended claims.¹¹⁴ It is not apparent from the record, however, that the claimant’s amended time increment of 3.66 hours included the other preliminary investigative time, such as checking records for prior reports of abuse or neglect and making phone calls to schedule interviews with witnesses or suspects.

On March 30, 2016, the Draft Audit Report was issued and maintained the 2.65-hour average time increment.¹¹⁵ The claimant responded to the Draft Audit Report on April 11, 2016.¹¹⁶ The claimant argued that although the first time study was not contemporaneous, it contained reliable information from “CAD logs and case files,” and when the second time study was conducted “[b]oth time studies yielded similar results.”¹¹⁷ The claimant further stated: “however, the second time study did not detail each activity separately and we believe it did not include report writing time which should have added an additional hour per case for a total of 3.67 hours to complete the investigation as mandated and write the report.”¹¹⁸ The claimant further stated: “The City offered to conduct another time study to support their time requested, however the SCO declined to consider this option stating that they believed that the difference in time was due to a disagreement regarding allowable activities, which would not be remedied by

¹⁰⁹ Exhibit C, Claimant’s Late Rebuttal Comments, page 37 [email discussion between the claimant’s representatives and the Controller’s audit staff].

¹¹⁰ Exhibit A, IRC, pages 299-380 [Amended Claim Documentation]; Exhibit B, Controller’s Comments on the IRC, page 169.

¹¹¹ Exhibit B, Controller’s Comments on the IRC, page 169.

¹¹² Exhibit B, Controller’s Comments on the IRC, page 166 [August 17, 2015 email between claimant’s representative and the Controller’s audit staff].

¹¹³ Exhibit C, Claimant’s Late Rebuttal Comments, page 25 [August 6, 2015 email between claimant’s representative and the Controller’s audit staff].

¹¹⁴ Exhibit C, Claimant’s Late Rebuttal Comments, pages 18; 21.

¹¹⁵ Exhibit A, IRC, page 265 [Final Audit Report, page 4].

¹¹⁶ Exhibit A, IRC, page 265 [Final Audit Report, page 4].

¹¹⁷ Exhibit A, IRC, pages 292-293 [Claimant Response to the Draft Audit Report].

¹¹⁸ Exhibit A, IRC, page 293 [Claimant Response to the Draft Audit Report].

conducting another time study.”¹¹⁹ The claimant went on to cite its disagreement with the scope of activities included in the time study, including reviewing call history and suspect background checks prior to conducting interviews; calling to schedule interviews, especially where a home location requires significant travel time; and inspecting the home of the alleged victim for signs of neglect.¹²⁰

The Final Audit Report, dated May 19, 2016, identifies reductions based on the claimant’s amended reimbursement claims filed July 2015,¹²¹ and indicates that the Controller believed the time study captured all allowable activities, and therefore the Controller rejected the additional report writing time proposed, excluded the unallowable investigation, and maintained the estimated time of 2.65 hours per SCAR investigation in the calculation of costs to conduct an investigation for purposes of preparing a report for DOJ.¹²² Of the direct costs claimed, the Controller found that \$2,913,118 is allowable and \$2,043,178 is unallowable. The Controller states that “[t]he portion of the finding relating to the average time increment disputed totals \$1,132,337.”¹²³

With respect to the additional preliminary activities asserted by the claimant (but not clearly identified in the amended claims) the Final Audit Report states as follows:

We agree that the deputies perform many additional activities necessary to complete their investigations. However, not all activities within the investigation process are allowable for reimbursement, even when they appear reasonably necessary. We believe that the preliminary investigation activities described above in items 1 and 2 go beyond the scope of the reimbursable component and therefore are unallowable.¹²⁴

2. Finding 3, Unallowable Indirect Costs

In Finding 3, the Controller’s audit found that the City claimed unallowable indirect costs, totaling \$509,136. The Controller found that the indirect costs are unallowable because the claimant “inappropriately applied its indirect cost rate to contract service costs.”¹²⁵ The Parameters and Guidelines, the Controller explained, allow claimants to either use a 10 percent flat rate, measured against direct salaries and benefits of a local agency’s employees, or prepare an Indirect Cost Rate Proposal.¹²⁶ The claimant here elected to use the 10 percent flat rate, but had no direct salaries and benefits costs because the mandated activities were conducted under

¹¹⁹ Exhibit A, IRC, pages 293-294 [Claimant Response to the Draft Audit Report].

¹²⁰ Exhibit A, IRC, pages 293-294 [Claimant Response to the Draft Audit Report].

¹²¹ Exhibit A, IRC, pages 259, 266-270 [Final Audit Report, pp. 5-9].

¹²² Exhibit A, IRC, pages 284-286 [Final Audit Report, pp. 23-25].

¹²³ Exhibit B, Controller’s Comments on the IRC, page 15.

¹²⁴ Exhibit A, IRC, page 285 [Controller’s Final Audit Report, p. 24].

¹²⁵ Exhibit A, IRC, pages 286-287 [Controller’s Final Audit Report, pp. 25-26].

¹²⁶ Exhibit A, IRC, page 279 [Final Audit Report, p. 18].

contract with the Los Angeles County Sheriff's Department.¹²⁷ In other words, none of the claimant's employees were involved in the mandate, and therefore the claimant had no direct salary costs.¹²⁸

To support this conclusion the Controller relies on the language of the Parameters and Guidelines defining indirect costs as "costs that are incurred for a common or joint purpose, benefitting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved."¹²⁹ The Parameters and Guidelines also state: "Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan."¹³⁰ And finally, the Parameters and Guidelines also limit the use of the 10 percent flat rate, or default rate, to "10% of direct labor, excluding fringe benefits."¹³¹ There is no mention of applying the 10 percent rate to contract costs, or any other direct costs.

The claimant disputed the disallowance of indirect costs, and argued that despite the mandate being performed under contract with the County, the claimant still incurred additional overhead costs both within the contract and outside the contract.¹³²

The Controller's finding was unchanged.¹³³ The Controller notes in its Final Audit Report that the claimant "incorrectly elected to use the option of claiming 10% of direct labor, excluding fringe benefits, to determine the amount of indirect costs...[h]owever, as stated above, the 10% indirect cost rate is to be applied to the amount of direct labor costs [and claimant] did not incur any payroll or direct labor costs."¹³⁴ The Controller therefore concludes that, as claimed, the indirect costs are unallowable.¹³⁵

¹²⁷ Exhibit A, IRC, page 279 [Final Audit Report, p. 18].

¹²⁸ Exhibit A, IRC, page 287 [Final Audit Report, p. 26].

¹²⁹ Exhibit A, IRC, page 287 [Final Audit Report, p. 26 (quoting Parameters and Guidelines, section V.B.)].

¹³⁰ Exhibit A, IRC, page 287 [Final Audit Report, p. 26 (quoting Parameters and Guidelines, section V.B.)].

¹³¹ Exhibit A, IRC, page 288 [Final Audit Report, p. 27 (quoting Parameters and Guidelines, section V.B.)].

¹³² Exhibit A, IRC, page 288-289 [Final Audit Report, pp. 27-28].

¹³³ Exhibit A, IRC, page 289 [Final Audit Report, p. 28].

¹³⁴ Exhibit A, IRC, page 290 [Final Audit Report, p. 29].

¹³⁵ Exhibit A, IRC, page 290 [Final Audit Report, p. 29].

III. Positions of the Parties

A. City of Palmdale

The total amount claimed for fiscal years 1999-2000 through 2012-2013 is \$5,600,497.¹³⁶ The total amount reduced was \$2,638,845.¹³⁷ The claimant requests reinstatement of \$2,552,314.¹³⁸

The claimant alleges two incorrect reductions within the audit: first, the claimant believes that the Controller's interpretation of the scope of reimbursable activities involved in investigating a report of suspected child abuse or neglect was "excessively restrictive," resulting in adjustments to the average time increment derived from the time study that reduced reimbursement for investigating child abuse and neglect; and second, the claimant asserts that the Controller incorrectly denied indirect costs claimed.

1. Adjustments to the Time Study (Audit Finding 2)

With respect to the scope of investigation-related activities, the claimant asserts that the Controller incorrectly excluded a number of minor tasks or activities the claimant included in its time study. The claimant's response to the Draft Audit Report asserted that "the second time study did not detail each activity separately and we believe it did not include report writing time which should have added an additional hour per case for a total of 3.67 hours to complete the investigation as mandated and write the report."¹³⁹ The claimant further stated that it offered to conduct a third time study, which the Controller declined, because, the claimant asserts, "they [the Controller's audit staff] believed that the difference in time was due to a disagreement regarding allowing activities, which would not be remedied by conducting another time study."¹⁴⁰ The claimant further stated that "the SCO and the City disagree on the eligibility of certain activities the Deputy performs in the course of their preliminary investigation to determine if the case is Founded, Unfounded, or Inconclusive as mandated."¹⁴¹ Specifically, the claimant requested 15 minutes per case to "review prior call history," and sometimes speak to other child welfare agencies before going to conduct interviews; 40 minutes to make phone calls to schedule interviews; and 6 minutes to inspect the home of the alleged victim.¹⁴²

In its IRC narrative, the claimant identifies five investigative steps, including preliminary investigative activities, that it maintains are reimbursable and should be included in the average time study increments:

¹³⁶ Exhibit A, IRC, page 259 [Controller's Final Audit Report Cover Letter].

