

# **CITY OF DOWNEY**

Audit Report

## **MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES PROGRAM**

Los Angeles Regional Water Quality Control Board,  
Order No. 01-182, Permit CAS004001, Part 4F5c3

*July 1, 2002, through June 30, 2014*



**BETTY T. YEE**  
California State Controller

June 2017



**BETTY T. YEE**  
California State Controller

June 30, 2017

The Honorable Fernando Vasquez  
Mayor of the City of Downey  
11111 Brookshire Avenue  
Downey, CA 90241

Dear Mayor Vasquez:

The State Controller's Office audited the costs claimed by the City of Downey for the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program (Los Angeles Regional Water Quality Control Board, Order No. 01-182, Permit CAS004001, Part 4F5c3) for the period of July 1, 2002, through June 30, 2014.

The city claimed \$716,563 for the mandated program. Our audit found that \$63,911 is allowable and \$652,652 is unallowable. The costs are unallowable because the city claimed reimbursement for costs not incurred and did not offset the revenues used to fund mandated activities. The State made no payments to the city. The State will pay \$63,911, contingent upon available appropriations.

This final audit report contains an adjustment to costs claimed by the city. If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on the State Mandates (Commission). Pursuant to Section 1185, subdivision (c), of the Commission's regulations (*California Code of Regulations*, Title 3), an IRC challenging this adjustment must be filed with the Commission no later than three years following the date of this report, regardless of whether this report is subsequently supplemented, superseded, or otherwise amended. You may obtain IRC information on the Commission's website at [www.csm.ca.gov/forms/IRCFForm.pdf](http://www.csm.ca.gov/forms/IRCFForm.pdf).

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, by telephone at (916) 323-5849.

Sincerely,

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/rg

cc: Anil H. Gandhi, Director  
Finance and Information Technology, City of Downey  
Mohammad Mostahkami, P.E., Director  
Public Works, City of Downey  
Yvette M. Abich Garcia, City Attorney  
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State Controller's Office

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# Audit Report

## Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Downey for the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program (Los Angeles Regional Water Quality Control Board, Order No. 01-182, Permit CAS004001, Part 4F5c3) for the period of July 1, 2002, through June 30, 2014.

The city claimed \$716,563 for the mandated program. Our audit found that \$63,911 is allowable and \$652,652 is unallowable. The costs are unallowable because the city claimed reimbursement for costs not incurred and did not offset the revenues used to fund mandated activities. The State made no payments to the city. The State will pay \$63,911, contingent upon available appropriations.

## Background

The California Regional Water Quality Control Board, Los Angeles Region (Board), adopted a 2001 storm water permit (Permit CAS004001) that requires local jurisdictions to:

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

On July 31, 2009, the Commission on State Mandates (Commission) determined that part 4F5c3 of the permit imposes a state mandate reimbursable under Government Code (GC) section 17561 and adopted the Statement of Decision. The Commission further clarified that each local agency subject to the permit and not subject to a trash total maximum daily load (TMDL) is entitled to reimbursement.

The Commission also determined that the period of reimbursement for the mandated activities begins July 1, 2002, and continues until a new National Pollutant Discharge Elimination System (NPDES) permit issued by the Board is adopted. On November 8, 2012, the Board adopted a new NPDES permit, Order No. R4-2012-0175, which became effective on December 28, 2012.

The program's parameters and guidelines establish the state mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on March 24, 2011. In compliance with GC section 17558, the SCO issues claiming instructions to assist local agencies, school districts, and community college districts in claiming mandated program reimbursable costs.

## Objectives, Scope, and Methodology

We conducted this performance audit to determine whether costs claimed represent increased costs resulting from the Municipal Storm Water and Urban Runoff Discharges Program for the period of July 1, 2002, through June 30, 2014.

The legal authority to conduct this audit is provided by GC sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures. Our audit scope did not assess the efficiency or effectiveness of program operations.

The objectives of our audit were to determine whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

To achieve our audit objectives, we:

- Reviewed the annual claims filed with the SCO to identify any mathematical errors and performed analytical procedures to determine any unusual or unexpected variances from year-to-year;
- Completed an internal control questionnaire and performed a walk-through of the claim preparation process to determine what information was used, who obtained it, and how it was obtained;
- Assessed whether computer-processed data provided by the city to support claimed costs was complete and accurate and could be relied upon;
- Researched the city's location in relation to the Los Angeles River watershed, the San Gabriel River watershed, and the Los Cerritos Channel and Alamitos Bay watershed and gained an understanding of the trash TMDL effective dates;
- Reviewed the documentation provided to support the one-time costs claimed;
- Determined whether the city claimed reimbursement using the correct unit cost rate;
- Reviewed the documentation provided to support the number of transit stops containing trash receptacles. Corroborated the supporting documentation with physical inspections of a number of current transit stops;
- Reviewed the documentation provided to support the city's process in performing weekly transit stop trash collections; and
- Determined whether the city realized any revenue from the statutes that created the mandated program or reimbursements from any federal, state or non-local source.