¹³⁷ Exhibit A, IRC, page 259 [Controller's Final Audit Report Cover Letter].

¹³⁸ Exhibit A, IRC, page 1. Based on the findings that are not disputed, the Controller maintains that the actual dollar amount in dispute is \$1,132,337 in direct costs and \$509,136 in indirect costs. (Exhibit B, Controller's Comments on the IRC, pp. 15; 22.)

¹³⁹ Exhibit A, IRC, page 281 [Final Audit Report, p. 20].

¹⁴⁰ Exhibit A, IRC, page 282 [Final Audit Report, p. 21].

¹⁴¹ Exhibit A, IRC, page 282 [Final Audit Report, p. 21].

¹⁴² Exhibit A, IRC, pages 282-283 [Final Audit Report, pp. 21-22].

- 1) Review preliminary documents and materials to determine if interviews are necessary. This may include checking to see if a report was already written (duplication), call CPS or reporting agency to obtain more details of the case, checking prior history, and other considerations.
(SCO is only allowing time to review the SCAR)
- 2) Identify involved parties
- 3) Schedule and set up interviews via phone and/or email when needed
- 4) Travel to meet with parties involved in the investigation
- 5) Inspection of home (in instances related to allegations of neglect) to determine living conditions – food, running water, safe living conditions, etc.¹⁴³

The claimant further argues, in its late rebuttal comments, that the total average time for investigations resulting from the time study does not accurately reflect all the required activities. The claimant asserts that report writing was not fairly reflected in the Controller's calculation of allowable time, and that longer, outlier investigative cases should not be excluded from the time study.¹⁴⁴ Further, the claimant asserts that its investigation time study was derived primarily from officers' on-scene time, which, according to the claimant, "is in fact a conservative estimate of actual time spent to conduct an investigation because this time wouldn't have any additional follow up activities that may have been required such as in the instances when not all the parties were present at the time of the officer's arrival."¹⁴⁵ The claimant asserts that "[i]t is common that the deputy must attempt to contact other parties after the initial call for service."¹⁴⁶

In response to the Draft Proposed Decision, the claimant filed additional copies of its time study documentation, with additional notations, and new declarations from the claimant representative and from the detective who compiled the time study documentation.¹⁴⁷ Detective Reddy's declaration states that she is the employee who compiled the time study information, she was never interviewed by the Controller's audit staff, and therefore the Controller's conclusions that report writing time was already included in the time study and that the single outlier investigation included unallowable activities and should be struck from the time study, are not

¹⁴³ Exhibit A, IRC, page 3 [As noted, the Controller agrees that inspecting the home is a reimbursable activity, but maintains that this activity is included in the time study. (Exhibit A, IRC, page 285 (Final Audit Report, p. 24))].

¹⁴⁴ Exhibit C, Claimant's Late Rebuttal Comments, pages 1-2.

¹⁴⁵ Exhibit C, Claimant's Late Rebuttal Comments, page 2.

¹⁴⁶ Exhibit C, Claimant's Late Rebuttal Comments, page 2.

¹⁴⁷ Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 5-7 [Declaration of Detective Vanessa Reddy and Time Study documents]; 19-20 [Declaration of Annette Chinn, claimant representative].

supported by the record.¹⁴⁸ The declaration of Detective Reddy, in particular, explains the reason why report writing was not included in the time study:

I tracked the actual time for these activities during the month of September, 2013 but inadvertently did not include time for report writing for all of the cases. This was because I was not clear on the exact parameters and the cases that I did not include report writing time for were for unfounded cases of child abuse. These cases typically end with the numbers “419” at the end of the report number. All of these unfounded cases also had a written internal report prepared, however, because those reports were not sent to the District Attorney’s Office I did not input report writing time on the logs.

It is my believe [sic] that to fairly represent actual time spent on this report writing activity, 15-20 minutes of time should be added to those cases (see attached log with an asterisk) which did not include time for report writing.

I also wanted to note that I was never interviewed by anyone from the State Controller’s Office about this time log or any other issues pertaining to this Child Abuse program or this audit.¹⁴⁹

Thus, the claimant requests that the time increment for the investigation activities be increased to reflect report writing for unfounded cases, the time reflected by the single outlier investigation, and the preliminary investigative activities.

On September 27, 2018, the claimant filed a response to the Controller’s late comments on the Draft Proposed Decision.¹⁵⁰ The claimant continues to assert in its response that the time increment for the investigation activities needs to be increased to reflect report writing for unfounded cases. However, the claimant is no longer disputing the Controller’s exclusion from the claimant’s time study of a single investigation that included unallowable activities occurring subsequent to the determination whether the case was substantiated, inconclusive, or unfounded. The claimant states the following:

Due to the length of time that has transpired since the original preparation of the time logs (2013) and the difficulty in remembering exact details of specific cases, the City has decided not to pursue this issue.¹⁵¹

The claimant also concurs with the conclusion in the Draft Proposed Decision that the Commission does not have jurisdiction to determine whether certain preliminary

¹⁴⁸ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 5-7 [Declaration of Detective Vanessa Reddy and Time Study documents]; 19-20 [Declaration of Annette Chinn, claimant representative].

¹⁴⁹ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 4 [Declaration of Detective Vanessa Reddy].

¹⁵⁰ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision.

¹⁵¹ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

investigative activities should be reimbursable since the Controller did not reduce any costs for preliminary investigative activities.¹⁵²

2. Reduction of Indirect Costs (Audit Finding 3)

With respect to the disallowance of indirect costs, the claimant argues that the Controller incorrectly disallowed “the default 10% Indirect Cost Rate Proposal or overhead costs to the City’s claim for reimbursement allowed by the claiming instructions.”¹⁵³ The Controller determined that because the claimant implemented the mandate by contracting with the Los Angeles County Sheriff’s Office, the claimant was not claiming direct labor costs, and could not claim indirect costs related to those activities and costs.¹⁵⁴ Further, the Controller opined that “there is already adequate overhead included in the contracted county billed hourly rates...”¹⁵⁵

The claimant disagrees with the Controller’s conclusion, and asserts that it did claim direct salaries and benefits, and should be entitled to indirect costs.¹⁵⁶ In addition, the claimant argues that it had additional overhead costs both within its contract with the County and outside of the contract. In this respect the claimant characterized administrative and clerical support staff as “overhead,” and states that “[e]ach fiscal year, the City purchased additional supplemental overhead positions through the contract, including Station Clerks, Administrative and Motor Sergeants (in addition to the Sergeants who were already built into the standard billing rates).”¹⁵⁷ The claimant further states “[i]n some years the cities may be able to afford more direct staff and more overhead items and other years they cannot.”¹⁵⁸ The claimant asserts that this may affect response times and service quality for the community.¹⁵⁹ The claimant states, without citing specific support, that “[w]hen the actual overhead rates were calculated, they were found to range between 6%-13%.”¹⁶⁰ The claimant therefore concludes that the 10 percent “default rates is [*sic*] a reasonable approximation of actual overhead costs incurred by the city.”¹⁶¹

With respect to “overhead incurred outside of the contract,” the claimant states as follows:

In addition to the County billed overhead, the City also contributed additional funds to support the law enforcement services contract. For example, there are

¹⁵² Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

¹⁵³ Exhibit A, IRC, page 4.

¹⁵⁴ Exhibit A, IRC, page 4.

¹⁵⁵ Exhibit A, IRC, page 4.

¹⁵⁶ Exhibit A, IRC, page 288 [Final Audit Report, p. 27]; Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, pages 1-2.

¹⁵⁷ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹⁵⁸ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹⁵⁹ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹⁶⁰ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹⁶¹ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

City wide overhead costs documented in their FY 13-14 Cost Allocation Plan (\$1,001,171) including administrative time from the City Attorney, City Manager's Office, Finance, Human Resources, and the Public Safety Department.

Then there are additional city costs incurred to contract the Palmdale Sheriff's Station in 2004 including the donation of 11 acres of land estimated (estimated value of \$1.3 million) as well as for city provided infrastructure improvements of (approximately \$1.01 million).

All these are valid examples of additional overhead costs not captured by the LA Sheriff's Deputy billing rate and denied for reimbursement in the SCO audit. The city provided many examples and documents supporting that it is actually incurring overhead costs over and above that which was included in the Deputy's standard billing rate. These types of city wide overhead items are eligible for reimbursement under the instruction and OMB A-87 and should be allowed for inclusion in our claims. (See attached examples).¹⁶²

In its late rebuttal comments, the claimant acknowledges that "most overhead was already included in the Deputies['] hourly rates billed, however the record shows that there were additional overhead charges not included in those billed hourly rates."¹⁶³ The claimant argues that "State Mandate statutes require the reimbursement of actual costs incurred to comply with the mandated program and the city believes it has shown that additional overhead costs were incurred and therefore were incorrectly reduced by the SCO."¹⁶⁴

In response to the Draft Proposed Decision, the claimant provides additional documentation for fiscal years 2006-2007 through 2012-2013, which claimant asserts support its claim for indirect costs. The proposed indirect cost rates for those years range from 5.4 to 11.3 percent, while rates for the same years submitted in earlier documentation ranged from 11.9 to 15.4 percent.¹⁶⁵ The claimant continues to assert that "[b]ased on claiming instructions and Federal guidelines, I believe these overhead costs are eligible for inclusion in the ICRP and are actual ICRP costs which the City is entitled to."¹⁶⁶

B. State Controller's Office

The Controller urges the Commission to deny this IRC. The Controller states that of the claimant's total reimbursement claims for \$5,600,497 for fiscal years 1999-2000 through 2012-2013, \$2,638,845 "is unallowable because the city overstated the number of suspected child abuse reports (SCARs) investigated, overstated time increments for each fiscal year, and claimed

¹⁶² Exhibit A, IRC, page 289 [Final Audit Report, p. 28].

¹⁶³ Exhibit C, Claimant's Late Rebuttal Comments, page 3.

¹⁶⁴ Exhibit C, Claimant's Late Rebuttal Comments, page 3.

¹⁶⁵ See Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 49-70; Exhibit A, IRC, pages 110-131.

¹⁶⁶ Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 19 [Declaration of Annette Chinn, claimant representative]; See also, Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, pages 1-2.

ineligible indirect costs.”¹⁶⁷ The Controller goes on: “The city does not dispute the portion of the audit findings related to the overstated SCAR investigations claimed for the audit period, nor the misstated \$1,013 in costs claimed within the Forward Reports to DOJ component activity in FY 2001-02.”¹⁶⁸ The remaining disputed reductions for the overstated time increments and ineligible indirect costs, according to the Controller, is limited to \$1,132,337.¹⁶⁹

The Parameters and Guidelines provide reimbursement to complete an investigation to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting a required form to DOJ.¹⁷⁰ The Controller acknowledges that “[t]his activity includes reviewing the initial SCAR (Form SS 8572), conducting initial interviews with involved parties, and making a report of the findings of those interviews.”¹⁷¹ The Controller states that the Commission’s Decision on the Parameters and Guidelines “clarified multiple times...that reimbursement is limited to the activities noted.”¹⁷² Further, the Controller notes that the claimant contracts with the Los Angeles County Sheriff’s Department to perform the law enforcement-related activities of the mandate, including investigations of suspected child abuse. Accordingly, the Controller determined that essentially all salaries and benefits claimed for the audit period should more properly be classified as contract costs.¹⁷³

The Controller explains that the claimant’s contract costs were claimed based on two time studies, the first of which the Controller found “inappropriate to support actual costs, as the study was not performed contemporaneously, was performed by staff who did not complete the actual investigation activities claimed, used time estimates, and used a sample of cases that were not representative of the total population of SCAR investigations.”¹⁷⁴ The second time study the Controller determined was appropriate, “with the exception of the one investigation that included activities occurring after the SCAR was determined to be a substantiated case of child abuse.”¹⁷⁵ The Controller therefore accepted and applied the second time study, with that case excised from the results. The Controller further verified the reasonableness of its results by conducting interviews and a time survey.¹⁷⁶

¹⁶⁷ Exhibit B, Controller’s Late Comments on the IRC, page 8.

¹⁶⁸ Exhibit B, Controller’s Late Comments on the IRC, page 15.

¹⁶⁹ Exhibit B, Controller’s Late Comments on the IRC, page 15.

¹⁷⁰ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 25-34.

¹⁷¹ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁷² Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁷³ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁷⁴ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁷⁵ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁷⁶ Exhibit B, Controller’s Comments on the IRC, page 16.

The claimant, during audit fieldwork, and in this IRC, has sought to augment the results of the time study, and increase the average time increment resulting from the time study, alleging that report writing time, and three preliminary investigative activities, should have been included. The Controller maintains that report writing time and time to inspect the home and living conditions of the alleged victim are included in the results of the time study, and the other activities raised are beyond the scope of the mandate.¹⁷⁷

With respect to the disallowance of indirect costs, the Controller maintains that the claimant inappropriately applied the 10 percent indirect cost rate to contract service costs.¹⁷⁸ The Controller explains that because the claimant did not incur any direct labor costs for mandated activities, indirect costs are inappropriate; rather, any overhead or indirect costs were included within the contract rates.¹⁷⁹ The Controller also posits that the fact that overhead costs were built into the contract rate was confirmed by the Los Angeles County Sheriff's Department's Contract Law Enforcement Bureau.¹⁸⁰ The Controller further notes that the Parameters and Guidelines allow claimants the option of claiming indirect costs based on 10 percent of direct labor, excluding benefits, or, preparing an indirect cost rate proposal if the 10 percent rate does not seem sufficient.¹⁸¹ Here, the claimant chose to use the 10 percent rate, but had no direct labor costs.¹⁸² The Controller states that the claimant created "sample Indirect Cost Rate Proposals" for fiscal years 2006-2007 through 2012-2013, but those sample ICRPs were submitted to demonstrate that the 10 percent flat rate was reasonable, and in fact conservative; the claimant only seeks "restoration of the 10% rate and not the indirect cost rates based on the proposed ICRPs."¹⁸³

In comments on the Draft Proposed Decision filed August 8, 2018, the Controller stated that it agrees with the proposed findings to deny the IRC.¹⁸⁴ The Controller filed additional comments on the Draft Proposed Decision and supporting documentation, which were filed late on August 31, 2018, to rebut the claimant's assertion that Detective Reddy, the officer who compiled the second time study, was never interviewed by anyone from the State Controller's Office about the time log or any other issues pertaining to the audit.¹⁸⁵

¹⁷⁷ Exhibit A, IRC, page 285 [Controller's Final Audit Report, p. 24].

¹⁷⁸ Exhibit B, Controller's Comments on the IRC, page 22.

¹⁷⁹ Exhibit B, Controller's Comments on the IRC, page 22.

¹⁸⁰ Exhibit B, Controller's Comments on the IRC, page 24.

¹⁸¹ Exhibit B, Controller's Comments on the IRC, page 24.

¹⁸² Exhibit B, Controller's Comments on the IRC, page 24.

¹⁸³ Exhibit B, Controller's Comments on the IRC, page 24.

¹⁸⁴ Exhibit E, Controller's Comments on the Draft Proposed Decision.

¹⁸⁵ Exhibit G, Controller's Late Comments on the Draft Proposed Decision.

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.¹⁸⁶ 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."¹⁸⁷

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.¹⁸⁸ 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." [Citation.]' "¹⁸⁹

¹⁸⁶ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁸⁷ *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.

¹⁸⁸ *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.

¹⁸⁹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

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.¹⁹⁰ 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.¹⁹¹

A. The Claimant Timely Filed this IRC Within Three Years from the Date 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).

Government Code section 17561 provides that the state shall reimburse local government for all costs mandated by the state. However, the Controller is authorized by section 17561 to audit those claims to verify the amount of mandated costs, and reduce any claim that the Controller determines is excessive or unreasonable. Government Code section 17551 in turn provides that the Commission shall hear and decide upon a claim by a local agency or school district that the Controller has incorrectly reduced payments pursuant to section 17561. 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.¹⁹²

Here, the Final Audit Report is dated May 19, 2016.¹⁹³ The IRC was filed with the Commission on November 7, 2017.¹⁹⁴ Less than three years having elapsed between the issuance of the audit report and the filing of the IRC, this IRC was filed within the period prescribed in Code of Regulations, title 2, section 1185.1.

B. The Commission Does Not Have Jurisdiction to Determine Whether Other Preliminary Investigative Activities Were Accounted for in the Time Study Because There Has Been No Reduction Relating to Preliminary Investigative Activities.

The claimant's IRC argues that additional time should be added to the 2.65 hours per SCAR investigation that the Controller found to be allowable based on the second time study, to

¹⁹⁰ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁹¹ 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

¹⁹² California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

¹⁹³ Exhibit A, IRC, page 259 [Controller's Final Audit Report].

¹⁹⁴ Exhibit A, IRC, page 1.

account for preliminary investigative activities, such as making calls to schedule interviews and reviewing prior case history.¹⁹⁵ The revised time study documentation supporting the amended claims, however, does not specifically identify additional time for preliminary investigative activities.¹⁹⁶ In addition, the evidence in the record does not show that at any point these preliminary activities were ever specifically claimed, or specifically disallowed, either in the original time study and reimbursement claims, or in the amended reimbursement claims filed July 15, 2015.