**Conclusion**

Our audit found instances of noncompliance with the requirements outlined in the Objectives section. These instances are described in the accompanying Schedule (Summary of Program Costs) and in the Findings and Recommendations section of this report.

For the audit period, the city claimed \$716,563 for costs of the Municipal Storm Water and Urban Runoff Discharges Program. Our audit found that \$63,911 is allowable and \$652,652 is unallowable. The State made no payments to the city. The State will pay \$63,911, contingent upon available appropriations.

**Views of  
Responsible  
Officials**

We issued a draft audit report on May 23, 2017. Anil Gandhi, Director of Finance and Information Technology, responded by letter dated June 5, 2017 (Attachment), disagreeing with the audit results. This final audit report includes the city's response.

**Restricted Use**

This report is solely for the information and use of the City of Downey, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

*Original signed by*

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

June 30, 2017

**Schedule—**  
**Summary of Program Costs**  
**July 1, 2002, through June 30, 2014**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2002, through June 30, 2003</u>				
One-time activities:				
Salaries and benefits	\$ 1,126	\$ 1,126	\$ -	
Materials and supplies	+ 18,129	+ 18,129	+ -	
Related indirect costs	+ 85	+ 85	+ -	
Total one-time activities	<u>19,340</u>	<u>19,340</u>	<u>-</u>	
Ongoing activities:				
Number of transit receptacles	× 151	× 151	× -	
Annual number of trash pickups	× 52	× 52	× -	
Total ongoing activities	<u>6.74</u>	<u>6.74</u>	<u>-</u>	
Total one-time and ongoing activities	<u>72,262</u>	<u>72,262</u>	<u>-</u>	
Less offsetting revenues and reimbursements	<u>-</u>	<u>(48,381)</u>	<u>(48,381)</u>	Finding 2
Total program costs	<u>\$ 72,262</u>	<u>23,881</u>	<u>\$ (48,381)</u>	
Less amount paid by the State		<u>-</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 23,881</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Ongoing activities:				
Unit cost rate	\$ 6.74	\$ 6.74	\$ -	
Number of transit receptacles	× 151	× 151	× -	
Annual number of trash pickups	× 52	× 52	× -	
Total ongoing activities	<u>52,922</u>	<u>52,922</u>	<u>-</u>	
Less offsetting revenues and reimbursements	<u>-</u>	<u>(16,877)</u>	<u>(16,877)</u>	Finding 2
Total program costs	<u>\$ 52,922</u>	<u>36,045</u>	<u>\$ (16,877)</u>	
Less amount paid by the State		<u>-</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 36,045</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Ongoing activities:				
Unit cost rate	\$ 6.74	\$ 6.74	\$ -	
Number of transit receptacles	× 239	× 239	× -	
Annual number of trash pickups	× 52	× 52	× -	
Total ongoing activities	<u>83,765</u>	<u>83,765</u>	<u>-</u>	
Less offsetting revenues and reimbursements	<u>-</u>	<u>(79,780)</u>	<u>(79,780)</u>	Finding 2
Total program costs	<u>\$ 83,765</u>	<u>3,985</u>	<u>\$ (79,780)</u>	
Less amount paid by the State		<u>-</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 3,985</u>		

## Schedule (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2005, through June 30, 2006</u>				
Ongoing activities:				
Unit cost rate	\$ 6.74	\$ 6.74	\$ 6.74	
Number of transit receptacles	× 239	× 239	× 239	
Annual number of trash pickups	× 52	× 26	× (26)	
Total ongoing activities	83,765	41,883	(41,882)	Finding 1
Less offsetting revenues and reimbursements	-	(41,883)	(41,883)	Finding 2
Total program costs	<u>\$ 83,765</u>	-	<u>\$ (83,765)</u>	
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		
<u>July 1, 2006, through June 30, 2007</u>				
Ongoing activities:				
Unit cost rate	\$ 6.74	\$ 6.74	\$ 6.74	
Number of transit receptacles	× 239	× 239	× 239	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 83,765</u>	-	<u>\$ (83,765)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		
<u>July 1, 2007, through June 30, 2008</u>				
Ongoing activities:				
Unit cost rate	\$ 6.74	\$ 6.74	\$ 6.74	
Number of transit receptacles	× 239	× 239	× 239	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 83,765</u>	-	<u>\$ (83,765)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		
<u>July 1, 2008, through June 30, 2009</u>				
Ongoing activities:				
Unit cost rate	\$ 6.74	\$ 6.74	\$ 6.74	
Number of transit receptacles	× 143.75	× 144	× 144	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 50,382</u>	-	<u>\$ (50,382)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		