As indicated in the Final Audit Report, the only reductions taken by the Controller pertain to the exclusion of the one investigation that went beyond the scope of the mandate, and the rejection of the additional report writing time claimed. Accordingly, while the claimant and the Controller have opined on the scope of reimbursement with respect to preliminary investigative activities,¹⁹⁷ there has been no reduction relating to preliminary investigative activities.

Pursuant to Government Code section 17551(d), the Commission only has jurisdiction over *reductions* taken in the context of an audit. Therefore, the Commission does not have jurisdiction to consider these issues in the context of an IRC.¹⁹⁸

C. The Controller's Reduction of Costs Based on the Exclusion of One Investigation from the Claimant's Time Study that Included Activities Beyond the Scope of the Mandate Is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As noted above, the initial claiming period for this mandated program includes fiscal years 1999-2000 through 2012-2013, and initial claims, in accordance with the claiming instructions, were required to be filed no later than July 15, 2014.¹⁹⁹ The Controller did not expect the claimant to have sufficient contemporaneous source documentation extending back to the beginning of the audit period, and therefore permitted the claimant to perform a time study.²⁰⁰ The claimant performed two time studies, and submitted its initial reimbursement claim on or about

¹⁹⁵ Exhibit A, IRC, pages 3 and 285 [Final Audit Report, p. 24].

¹⁹⁶ Exhibit C, Claimant's Late Rebuttal Comments, page 15.

¹⁹⁷ See Exhibit A, IRC, pages 285-286 [Final Audit Report, pp. 24-25].

¹⁹⁸ The claimant now agrees with this legal conclusion. (Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 3.)

¹⁹⁹ Exhibit A, IRC, page 229 [initial claiming instructions].

²⁰⁰ Any attempt to enforce the contemporaneous source document rule retroactively would raise due process implications. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 803-807; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.)

July 3, 2014, based on an average time increment calculated from both time studies of 3.67 hours.²⁰¹

As indicated in the Background, the first of two time studies was not contemporaneous with the performance of the activities, and was therefore rejected, but the Controller accepted the claimant's second time study, except that it excluded an investigation "with unallowable hours that accounted for activities following the determination of a substantiated status of child abuse."²⁰² The Controller recalculated without the unallowable investigation, and found an average time increment of 2.65 hours per SCAR investigation.²⁰³ The Controller thus reduced reimbursement based on excluding from the claimant's time study a single investigation that included unallowable activities occurring subsequent to the determination whether the case was substantiated, inconclusive, or unfounded. That investigation was referred to the Los Angeles County Sheriff's Department Special Victims Unit, and according to interviews with the deputies performing the mandate, including Detective Reddy, the investigation included further activities after that referral to DOJ was made.²⁰⁴ That investigation also required substantially more time than the others sampled in the time study (660 minutes, as compared to approximately 159 minutes, on average, throughout the remaining sample).²⁰⁵ The Controller concluded "[t]he average time per case, using the second time study results (less the unallowable hours of one case), totaled 2.65 hours."²⁰⁶ To verify this time increment, the Controller conducted a time survey with the deputies, which resulted in a range of 2.29 to 2.71 hours per SCAR investigation. Since the 2.65 hours resulting from the time study (less the unallowable hours of one case) fell within that range, the Controller determined that the time study result was reasonable, and accepted the 2.65-hour average time increment.²⁰⁷

The claimant argues that even though that investigation was an outlier in terms of the time spent by deputies performing the mandate, it should be included in the time study sample because it reflects the fact that some cases require more time and resources than others:²⁰⁸

[T]he longest case in [the claimant's] 2013 [time study] should not have been removed from computation of the average time per case. These types of more

²⁰¹ Exhibit B, Controller's Comments on the IRC, page 30; Exhibit A, IRC, page 278 [Final Audit Report, p. 17].

²⁰² Exhibit A, IRC, page 284 [Controller's Final Audit Report, p. 23].

²⁰³ Exhibit B, Controller's Comments on the IRC, page 171 [Analysis of Time Study #2]. See also, Exhibit C, Claimant's Late Rebuttal Comments, page 26 [August 4, 2015 Email from Douglas Brejnak to Annette Chinn].

²⁰⁴ Exhibit A, IRC, page 284 [Controller's Final Audit Report, page 23]; Exhibit C, Claimant's Late Rebuttal Comments, page 38 [email discussion between the claimant's representatives and the Controller's audit staff].

²⁰⁵ Exhibit B, Controller's Comments on the IRC, page 171.

²⁰⁶ Exhibit A, IRC, page 284 [Controller's Final Audit Report, p. 23].

²⁰⁷ Exhibit A, IRC, page 284 [Controller's Final Audit Report, p. 23].

²⁰⁸ Exhibit C, Claimant's Late Rebuttal Comments, page 34.

involved cases do occur and their lengthier investigation time should also be factored into the average time per case. The time logs accurately reflect actual time spent by station Deputies on the preliminary investigative process to determine if the case was founded, unfounded, or inconclusive and to prepare the written report.²⁰⁹

The claimant continues to stress, in its comments on the Draft Proposed Decision, that this investigation should not have been removed from the time study, and that the Controller “would not have been able to make this determination *without interviewing the employee who actually worked on that investigation...*”²¹⁰

The Controller disputes that it did not interview the relevant employees.²¹¹ In its additional comments on the Draft Proposed Decision, which were filed late, the Controller states that it conducted meetings during the initial week of fieldwork, between April 7 and 9, 2015, at the Palmdale Station. The Controller states that Detective Vanessa Reddy “participated in that meeting and answered questions asked of her by the SCO auditor concerning the time study and general SCAR program activities;” and that the “SCO auditor summarized the meetings, including the Detective’s statements, in working papers (Tab 3).”²¹² The working papers state, in relevant part, the following:

The second time study was completed by the sheriff’s deputy assigned to investigate SCARs (8572). The time study was completely contemporaneously during September 2013. The deputy recorded her time for each case that was opened during the month, regardless if the case was substantiated, unfounded, or inconclusive. The deputy (Vanessa Reddy) is no longer working the SCAR cases but was available to come by the station to discuss her time study.

Unlike the 1st time study, the deputy did not separate the time into different categories. Only a total for each case was recorded within this time study. The time study documented which activities were performed but not the time splits. This time study was not used within the city’s claim. During discussions with Vanessa Reddy, she stated the entire time of her work on the case was included within the time study. For substantiated cases, this would include time after the Special Victims Unit was contacted which may include ineligible activities.²¹³

²⁰⁹ Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

²¹⁰ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 20 [Declaration of Annette Chinn].

²¹¹ Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, pages 8-17.

²¹² Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 8.

²¹³ Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 11 (Emphasis in original); see also page 18 [“We interviewed staff who prepared the time study and found that one case within the study included time outside of allowable activities.”].

The Commission finds that the reduction of costs based on the exclusion of one investigation from claimant's time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The scope of the reimbursable activity relating to investigations of suspected child abuse or neglect looms large in the Commission's consideration and analysis of the Parameters and Guidelines, and it remains an issue in this IRC. The Commission's Decision adopting the Parameters and Guidelines reasoned that the requirement to investigate reports of suspected child abuse or neglect derives from the reporting requirement to DOJ; it is not a reimbursable state mandate to investigate reports of child abuse or neglect for purposes of prosecuting crimes.²¹⁴ Accordingly, the Parameters and Guidelines place the "Complete an Investigation" activity under the heading, "Reporting to the Department of Justice."²¹⁵

The Decision also analyzed at length the idea that the express goal of CANRA is to protect children from abuse or neglect, not to investigate and prosecute criminal child abuse, sexual assault, neglect, or other crimes.²¹⁶ And since the other agencies with similar reporting responsibilities under CANRA do not have law enforcement or criminal prosecution authority, the Parameters and Guidelines limited reimbursement for this mandate to an investigation similar in scope to one conducted by another child welfare agency, and which is conducted for purposes of reporting to DOJ when suspected child abuse is substantiated or inconclusive.²¹⁷ The Commission made that determination, in part, because at some point an investigation of suspected child abuse conducted by a law enforcement agency turns from an investigation to determine whether a report is substantiated, inconclusive, or unfounded, to an investigation for purposes of criminal prosecution:

Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is "not unfounded" has been

²¹⁴ Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 25.

²¹⁵ Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pp. 8-9].

²¹⁶ Exhibit I, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 34.

²¹⁷ Exhibit I, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 28-38.

made, and the investigative mandate approved in the test claim statement of decision has been satisfied.²¹⁸

The Parameters and Guidelines also include an express disclaimer that reimbursement is not required for: “Investigative activities undertaken *subsequent to the determination* whether a report of suspected child abuse is substantiated, inconclusive, or unfounded...including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.”²¹⁹

Here, the Controller determined that one of the 14 investigations sampled for the time study included activities that were “subsequent to the determination” that the report of child abuse was not unfounded. In other words, referral to SVU detectives suggested that the case in question was at minimum not unfounded, and therefore a report to DOJ was required. The evidence in the record shows that this determination was based on conversations with the deputies at the Palmdale station.²²⁰ Following those discussions, the Controller determined correctly as a matter of law that any further investigation subsequent to that determination is beyond the scope of the mandate, and in accordance with the Parameters and Guidelines. Therefore, the Controller excluded that investigation from the sample used for the time study, and recalculated the average time increment based on the other 13 investigations sampled. Then, as noted above, the Controller verified the reasonableness of the time study results after removing that case from the sample, by conducting a time survey, and the 2.65-hour average time increment fell squarely within the results of the time survey.²²¹

The claimant’s argument that the 660 minute case should have been included in the sample because “[t]hese types of more involved cases do occur and their lengthier investigation time should also be factored into the average time per case,”²²² ignores the fact that the case was not excluded because of its length, but because the Controller found that the case exceeded the scope of the mandate, based on discussions with the officers performing the mandate.

The claimant’s most recent comments no longer dispute this conclusion.²²³

²¹⁸ Exhibit I, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 38.

²¹⁹ Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pp. 8-9].

²²⁰ Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [The Controller’s audit staff states in an email to the claimant representative that “we discussed the 660 minute case with Detective Reddy.” The Controller states “[i]t appeared that ineligible activities performed after SVU was contacted were included in the time, which lead to the decision to remove the case from the average time calculation.”]; Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 11.

²²¹ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

²²² Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

²²³ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

Accordingly, the Controller's exclusion of one sample investigation that included unallowable activities from the time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Rejection of Claimant's Proposal to Add More Time to Capture Report Writing Time for Unfounded Cases Claimed To Be Omitted from the Allowed Time, Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As indicated in the Background, the claimant filed amended reimbursement claims on or about July 15, 2015, based on a 3.66-hour average time increment per investigation.²²⁴ The 3.66 hours included not only the investigation that the Controller had determined to remove, but also an additional thirty minutes of report writing time for 11 of the 14 investigations in which the claimant asserted that report writing had been omitted from the second time study.²²⁵ During the audit, the claimant's representative stated in an email to Controller staff: "I added a conservative amount of time (30 minutes) for every case [in] the time study that didn't indicate that report writing was included in the time."²²⁶

The Controller rejected the additional time for report writing, and in the Final Audit Report maintained its original finding that a 2.65-hour average time increment per SCAR investigation was allowable from the claimant's time study. The Controller states that preparing a written report "for every case" is included in that average time. Report writing for every case investigated was one of the four activities clearly and expressly identified in the time study documentation to support the reimbursement claims, and "was in fact recorded by the deputies in a number of investigations within the time study."²²⁷ The Final Audit Report states the following:

The second time study recorded time spent performing four activities. It did not separately identify the time for each activity. The time study noted total hours per case and listed which activities were performed for each case. For each investigation included in the time study, the deputies would mark which of the following four activities were performed:

1. Initial response to begin documentation of case and to contact County Welfare.
2. Complete an investigation to determine whether a report is unfounded, substantiated, or inconclusive.

²²⁴ Exhibit A, IRC, pages 299-380 [Amended Claim Documentation]; Exhibit B, Controller's Comments on the IRC, page 169.

²²⁵ Exhibit B, Controller's Comments on the IRC, page 169.

²²⁶ Exhibit B, Controller's Comments on the IRC, page 166 [August 17, 2015 Email from claimant representative Annette Chinn to Controller's audit staff Douglas Brejnak].

²²⁷ Exhibit A, IRC, page 285 [Final Audit Report, page 24 (emphasis added)].

3. Prepare a written report for every case investigated of known or suspected child abuse.
4. Review and approval of report.²²⁸

The time study summary documentation also states: “NOTE that this year ALL activities – ranging from investigation, report writing and review and approval were included in ONE time entry.”²²⁹ The Controller also maintains that the time *survey* it conducted to check the reasonableness of the claimant’s time study captured report writing time: specifically, the time survey asked deputies to estimate the amount of time required to write a report for an unfounded investigation, and the amount of time to write a report for a substantiated or inconclusive investigation.²³⁰ Thus, the Controller did not add 30 minutes for report writing to the average time increment per SCAR investigation because the time was already reflected in the time allowed.

The parties do not dispute that report writing is a reimbursable component of the investigation. The dispute, however, is whether the Controller’s audit decision to reject the claimant’s proposal to add thirty minutes to the average time increment for report writing is arbitrary, capricious, or entirely lacking in evidentiary support. Under this standard, and when reviewing the audit findings of the Controller, the Commission is required to defer to the Controller’s authority and presumed expertise.²³¹ The Commission may not reweigh the evidence or substitute its judgement for that of the Controller. The Commission’s review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, and the choices made.²³²

The facts and documentation regarding this issue, and the various arguments raised at different times during the audit and within the IRC are complex, and at times inconsistent. Based on the evidence in the record, however, the Commission finds that the Controller’s rejection of the claimant’s proposal to add more time to complete an investigation to capture report writing time claimed to be omitted from the allowed time is not arbitrary, capricious, or entirely lacking in evidentiary support.

The record shows that the claimant’s second time study, conducted in September 2013, was based on four activities, which expressly included report writing for every case investigated as

²²⁸ Exhibit A, IRC, page 284-285 [Final Audit Report, pages 23-24]; See also Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 4 and 7, confirming the four stated activities included in the time study.

²²⁹ Exhibit C, Claimant’s Late Rebuttal Comments, page 15.

²³⁰ Exhibit A, IRC, page 284 [Final Audit Report, p. 23]; Exhibit B, Controller’s Comments on the IRC, pages 174-179 [Time Survey Questionnaire].

²³¹ See generally, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837.

²³² *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

activity “3.”²³³ When the claimant filed its amended claims, and informed the auditor via email of the additional 30 minutes of report writing time it sought, the claimant was relying primarily on the *absence* of report writing time being documented in the TIME LOG for the second time study:

The difference from the original time is that I didn’t exclude the largest case in the 2012-13 time study and I added a conservative amount of time (30 minutes) *for every case [in] the time study that didn’t indicate that report writing was included in the time.*²³⁴

The attached document to which the email refers is the TIME LOG document provided to the Controller during the audit, which is the same as the document provided by the claimant in its late rebuttal comments, with the additional handwritten caption: “2013 TIME STUDY.”²³⁵ And the same document was provided again in response to the Draft Proposed Decision, this time without the handwritten caption, but with asterisks indicating the cases in which report writing was not recorded.²³⁶ Each version of this document contains the same 14 handwritten entries with dates, case numbers, and total investigative time, and notations of the four activities included in the time study, with activity “3” reflecting report writing for every case investigated of known or suspected child abuse.²³⁷ Eleven of the 14 entries in the time log identify only activities 1, 2, and 4, but do not list activity 3.²³⁸ The claimant suggests that the absence of activity “3” in several entries means that report writing was not reflected in the total time.²³⁹ Another document, this one typed, and labeled “Analysis of Time Study #2” contains the same entries, and the same notations under “Activities Performed.”²⁴⁰ On a cover page preceding these documents the following assertions appear:

²³³ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 7.

²³⁴ Exhibit B, Controller’s Comments on the IRC, page 166 [August 17, 2015 Email from Annette Chinn to Douglas Brejnak (emphasis added)]. See also, Exhibit C, Claimant’s Late Rebuttal Comments, page 1, where it states that the claimant “amended their claim to correct the fact that they did not claim for the costs of preparing ALL child abuse reports due to a misunderstanding of the instructions.”

²³⁵ Exhibit B, Controller’s Comments on the IRC, page 162 [TIME LOG]; Exhibit C, Claimant’s Late Rebuttal Comments, page 12 [2013 TIME STUDY].

²³⁶ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 6.

²³⁷ Exhibit C, Claimant’s Late Rebuttal Comments, page 12.

²³⁸ Exhibit C, Claimant’s Late Rebuttal Comments, page 12.

²³⁹ Exhibit C, Claimant’s Late Rebuttal Comments, page 14.

²⁴⁰ Exhibit C, Claimant’s Late Rebuttal Comments, page 14. This second document may have been prepared by the Controller, but it is unclear from the record. The same document appears in Exhibit B, Controller’s Comments on the IRC, page 171, and in that instance it is labeled “SCO Analysis of Time Study #2.”

SHOWS THAT THE 2013 TIME STUDY THE STATE USED TO DEVELOP THEIR AVERAGE TIMES (2.65 HRS/CASE) DID NOT INCLUDE/ACCOUNT FOR REPORT WRITING FOR ABOUT 80% OF THE CASES.

BECAUSE REPORT WRITING TIME WAS NOT FACTORED IN PROPERLY, TOTAL ALLOWABLE TIME DETERMINED BY THE SCO FOR THIS COMPONENT WAS UNDERSTATED.