## Schedule (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2009, through June 30, 2010</u>				
Ongoing activities:				
Unit cost rate	\$ 6.78	\$ 6.78	\$ 6.78	
Number of transit receptacles	× 112	× 112	× 112	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 39,487</u>	-	<u>\$ (39,487)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		
<u>July 1, 2010, through June 30, 2011</u>				
Ongoing activities:				
Unit cost rate	\$ 6.80	\$ 6.80	\$ 6.80	
Number of transit receptacles	× 112	× 112	× 112	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 39,603</u>	-	<u>\$ (39,603)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		
<u>July 1, 2011, through June 30, 2012</u>				
Ongoing activities:				
Unit cost rate	\$ 7.15	\$ 7.15	\$ 7.15	
Number of transit receptacles	× 112	× 112	× 112	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 41,642</u>	-	<u>\$ (41,642)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		
<u>July 1, 2012, through June 30, 2013</u>				
Ongoing activities:				
Unit cost rate	\$ 7.31	\$ 7.31	\$ 7.31	
Number of transit receptacles	× 112	× 112	× 112	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 42,573</u>	-	<u>\$ (42,573)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		

## Schedule (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference <sup>1</sup>
<u>July 1, 2013, through June 30, 2014</u>				
Ongoing activities:				
Unit cost rate	\$ 7.32	\$ 7.32	\$ (7.32)	
Number of transit receptacles	× 112	× -	× (112)	
Annual number of trash pickups	× 52	× -	× (52)	
Total program costs	<u>\$ 42,632</u>	-	<u>\$ (42,632)</u>	Finding 1
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>		
<u>Summary: July 1, 2002, through June 30, 2014</u>				
One-time activities	\$ 19,340	\$ 19,340	\$ -	
Ongoing activities	<u>697,223</u>	<u>231,492</u>	<u>(465,731)</u>	
Total one-time and ongoing activities	716,563	250,832	(465,731)	
Less offsetting revenues and reimbursements	<u>-</u>	<u>(186,921)</u>	<u>(186,921)</u>	
Total program costs	<u>\$ 716,563</u>	63,911	<u>\$ (652,652)</u>	
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 63,911</u>		

<sup>1</sup> See the Findings and Recommendations section.

# Findings and Recommendations

## FINDING 1— Overstated ongoing maintenance costs

The city claimed \$697,223 for the ongoing maintenance of transit stop trash receptacles for the audit period. We found that \$231,492 is allowable and \$465,731 is unallowable. The costs are unallowable because the city claimed reimbursement for costs not incurred.

The city claimed reimbursement for the ongoing maintenance costs using the Commission-adopted reasonable reimbursement methodology (RRM). Under the RRM, the unit cost (which is \$6.74 during the period of July 1, 2002, through June 30, 2009, and is, thereafter, adjusted annually by the implicit price deflator) is multiplied by the number of city-wide transit stop trash receptacles and by the number of annual trash collections.

A summary of the claimed, allowable, and audit adjustment amounts are as follows:

Fiscal Year	Amount Claimed				Amount Allowable				Audit Adjustment
	Number of Trash Receptacles	No. of Annual Trash Collections	Unit Cost Rate	Total	Number of Trash Receptacles	No. of Annual Trash Collections	Unit Cost Rate	Total	
2002-03	151	52	\$ 6.74	\$ 52,922	151	52	\$ 6.74	\$ 52,922	\$ -
2003-04	151	52	6.74	52,922	151	52	6.74	52,922	-
2004-05	239	52	6.74	83,765	239	52	6.74	83,765	-
2005-06	239	52	6.74	83,765	239	26	6.74	41,883	(41,882)
2006-07	239	52	6.74	83,765	239	-	6.74	-	(83,765)
2007-08	239	52	6.74	83,765	239	-	6.74	-	(83,765)
2008-09	143.75	52	6.74	50,382	144	-	6.74	-	(50,382)
2009-10	112	52	6.78	39,487	112	-	6.78	-	(39,487)
2010-11	112	52	6.80	39,603	112	-	6.80	-	(39,603)
2011-12	112	52	7.15	41,642	112	-	7.15	-	(41,642)
2012-13	112	52	7.31	42,573	112	-	7.31	-	(42,573)
2013-14	112	52	7.32	42,632	-	-	-	-	(42,632)
Total ongoing costs				<u>\$ 697,223</u>				<u>\$ 231,492</u>	<u>\$ (465,731)</u>

### Agreement with CalMet Services, Inc.

For the period of January 1, 2006, through June 30, 2014, the city claimed \$465,731 for ongoing maintenance of transit stop trash receptacles. We found that none of the costs claimed are allowable because the services rendered by CalMet Services, Inc., were provided at no cost to the city.

On January 1, 2006, the city entered into an agreement with CalMet Services, Inc. for the collection, transportation, and disposal of solid waste. The contract term is from January 1, 2006, through March 31, 2016.

The agreement with CalMet Services, Inc. (Article IV., Section 4.1, (M) – Solid Waste Collection from City Facilities and Operations) states:

The Contractor will Collect Solid Waste from the City Facilities and Bus Bench Locations specified in Appendix D. More locations may be added to this list. The size of Containers for each site and the existing frequency of collection are shown on Appendix D ... *No charges will be made to the City for the services described in the Section.* [Emphasis added].

The parameters and guidelines (Section IV. Reimbursable Activities) state:

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

### Recommendation

No recommendation is applicable for this finding as the period of reimbursement expired on December 27, 2012, with the adoption of a new permit.

### City's Response

Finding No. 1 disallows all reimbursement for costs incurred subsequent to January 1, 2006, the effective date of the CalMet contract. Finding No. 1 makes this disallowance based on a provision in the CalMet contract that provided that no charge will be made to the City for the cost of collective solid waste from the trash receptacles in question (CalMet Contract, Article IV., section 4.1(M)).

Finding No. 1 erroneously disallows reimbursement, however, for the *maintenance, repair and replacement* of the trash receptacles. The Parameters and Guidelines provide that the City is entitled to be reimbursed for:

1. Collection and disposal of trash at a disposal/recycling facility;
2. Inspection of receptacles and pads for wear, cleaning, emptying, and other maintenance needs;
3. Maintenance of receptacles and pads, including painting, cleaning, and repairing receptacles and replacing liners; and
4. Replacing individual damaged or missing receptacles and pads.

Parameters and Guidelines, adopted March 24, 2011, at p.4. The services provided by CalMet under the contract, however, addressed only the first of the four lines for which the City is entitled to reimbursement. The City is still entitled to a subvention of funds for the other three activities.

It appears that Finding No. 1 disallowed reimbursement for the maintenance, repair, and replacement of the trash receptacles because, under the reasonable reimbursement methodology, the unit cost is multiplied by the annual number of trash collections. This procedure for determining reimbursement, however, does not supersede the Parameter and Guideline's provision that the City is entitled to reimbursement not only for the collection of the trash, but also the maintenance, repair, and replacement of the trash receptacles (Parameters and Guidelines at p.4). Therefore, even if the Controller's office is going to disallow the costs from the collection, which the City does not concede is appropriate, the Controller's office still must allow reimbursement for the maintenance, repair, and replacement of the trash receptacles, services which the CalMet contract did not cover.

The City has incurred \$19,424 in personnel costs for these other mandates from January 1, 2006 to June 30, 2014. (The backup documentation support the employee time devoted to these mandates has

been previously provided to you.) The City also incurred capital costs for the replacement of receptacles when required. The audit must either modify the unit cost to continue to reflect reimbursement for the maintenance, repair and replacement of the trash receptacles, or allow the City to claim the actual costs. If the Controller's office believes that it does not have the authority under the Parameters and Guidelines to modify the unit cost or allow the City to be reimbursed for actual costs, then it should provide reimbursement at the full unit cost minus the savings the City realized as a result of the CalMet contract.

#### SCO's Comments

The finding and recommendation remain unchanged.

#### **Trash Collection Activities**

In regards to the CalMet contract, the city states that it "does not concede" that the costs for the trash collection are unallowable; however, the city has not provided any documentation to support that it incurred a cost for the trash collection activities of the transit stop trash receptacles for the period of January 1, 2006, through June 30, 2014. In addition, the city's comment that it "does not concede" is in conflict with its statement at the end of the response to Finding 1 that the SCO "should provide reimbursement at the full unit cost minus the savings the City realized as a result of the CalMet contract."

#### **Repair, Maintenance, and Replacement of Trash Receptacles**

The city believes that the SCO should allow reimbursement for repair, maintenance, and replacement of the trash receptacles as it "has incurred \$19,424 in personnel costs for these other mandates from January 1, 2006 to June 30, 2014. (The backup documentation support the employee time devoted to these mandates has been previously reported to you). The City also incurred capital costs for the replacement of receptacles when required."

In regards to the \$19,424 in personnel costs, the city provided no documentation to support this exact amount for the period of July 1, 2006, through June 30, 2014. During audit fieldwork, the city provided us with incomplete maintenance work logs for 2002 through 2010. While the maintenance work logs do document that city employees sporadically replaced damaged receptacles, there is no time associated with this activity. In reviewing the city's adopted budget for FY 2006-07 through FY 2013-14, we can confirm that the salaries and benefits for one to two maintenance workers was posted to the Transit (Prop A) Fund (Fund No. 55) for each fiscal year; however, there is no breakdown that specifies the length of time the maintenance workers spent repairing, maintaining, and replacing the trash receptacles. In addition, the salaries and benefits for the maintenance workers were paid for with Proposition A funds, which would have been offset if the costs had been found to be allowable (see Finding 2).