LATER SCO TIME SURVEY QUESTIONNAIRE [sic] RESULTS ALSO SHOW THAT REPORT WRITING TIME WAS UNDERSTATED. BASED ON THE QUESTIONNAIRE, [sic] AVERAGE TIME PER CASE SHOULD HAVE BEEN 36 MINUTES PER INVESTIGATION²⁴¹

The claimant also relies on the Controller's time survey which contains separate estimates of the time needed to prepare a report for an unfounded investigation (15-20 minutes) and a substantiated or inconclusive investigation (45-50 minutes).²⁴² A handwritten comment next to those entries incorrectly states "avg = 37 mins."²⁴³ On the basis of these documents, the claimant requested an additional 30 minutes of report writing time be added to the average time increment per investigation, on the theory that for 11 of the 14 investigations sampled, report writing (activity #3) is not reflected in the handwritten time logs.

The Draft Proposed Decision, however, found that the Controller's finding that the time for report writing was already included in the time study was not arbitrary, capricious, or without evidentiary support, and that the claimant had not provided substantial evidence in the record to rebut that determination. The Draft Proposed Decision found that the claimant's assertions and documentation were all hearsay evidence, which *shall not be sufficient in itself* to support a finding unless it would be admissible over objection in civil actions.²⁴⁴

The claimant filed comments on the Draft Proposed Decision, and declarations, including a declaration signed under penalty of perjury from Detective Vanessa Reddy, which explains that report writing was indeed inadvertently omitted from the time study for investigations that were determined to be unfounded, due to a misunderstanding of the instructions for the time study,

²⁴¹ Exhibit C, Claimant's Late Rebuttal Comments, page 11.

²⁴² Exhibit C, Claimant's Late Rebuttal Comments, page 18.

²⁴³ Exhibit C, Claimant's Late Rebuttal Comments, page 18 [A simple average of the two ranges (15-20 minutes and 45-50 minutes) does not yield an average of 37 minutes; the "average" of these estimates would fall between 30 and 35 minutes. In addition, the time study showed that unfounded investigations were much more common (10 of 14 investigations initially sampled), and therefore augmenting the time study results on the basis of a simple average between longer, more complex reports, and shorter, unfounded reports would skew the allowable time increment. Finally, the evidence in the record shows that only unfounded investigations were omitted from the time study, so there is no need to calculate an average time that includes the time survey estimate for substantiated or inconclusive cases.].

²⁴⁴ Exhibit D, Draft Proposed Decision; California Code of Regulations, title 2, section 1187.5(a).

and that 15-20 minutes of time should be added for those cases based on her belief.²⁴⁵ Detective Reddy's declaration states the following:

The time log parameters provided to me by my commanding Sergeant identified four eligible activities and are listed on the attached blank Time Log (Item 2)

- 1- Initial response to begin documentation of case and contacting county [sic] the county welfare department to forward to other agencies if the cases did not occur in the city.
- 2- Complete an investigation to determine whether a report of suspected child abuse or severe [sic] neglect is unfounded, substantiated, or inconclusive, as defined in Penal Code section 12165.12 for purposes of preparing and submitting the state "Child Abuse Investigation Report" form SS 8583, or subsequent designated form to the DOJ.
- 3- Prepare a written report for every case investigated of known or suspected child abuse or severe neglect.
- 4- Review and approve report.

I tracked the actual time for these activities during the month of September, 2013 but inadvertently did not include time for report writing for all of the cases. This was because I was not clear on the exact parameters and the cases that I did not include report writing time for were for unfounded cases of child abuse. These cases typically end with the numbers "419" at the end of the report number. All of these unfounded cases also had a written internal report prepared, however, because those reports were not sent to the District Attorney's Office I did not input report writing time on the logs.

It is my believe [sic] that to fairly represent actual time spent on this report writing activity, 15-20 minutes of time should be added to those cases (see attached log with an asterisk) which did not include time for report writing.

I also wanted to note that I was never interviewed by anyone from the State Controller's Office about this time log or any other issues pertaining to this Child Abuse program or this audit.²⁴⁶

Following receipt of the claimant's comments, the Controller filed additional comments on the Draft Proposed Decision and evidence and documentation detailing a number of contacts between audit staff and Detective Reddy during audit fieldwork, to rebut the assertion that the Controller's Office never interviewed Detective Reddy about the time log or the audit.²⁴⁷ In particular, the Controller's Office states the following:

²⁴⁵ Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 4; 6.

²⁴⁶ Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.

²⁴⁷ See Exhibit G, Controller's Late Comments on the Draft Proposed Decision, pages 8-20.

Detective Reddy attended a meeting with the SCO auditor, Ms. Chinn, and Sergeant Paul Zarris of the LASD during the initial week of fieldwork between April 7, 2015, and April 9, 2015, at the LASD Palmdale Station. Detective Reddy participated in the meeting and answered questions asked of her by the SCO auditor concerning the time study and general SCAR program activities. The SCO auditor summarized the meetings, including the Detective's statements, in the working papers (Tab 3).

[¶]

. . . . Ms. Chinn's knowledge of this meeting is detailed in the email correspondence dated June 22, 2015, in which she states "You already talked to the Deputy who did the time studies before" (Tab 4). Detective Reddy is identified by the SCO auditor in a reply to Ms. Chinn's email on June 22, 2015, stating, "The interviews will be more in depth and with more emphasis on the time per activity than our previous conversation with Ms. Reddy." (Tab 4).

Furthermore, the SCO auditor provided the city with three status updates via email between August 17, 2015, and September 9, 2015 (Tab 5); held a Status Meeting with city staff on September 30, 2015 (Tab 6); and conducted the Exit Conference with city staff on March 7, 2016 (Tab 7). In all email correspondence and meetings with the city, the auditor referred to the time study issues discovered during the discussion with Detective Reddy. The city never disputed that the meeting with Detective Reddy had taken place, or that the 2013 time study had been discussed at that meeting. Nor did the city make any such statements in its response to the draft report findings or the subsequent IRC.²⁴⁸

The claimant's most recent comments state the following:

Thought [sic] the State Controller's Office has shown that Deputy Reddy's recollection of meeting with the SCO auditor was incorrect, we still believe that Deputy Reddy's declaration that she did not included [sic] report writing time for a number of cases is still accurate and valid. As a result, time allowed by the SCO was understated and should be corrected.²⁴⁹

The claimant also attached additional declarations in response to the Draft Proposed Decision and the Controller's Late Comments on the Draft Proposed Decision, which state that the claimant's representative, Annette Chinn, "misinterpreted the Statement of Decision and Parameters and Guidelines (Ps and Gs,) and originally gave my clients instructions to only track report writing for cases that resulted in a form SS 8583 report being sent to the Department of Justice."²⁵⁰ The declaration further states: "The City of Palmdale was the first of my cities to be

²⁴⁸ See Exhibit G, Controller's Late Comments on the Draft Proposed Decision, page 8; see also pages 9-11 (Tab 3), 12-15 (Tab 4), 16-27 (Tab 5), 28-35 (Tab 6), 36-53 (Tab 7).

²⁴⁹ Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, pages 2-3.

²⁵⁰ Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 4.

audited and until then, I did not know that the Report Writing component was eligible for all cases investigated until after the State Controller's Office initiated its audit on December, 2014."²⁵¹

As analyzed herein, the Commission finds that the Controller's rejection of the claimant's proposal to add more time to complete an investigation to capture report writing time claimed to be omitted is not arbitrary, capricious, or entirely lacking in evidentiary support.

First, there is no dispute that the time study permitted the deputies to log time to "prepare a written report for *every case investigated* of known or suspected child abuse or severe neglect."²⁵² (Emphasis added.) The claimant has shown with evidence in the record that report writing time for unfounded cases was inadvertently omitted from the time study based on a misunderstanding of the scope of the mandate, but the time study clearly called for this information, and there is no dispute that report writing time for all cases is reimbursable.

Second, although the claimant has shown with evidence in the record that report writing for unfounded cases was omitted from the time log, the claimant does not provide any evidence of the actual time to write those reports. The claimant relies on the "TIME LOG," and the computer-generated facsimile of the same, which only serve to show *an absence of report writing being documented* and do not indicate any times per activity. During the audit, the claimant filed amended claims that sought "a conservative amount of time" added to the allowable time increment for the inadvertently-omitted report writing.²⁵³ As discussed above, this estimate was based in part on the Controller's 2015 time *survey* with two of the deputies performing the mandate, which *estimates* the time for report writing for unfounded cases between 15 and 20 minutes, and substantiated or inconclusive cases between 45 and 50 minutes.²⁵⁴ But because report writing time was omitted from the time study *only for the unfounded cases*, based on the evidence in the record, the 45 to 50 minute estimate is inapplicable, and so the claimant now requests only 15-20 minutes, based on its Comments on the Draft Proposed Decision.²⁵⁵

However, the claimant's request is still based on an estimate, not actual time. As indicated above, the Controller used the time survey to verify the reasonableness of the claimant's time study to complete an investigation. The survey shows that the estimated hours to complete an investigation identified in the survey already captures the time for report writing for unfounded

²⁵¹ Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 5.

²⁵² Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 7 [Blank Time Log (Time Study) Worksheet]. See also Exhibit A, IRC, page 285 [Final Audit Report, page 24].

²⁵³ Exhibit B, Controller's Comments on the IRC, page 166 [August 17, 2015 Email from claimant representative Annette Chinn to Controller's audit staff Douglas Brejnak].

²⁵⁴ Exhibit C, Claimant's Late Rebuttal Comments, pages 18 [Time Survey Questionnaire, with Deputy Deschamps' Responses], 21 [Time Survey Questionnaire, with Deputy Porter's Responses].

²⁵⁵ Exhibit F, Claimant's Comments on Draft Proposed Decision, page 4 [Declaration of Detective Vanessa Reddy].

cases. In addition, the time survey, which includes report writing time, resulted in overall times ranging from 2.29 hours to 2.71 hours to complete an investigation for purposes of preparing a report for DOJ.²⁵⁶ Thus, the 2.65-hour time increment allowed by the Controller falls near the top of that range, and includes time for report writing for all cases.

The claimant also relies on the first time study conducted in 2011 before the Parameters and Guidelines were adopted, which indicated an average of 1.28 hours for writing each report.²⁵⁷ The first time study was rejected by the Controller, however, because it was not contemporaneous, was prepared by deputies that did not perform the mandate, and, thus, did not support actual costs incurred.²⁵⁸ There is no argument or evidence in the record that the Controller's finding, that the first time study did not provide documentation of actual costs incurred, is arbitrary, capricious, or without evidentiary support.

Finally, the claimant asserts that it was not given the opportunity to conduct a third time study to capture report writing for unfounded cases.²⁵⁹ The evidence in the record shows that the claimant offered to conduct another time study as early as August 19, 2015. However, that statement was made in the context of a dispute over "cross-reporting," which is not at issue in this IRC. The claimant stated:

Regarding your stance on cross reporting – it is true that the secretary actually transmits the info...but that info that is transmitted first it has to go through the Deputies and Sergeants review and authorization before they can call it in...The 10 minutes is also the minimal amount of time for the Sergeant to review an investigation and it has been logged on our first time study, as well as our interviews with the Sergeants. If this is not satisfactory, I'm sure they can do a quick time study for you in the next couple weeks to verify these 10 minutes per position.²⁶⁰

As indicated above, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. The Commission's review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors and the choices made.²⁶¹

Based on this record, the Commission concludes that the Controller's rejection of the claimant's proposal to add more time to complete an investigation to capture report writing time claimed to be omitted is not arbitrary, capricious, or without evidentiary support.

²⁵⁶ Exhibit B, Controller's Comments on the IRC, page 173 [Analysis of Time Survey].

²⁵⁷ Exhibit C, Claimant's Late Rebuttal Comments, page 2.

²⁵⁸ Exhibit A, IRC, pages 278, 284 [Controller's Final Audit Report, pp 17, 23].

²⁵⁹ Exhibit C, Claimant's Late Rebuttal Comments, page 2.

²⁶⁰ Exhibit C, Claimant's Late Rebuttal Comments, page 37 [August 19, 2015 Email from Annette Chinn to Douglas Brejnak].

²⁶¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

E. The Controller's Reduction of Indirect Costs Is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The final reduction at issue in this IRC relates to the disallowance of indirect costs during the audit period. The Parameters and Guidelines allow claimants to use either a 10 percent indirect cost rate based on direct labor costs, excluding benefits, or prepare an Indirect Cost Rate Proposal if indirect costs exceed the 10 percent rate.²⁶² In this case, the claimant claimed the 10 percent indirect cost rate for each fiscal year and applied it to *contract services costs* that were incorrectly claimed as direct labor costs.²⁶³ The claimant did not incur any direct labor costs in any fiscal year of the audit period for the mandated activities. The claimant contracts with the Los Angeles County Sheriff's Department to perform all law enforcement activities, including the reimbursable activities here.²⁶⁴ Therefore, the Controller found that the claimant did not incur any direct labor costs for this program, and that the claimant's methodology to classify and compute costs as indirect based on contract costs is not appropriate. The Controller also found that the claimant's contracted rates *included* overhead costs, which would normally be characterized as indirect costs.²⁶⁵ In other words, the Controller concluded that much of what would normally be claimed as indirect costs was already included in the contract.

The claimant replies that it is entitled to fair compensation of all direct and indirect actual costs related to the mandated program.²⁶⁶ In addition, the claimant asserts that the hourly rates of the deputies do not include all overhead, such as additional administrative and support positions, and facility costs.²⁶⁷ The claimant further explains:

In the Los Angeles County Sheriff Contract, most overhead charges are included in the cost of each Deputy in the contract rate. This overhead includes services such as dispatch, special unit services (homicide, sexual crimes, forensics, etc.), equipment, and other overhead positions such as a base level of administrative and clerical support.

In addition to this base amount of overhead built into the sworn staff rates, each city has the option of purchasing additional supplemental overhead positions to their contract if they require and can afford additional support (such as clerical) or administrative staff (dedicated Lieutenants, and extra Sergeants or Watch Deputies). Each fiscal year, the City purchased additional supplemental overhead positions through the contract. (See Appendix B)

²⁶² See Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15].

²⁶³ See, e.g., Exhibit A, IRC, pages 299 [Reimbursement Claim Form, Fiscal Year 2006-2007]; 111 [Claimant's "Indirect Cost Rate Proposal," showing 15.4% claimed indirect costs, but failing to show the nature or to otherwise describe the direct and indirect costs alleged].

²⁶⁴ See Exhibit A, IRC, page 61 [Email from Karen Johnson, Finance Manager for the City of Palmdale, to Douglas Brejnak, Auditor, dated August 19, 2015].

²⁶⁵ Exhibit B, Controller's Comments on the IRC, page 22.

²⁶⁶ Exhibit A, IRC, page 5.

²⁶⁷ Exhibit A, IRC, page 5.

In some years the cities may be able to afford more direct staff and more overhead items and in other years they cannot. In the lean years, response times and customer service may decline due to limited fiscal resources. When the actual overhead rates were calculated, they were found to range between 12%-15%. (See Appendix B)²⁶⁸

The claimant further asserts that it incurred “approximately \$1 million in City Staff Costs related to the management and oversight of the Sheriff’s Contract/Public Safety program (or 5% of total Law Enforcement Contract with the County).”²⁶⁹ And finally, the claimant asserts that the donation of 11 acres of land, and “infrastructure improvements associated with the construction of the Palmdale Sheriff’s Station in 2004” constitute reimbursable indirect costs outside the contract.²⁷⁰

The Draft Proposed Decision concluded that the Controller’s reduction of indirect costs was correct as a matter of law because the claimant did not comply with the Parameters and Guidelines, and there was no evidence in the record that the claimant developed an indirect cost rate proposal.²⁷¹ The Draft Proposed Decision also noted that the claimant was still asserting its indirect cost documentation supported the 10 percent default rate:

As support, the city created sample Indirect Cost Rate Proposals (ICRPs) for FY 2006-07 through FY 2012-13...The city provided its ICRPs to show additional overhead costs that it asserts should be reimbursable. However, the city is asking for the restoration of the 10% rate claimed and not the indirect cost rates based on the proposed ICRPs.²⁷²

In response to the Draft Proposed Decision, the claimant asserts that it provided sufficient documentation to the Controller to show that the indirect cost rates “were on average, similar to the default rate (10%) claimed.”²⁷³ The claimant further states: “If the Commission feels that the default 10% rate cannot be used, we request that the City’s actual Indirect Cost rates, which we had available and presented to the SCO auditors during and after the audit, on more than one occasion for their review and approval, and that these actual overhead costs be allowed and reinstated.”²⁷⁴ The claimant’s response also included additional copies, substantially similar to

²⁶⁸ Exhibit A, IRC, page 6.

²⁶⁹ Exhibit A, IRC, page 6.

²⁷⁰ Exhibit A, IRC, page 6.

²⁷¹ Exhibit D, Draft Proposed Decision, pages 42-43.

²⁷² Exhibit D, Draft Proposed Decision, page 42 [citing Exhibit B, Controller’s Comments on the IRC, p. 25].

²⁷³ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 9 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

²⁷⁴ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 10 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

those previously in the record,²⁷⁵ of documents entitled “Indirect Cost Rate Proposal” for fiscal years 2006-2007 through 2012-2013. However, those documents are not explained in the narrative comments and do not include a description of what costs are listed as direct and indirect; nor is there any indirect cost documentation provided for the first six years of the audit period, fiscal years 1999-2000 through 2005-2006.²⁷⁶

Finally, in response to the Controller’s Late Comments on the Draft Proposed Decision, the claimant continues to stress that it “had already developed and presented indirect cost rate proposals for FY 2006-07 through FY 2012-13,” and that “[t]hese rates were computed for use in the preparation of other, prior State Mandate Reimbursement claims.” The claimant also asserts that its rates “were prepared in compliance with Federal OMB and CRF guidelines and reflected actual allowable cost pursuant to the Parameters and Guidelines.”²⁷⁷ Accordingly, the claimant now requests “that actual overhead rates be allowed in our claims for State Reimbursement.”²⁷⁸

The Commission cannot reweigh the evidence and substitute its judgment for the Controller’s.²⁷⁹ The Commission’s review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, and the choices made.²⁸⁰

The Parameters and Guidelines state that when claiming indirect costs claimants have the option of using *10 percent of direct labor*, excluding fringe benefits, or *preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds the 10 percent default rate*, as follows:

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

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using *10% of direct labor*,

²⁷⁵ See Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 49-70; Exhibit A, IRC, pages 110-131.