In regards to the capital costs, the city provided purchase orders and payment requests from eight projects completed between 2002 and 2012. The purchase orders and the payment requests did not identify any salaries

and benefits. The scope of the eight projects included furnishing and installing trash receptacles, one among several activities. After analyzing the documents provided, we found that the purchase orders and payment requests are insufficient because they do not clarify that the trash receptacles were installed at transit stops, and if they were, whether the receptacles are replacement receptacles or newly installed receptacles at new transit locations. Additionally, the projects were funded with restricted resources such as Proposition A, county grants, state gas taxes, and contributions from private sources and would have been offset if the costs had been found to be allowable (see Finding 2).

The city states that the SCO “must either modify the unit cost to continue to reflect reimbursement for the maintenance, repair, and replacement of the trash receptacles, or allow the city to claim actual costs.” We have no authority to modify a unit cost rate which has been adopted and included in the regulations. In addition, reimbursement for maintenance, repair, and replacement of the trash receptacles is allowable only through the Commission-adopted RRM.

To conclude, the city states, “If the Controller’s office believes that it does not have the authority under the Parameters and Guidelines to modify the unit cost or allow the City to be reimbursed for its actual costs, then it should provide reimbursement at full unit cost minus the savings the City realized as a result of the CalMet contract.” We disagree. The parameters and guidelines state that to claim reimbursement, the unit cost rate is multiplied by the number of city-wide transit stop trash receptacles and by the number of annual trash collections. The parameters and guidelines provide no alternative to this methodology.

The city was a test claimant for this mandate (03-TC-21) and one of eight respondents to the survey used to develop the unit cost rate of \$6.74. The city was aware of what was included in the development of the unit cost rate and the application of the adopted unit cost rate.

**FINDING 2—  
Unreported offsetting  
revenues and  
reimbursements**

The city did not offset any revenues or reimbursements on its claim forms for the audit period. We found that the city should have offset \$186,921 for the audit period.

The following table summarizes the unreported offsetting revenues for the audit period:

<u>Fiscal Year</u>	<u>Offset Reported</u>	<u>Unreported Offset</u>	<u>Audit Adjustment</u>
2002-03	\$ -	\$ (48,381)	\$ (48,381)
2003-04	-	(16,877)	(16,877)
2004-05	-	(79,780)	(79,780)
2005-06	-	(41,883)	(41,883)
2006-07	-	-	-
2007-08	-	-	-
2008-09	-	-	-
2009-10	-	-	-
2010-11	-	-	-
2011-12	-	-	-
2012-13	-	-	-
2013-14	-	-	-
<b>Total</b>	<b>\$ -</b>	<b>\$ (186,921)</b>	<b>\$ (186,921)</b>

### **Proposition A Local Return Program**

The city adopted its Bus Bench Program for maintaining the city's bus benches and trash receptacles. The bus bench program is fully funded by Proposition A.

Proposition A is a one-half cent sales tax approved by Los Angeles County voters in 1980. As a condition of voter approval, the sales tax revenue is restricted to benefiting public transit.

The proposition A Local Return Guidelines, section II. Project Eligibility, identify reimbursement for bus stop improvement and maintenance projects such as installation, replacement, and/or maintenance as follows:

#### **2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Codes 150, 160, & 170)**

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- Trash receptacles
- Curb cuts
- Concrete or electrical work directly associated with the above items

### **One-time activities**

We found that the city should have offset \$17,699 in Proposition A funds used to purchase trash receptacles.

For FY 2002-03, the city claimed reimbursement of \$19,340 to purchase and install 50 transit stop trash receptacles. We reviewed the city's adopted budget and confirmed that \$17,699 of the amount claimed was posted to the Bus Bench Program and funded with Proposition A funds. As the city used Proposition A funds, which are authorized to be used on the mandated activities, it did not have to rely solely on discretionary general funds to pay for the mandated activities.

### **Ongoing activities**

We found that the city should have offset \$169,222 in Proposition A funds used to pay for the ongoing maintenance of transit stop trash receptacles during the audit period.

As stated in Finding 1, we found that from July 1, 2002 through December 31, 2005, \$231,492 in ongoing maintenance costs of transit stop trash receptacles is allowable. We reviewed the city's adopted budget and confirmed that \$169,222 was posted to the Bus Bench Program and funded with Proposition A funds. As the city used Proposition A funds, which are authorized to be used on the mandated activities, it did not have to rely solely on discretionary general funds to pay for the mandated activities.

The parameters and guidelines, section VIII. Offsetting Revenues and Reimbursements, state:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

### **Recommendation**

No recommendation is applicable for this finding as the period of reimbursement expired on December 27, 2012, with the adoption of a new permit.