²⁷⁶ Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 49-70.

²⁷⁷ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 2.

²⁷⁸ Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 2.

²⁷⁹ See generally, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837.

²⁸⁰ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

excluding fringe benefits, *or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.*

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.²⁸¹

The claimant here filed its initial reimbursement claims as direct salary costs for the deputies and sergeants conducting the mandate, and sought 10 percent of the direct costs as its indirect costs. At all times relevant to this IRC, the claimant, through its reimbursement claims,²⁸² amended claims,²⁸³ assertions and objections throughout the audit period,²⁸⁴ and allegations in filing the IRC,²⁸⁵ has consistently sought indirect costs of *only* the 10 percent default rate applied to the claimant's contract costs. The Final Audit Report states (and the claimant concedes) that "[n]one of the city staff members performed any of the reimbursable activities under this program."²⁸⁶ Nevertheless, the claimant continued throughout the audit and in this IRC to assert its belief that the 10 percent default rate was a reasonable and conservative estimate of its indirect costs.²⁸⁷ Accordingly, as noted above, the Controller disallowed all claimed indirect costs.

The Government Code requires a claimant to file its reimbursement claims in accordance with the parameters and guidelines.²⁸⁸ And the courts have determined that parameters and guidelines

²⁸¹ Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15 (emphasis added)].

²⁸² See, e.g., Exhibit B, Controller's Comments on the IRC, page 30 [Original Reimbursement Claim, Fiscal Year 2012-2013, dated July 3, 2014].

²⁸³ Exhibit A, IRC, pages 299-380 [Amended Claim Forms].

²⁸⁴ See, e.g., Exhibit A, IRC, pages 60 [July 27, 2015 Email from Annette Chinn, Claimant Representative, to Douglas Brejnak, Auditor]; 297 [Claimant's Response to Draft Audit Report ("[W]e believe that we have already provided more than enough support to justify the inclusion of the default 10% rate allowed in the State instructions.")].

²⁸⁵ Exhibit A, IRC, page 5 ["The city has attached the Cost Schedules for each year showing the Supplemental costs incurred through the contract as well as has prepared sample ICRPs to show that the default overhead rate of 10% is justified."].

²⁸⁶ Exhibit A, IRC, page 271 [Final Audit Report, p. 10].

²⁸⁷ Exhibit A, IRC, pages 287 [Final Audit Report, p. 26]; 297 [Claimant's Response to the Draft Audit Report ("We request the restoration of the additional 10% default overhead ICRP costs in the claims.")].

²⁸⁸ Government Code section 17561(d)(1).

are regulatory in nature and binding on the parties.²⁸⁹ In this case, the claimant has not complied with the Parameters and Guidelines in claiming its indirect costs; the 10 percent rate is allowed when the claimant uses its own employees to perform the mandated activities. This claimant contracts for all law enforcement services, including the mandated activities, and therefore the claimant has no direct salaries and benefits upon which to base its claim of indirect costs. The 10 percent default rate is not available to this claimant based on the plain language of the Parameters and Guidelines, irrespective of whatever documentation might be presented to justify it. Therefore, it is correct as a matter of law for the Controller to deny indirect costs, as claimed.

The remaining question then, is whether it was arbitrary and capricious for the Controller to reject the claimant's indirect cost documentation. The Commission finds that it was not. As noted above, in response to the Draft Proposed Decision, the claimant asserts that it provided sufficient documentation to the Controller to show that the indirect cost rates "were on average, similar to the default rate (10%) claimed."²⁹⁰ The claimant further states: "If the Commission feels that the default 10% rate cannot be used, we request that the City's actual Indirect Cost rates, which we had available and presented to the SCO auditors during and after the audit, on more than one occasion for their review and approval, and that these actual overhead costs be allowed and reinstated."²⁹¹

However, as noted above, the Commission's review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, and the choices made.²⁹² Based on the evidence and documentation in the record, at no time prior to its comments on the Draft Proposed Decision has the claimant requested reimbursement on the basis of its sample Indirect Cost Rate Proposals. The Controller explains:

As support, the city created sample Indirect Cost Rate Proposals (ICRPs) for FY 2006-07 through FY 2012-13 (Exhibit F). The city did not provide ICRPs for FY 1999-00 through FY 2005-06. The city provided its ICRPs to show additional overhead costs that it asserts should be reimbursable. However, the city is asking for the restoration of the 10% rate claimed and not the indirect cost rates based on the proposed ICRPs.²⁹³

The sample ICRPs that the Controller refers to are each one to three pages, and include "City Wide Costs" without any evidence of an allocation basis for this mandated program; "Allowable Indirect Costs," which coincide with costs for additional sergeants and administrative support (which the Controller suggests are also contract costs, and therefore include some overhead); and

²⁸⁹ *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

²⁹⁰ Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 9 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

²⁹¹ Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 10 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

²⁹² *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁹³ Exhibit B, Controller's Comments on the IRC, page 25.

“Allocation of Land/Facility Costs,” listed as \$300,000, without any information of the origin of that amount.

Moreover, the documents included in the Claimant’s Comments on the Draft Proposed Decision, which appear to be substantially similar to those provided to the Controller in the context of the audit, do not explain the origin of the purported indirect cost rates calculated, do not identify a distribution base, as required under the Parameters and Guidelines, and are characterized by the Controller as “support” for the claimant requesting “the restoration of the 10% rate claimed.”²⁹⁴ Both parties also characterize these documents as “*sample* Indirect Cost Rate Proposals.”²⁹⁵

The Controller also describes a number of other issues within the sample ICRPs,²⁹⁶ including the assignment of direct and indirect costs; and the apparent duplication of costs inherent in using contract costs (which already contain overhead and support, i.e., indirect costs) as a direct cost basis for calculating indirect costs; and especially that the OMB regulations prohibit donations, including of real property, from being considered as indirect costs.²⁹⁷ One of the costs that the claimant asserted as justification for indirect costs, and documented in its amended claims was the donation of land to build a Palmdale station for the Los Angeles County Sheriff’s Department.²⁹⁸ This cost item has been omitted from the claimant’s more recent filings,²⁹⁹ but as of the time of the audit the indirect cost documentation included this unallowable cost item.

Based on the evidence in the record, at no time during the audit, or in the early stages of this IRC, did the claimant seek reimbursement based on anything other than the 10 percent default rate, which was correctly denied consistent with the Parameters and Guidelines. Based on the claimant’s position and assertions at that time, as reflected in the record, and based on the many flaws and insufficiencies in the evidence, as identified by the Controller, and which have not been rebutted, it was not arbitrary and capricious for the Controller to deny all indirect costs, as claimed.

Accordingly, the Commission finds that the Controller’s reduction of indirect costs, as claimed, is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Based on the forgoing analysis, the Commission denies this IRC.

²⁹⁴ See Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 49-70; Exhibit B, Controller’s Comments on the IRC, page 25.

²⁹⁵ See Exhibit A, IRC, page 109; Exhibit B, Controller’s Comments on the IRC, page 25.

²⁹⁶ Exhibit B, Controller’s Comments on the IRC, pages 25-27.

²⁹⁷ Exhibit B, Controller’s Comments on the IRC, page 26 [Citing 2 CFR Part 225].

²⁹⁸ See Exhibit A, IRC, pages 6 [IRC Narrative]; 111 [Indirect Cost Documentation, Fiscal Year 2006-2007].

²⁹⁹ Compare Exhibit A, IRC, page 111 [Indirect Cost Documentation, Fiscal Year 2006-2007]; with Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 50.

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.

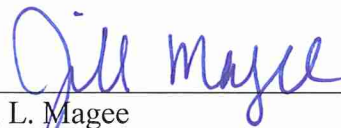
On November 14, 2018, I served the:

- **Proposed Decision issued November 14, 2018**

Interagency Child Abuse and Neglect Investigation Reports (ICAN), 17-0022-I-01
Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7),
11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977,
Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982,
Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter
1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459;
Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990,
Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338;
Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes
1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes
2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98,
Number 29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)
Interagency Child Abuse and Neglect Investigation Reports (ICAN)
Fiscal Years 1999-2000 through 2012-2013
City of Palmdale, 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 November 14, 2018 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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(916) 323-3562

¹ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/26/18

Claim Number: 17-0022-I-01

Matter: Interagency Child Abuse and Neglect Investigation Reports (ICAN)

Claimant: City of Palmdale

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