### **City's Response**

Excerpts of the city's response letter is as follows:

Finding No. 2 reduces the City's claim in the amount of \$186,921 based on the assertion that the City used Proposition A funds for the purchase and maintenance of the trash receptacles. Finding No. 2 is also erroneous. The Parameters and Guidelines provide that reimbursement for this mandate received from any "federal, state or non-local source" shall be identified and deducted from the City's claim. Proposition A is not a federal, state or non-local source within the meaning of the Parameters and Guidelines.

#### **1. Proposition A**

Proposition A is a one-half cent sales tax approved by Los Angeles County voters in 1980. The tax is imposed on the sale of tangible personal property at every retailer in the County and upon the storage, use or other consumption in the County of tangible personal property

purchased from any retailer for storage, use or other consumption in the County. See Los Angeles County Metropolitan Transportation Authority Administrative Code, sections 3-05-020 and 3-05-030.

Proposition A provides that twenty-five percent of the sales tax revenue will be returned to local jurisdictions for local transit purposes. These funds are generally referred to as “Local Return funds.”

Under guidelines adopted by the Metropolitan Transportation Authority for the use of Local Return funds, the city has discretion as to the use of those funds as long as the eligible uses is for bus stop improvement and maintenance. Local Return Guidelines, Section II.A.2. The City was not required, however, to use the funds for that purpose. Instead, the City had the discretion to use the funds for any appropriate project.

*The guidelines specifically provide the Proposition A Local Return funds may be used as an advance with respect to a project, with the funds subsequently being returned to the Proposition A account when the advance is reimbursed from another source. The guidelines specifically provide, “Local Return funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines.” In that case, the reimbursement must be returned to the appropriate Proposition A Local Return fund. Guidelines, Section 4.C.10.*

2. The Draft Audit’s Conclusion that Proposition A Funds Constituted Reimbursement from a Federal, State, or Non-Local Source is Erroneous

Finding No. 2 disallows \$186,921 of the City’s costs based on the assertion that the Proposition A funds advanced by the City should be offset against the City’s claim. In support of this disallowance, Finding No. 2 cites the Parameter and Guidelines provision quoted above, that “reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.” This finding is erroneous for several reasons.

First, Proposition A is a local tax. It is therefore not a federal or state source.

Second, Proposition A is not a non-local source. It is a local sales tax imposed on local citizens.

Third, it was entirely proper for the City to use Proposition A funds as an advance, with the exception that the funds would be paid back to the Proposition A account to be used for other transit purposes when the City recovers the funds pursuant to its Test Claim. As discussed, Proposition A guidelines specifically provided that “Local Returns funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines.” In this regard, Proposition A did not require the City to use Proposition A funds for the installation and maintenance of trash receptacle; the City had discretion to use Proposition A funds as an advance and then to use those funds for other transit projects upon their recovery pursuant to the Test Claim. (It should be noted that the draft audit on page 9 contain an erroneous statement that the City adopted a Bus Bench Program that was fully funded by Proposition A. Instead, the City included a statement in its budget about its obligation to install and maintain trash receptacles.)

Thus, it cannot be said that the City's lawful use of Proposition A funds to advance the installation and maintenance of the trash receptacles, with the understanding that, upon reimbursement through the Test Claim, those funds would be returned to the appropriate Proposition A fund for use on other transit projects, was reimbursement from a non-local source. Because the Proposition A funds will be returned to the Proposition A fund to be used for other purposes, the advances (not payment) of those funds was not a reimbursement.

To find differently would be contrary to article XIII, section 6, of the California Constitution. That section was adopted to protect local government's tax revenues. There would be no reduction of the City's claim if the City had used other sales tax revenue to pay for the installation and maintenance of the trash receptacles. Proposition A funds are no different. They are also derived from a one-half cent sales tax, no different from any other sales tax.

The authorities that the Controller's office shared with the City in conjunction with the exit interview are not to the contrary. *County of Fresno v. State of California* held that Article XIII, section 6 was designed to protect the tax revenues of local governments from state mandates that would require expenditures of such revenues." *County of Fresno v. State of California (1991)* 53 Cal.3d 482, 487. Based on this holding, the Controller's office noted that "costs" within the mean of Article XIII, section 6, excludes expenses recoverable from sources other than taxes. Here, however, Proposition A is a local sales tax, one which falls directly within the protection of Article XIII B, section 6. Reimbursement of these tax revenues is therefore not inconsistent with the *County of Fresno*.

The Commission's decision in *Animal Adoption*, Commission on State Mandates Case No. 13-9811-I-02, is also inapplicable. This Improper Reduction Claim addressed the use of Proposition F funds, which were funds obtained through bonds issued pursuant to a ballot measure. Again, that is not the case here. Proposition A is a local sales tax.

The Commission's decisions in the *Two-Way Traffic Signal Program* and that *Behavioral Intervention Plans* claims are likewise inapplicable. In *Two-Way Signal* the funds were derived from a *state* gas tax, not a local sales tax which Article XIII B, section 6 is meant to protect. Similarly, in *Behavioral Intervention Plans*, the funds were also state funds, not sales taxes. As the Commission said in *Behavioral Intervention Plans* "when funds other than the local proceeds of taxes are thus applied, the Controller may reduce reimbursement accordingly. Commission on State Mandates Case No. CSM4464, State of Decision at 54 (2013) (emphasis added).

#### C. Finding No. 2 is an Unlawful Retroactive Application of the Parameters and Guidelines

There is another reason why Finding No. 2 is erroneous. The City commenced the advancement of Proposition A funds on or around July 1, 2002, the commencement of the first audit period, or shortly thereafter. As discussed above, at the time the City advanced the Proposition A funds for the installation and maintenance of the trash receptacles, the Proposition A guidelines specifically provided that the City could advance these funds and then return them to its Proposition A account when the expenditures were reimbursed.

The Parameters and Guidelines, on the other hand, were not adopted until March 24, 2011. It would be arbitrary and capricious to find that the Parameters and Guidelines retroactively prohibited an advancement of Proposition A funds in a way that was lawful when those funds were advanced.

In this regard, as a general rule a regulation will not be given a retroactive effect unless it merely clarifies existing law. *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135. Retroactivity is not favored in the law. *Aktar v. Anderson* (1957) 58 Cal.App.4th 1166, 1179. Regulations that “substantially change the legal effect of past events” cannot be applied retroactively. *Santa Clarita Organization for Planning and the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 315.

That rule applies here. At the time the City advanced its Proposition A funds to use for the installation and maintenance of the trash receptacles, it was operating under the understanding, consisting with Proposition A Guidelines, that the City could advance those funds and then return them to the Proposition A account for other use once the City obtained a subvention of funds from the state. To retroactively apply the Parameters and Guidelines, adopted in 2011, to preclude a subvention, i.e., to now fund that the City did not use its Proposition A fund as an advance only, substantially changes the legal effect of these past events. Such an application is unlawful.

#### SCO’s Comments

The finding and recommendation remain unchanged. We will respond to the city’s comments in the sequence presented.

#### **1. Proposition A**

The city quotes section 4.C. of the Proposition A and C Local Return Guidelines which allows Local Return funds to be advanced on a project subsequently reimbursed from “federal, state or local grant funding.” The Proposition A and Proposition C Local Return Guidelines state that Local Return funds may be advanced only for other grant funding. A mandate payment is a subvention of funds to reimburse local governments for the costs of the program, which is different than a grant. For grants, an applicant must submit an application or proposal on how being awarded the money will benefit the community. An applicant will not always be awarded the grant. Therefore, we disagree with any comments regarding the advancement of Proposition A funds pending mandate reimbursement from the State.

#### **2. The Draft Audit’s Conclusion that Proposition A Funds Constituted Reimbursement from a Federal, State, or Non Local Source is Erroneous**

The city states, “There would be no reduction of the City’s claim if the City had used other sales tax revenue to pay for the installation and maintenance of the trash receptacles. Proposition A funds are no different. They are also derived from a one-half cent sales tax, no different from any other sales tax.” We disagree.

There are two types of sale taxes: unrestricted general sales tax and special supplementary sales tax. An unrestricted general sales tax can be spent for any general governmental purpose, including public employee salaries and benefits. A special supplementary sales tax is dedicated for a specific purpose. Proposition A is a special supplementary sales tax approved by Los Angeles County voters in 1980. Proposition A sales tax revenue is restricted to benefiting public transit. For example, the Proposition A funds cannot be used to purchase a new ambulance or pay for park landscaping, unlike unrestricted general sales tax. As such, we do not agree that the Proposition A funds “are no different from any other sales tax.”

### **3. Finding No. 2 is an Unlawful Retroactive Application of the Parameters and Guidelines**

The city states that “it commenced the advancement of Proposition A funds on or around July 1, 2002, the commencement of the first audit period, or shortly thereafter.” We disagree.

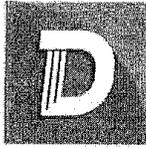
The city has not provided us with any documentation to support that the Metropolitan Transportation Authority (MTA) approved the advancement of the Proposition A funds. We reviewed both the city’s financial statements and adopted budgets for the Transit Fund (Fund No. 55) for FY 2002-03 through FY 2005-06 and found no footnotes indicating that the Proposition A funds were advanced. Our review of the City Manager’s Transmittal Letter in the FY 2003-04 adopted budget states that the Proposition A Local Return funds are being used for its intended purposes, which is to “to support” the “bus bench maintenance program,” as follows:

Transit (Prop A) Fund. This fund accounts for the special revenues the City receives pursuant to a County ballot measure. The City uses the funds to support the City’s senior citizen and handicapped bus operation. It also includes special recreation transportation programs and our *bus bench maintenance program*. Unlike the Water and Golf Course Funds, this fund is not fee supported. Revenues from the Proposition A sales tax provides about \$1,500,000 *to support these programs*. The programs are operated under regulations issued by Metropolitan Transportation Authority. [Emphasis added]

The city concludes that it is “arbitrary and capricious to find that the Parameters and Guidelines retroactively prohibited an advancement of Proposition A funds in a way that was lawful when those funds were advanced.” We disagree. The city claimed reimbursement for eligible mandated costs that were funded by Proposition A. However, the parameters and guidelines state that costs funded by non-local sources (e.g. Proposition A) must be offset from claimed costs. Also, the MTA guidelines, rather than the parameters and guidelines, “prohibit” advancement.

**Attachment—  
City's Response to  
Draft Audit Report**

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# City of Downey

June 5, 2017

VIA EMAIL [jspano@sco.ca.gov](mailto:jspano@sco.ca.gov) and U.S. MAIL

Jim L. Spano, Chief  
Mandated Costs Audit Bureau  
State Controller's Office  
Division of Audits  
P.O. Box 942850  
Sacramento, CA 94250

Re: *City of Downey, Draft Audit Report*

Dear Mr. Spano:

Thank you for the opportunity to comment on the Draft Audit Report for the costs claimed by the City of Downey under the Municipal Storm Water and Urban Runoff Discharge Program (Los Angeles Regional Water Quality Control Board Order No. 01-182) for the period of July 1, 2002 through June 30, 2014. For the reasons set forth below, we submit that the draft audit is erroneous in several respects.

## I. The City's Claim

The City has sought \$716,563 in reimbursement for the cost of installing and maintaining trash receptacles at transit locations from July 1, 2002, through June 30, 2014. On July 31, 2009, the Commission on State Mandates found that the installation and maintenance of these trash receptacles is a state mandate for which the City is entitled to reimbursement. On March 24, 2011, the Commission issued Parameters and Guidelines setting forth reimbursement criteria. The City filed its claim in accordance with the Parameters and Guidelines and the State Controller's office's claiming instructions.

## II. The Draft Audit

The draft audit finds that \$652,652 of the City's costs are not reimbursable. The draft audit bases this conclusion on two findings. Finding No. 1 disallows reimbursement for all costs incurred after the City's entry into a solid waste collection and disposal contract with CalMet Services, Inc., in the amount of \$465,731. Finding No. 2 disallows \$186,921 on the grounds that the City used this amount in Proposition A funds to pay for the installation and maintenance of the trash receptacles.

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### *Future Unlimited*

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[www.downeyca.org](http://www.downeyca.org)

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UTILITIES DIVISION  
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MAINTENANCE SERVICES  
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**A. Finding No. 1**

Finding No. 1 disallows all reimbursement for costs incurred subsequent to January 1, 2006, the effective date of the CalMet contract. Finding No. 1 makes this disallowance based on a provision in the CalMet contract that provided that no charge will be made to the City for the cost of collecting solid waste from the trash receptacles in question (CalMet Contract, Article IV., section 4.1(M)).

Finding No. 1 erroneously disallows reimbursement, however, for the *maintenance, repair and replacement* of the trash receptacles. The Parameters and Guidelines provide that the City is entitled to be reimbursed for:

1. Collection and disposal of trash at a disposal/recycling facility;
2. Inspection of receptacles and pads for wear, cleaning, emptying, and other maintenance needs;
3. Maintenance of receptacles and pads, including painting, cleaning and repairing receptacles and replacing liners; and
4. Replacing individual damaged or missing receptacles and pads.

Parameters and Guidelines, adopted March 24, 2011, at p. 4. The services provided by CalMet under the contract, however, addressed, only the first of the four items for which the City is entitled to reimbursement. The City is still entitled to a subvention of funds for the other three activities.

It appears that Finding No. 1 disallowed reimbursement for the maintenance, repair, and replacement of the trash receptacles because, under the reasonable reimbursement methodology, the unit cost is multiplied by the annual number of trash collections. This procedure for determining reimbursement, however, does not supersede the Parameter and Guideline's provision that the City is entitled to reimbursement not only for collection of the trash, but also the maintenance, repair, and replacement of the trash receptacles (Parameters and Guidelines at p. 4). Therefore, even if the Controller's office is going to disallow the cost for the collection, which the City does not concede is appropriate, the Controller's office still must allow reimbursement for the maintenance, repair, and replacement of the trash receptacles, services which the CalMet contract did not cover.

The City has incurred \$19,424 in personnel costs for these other mandates from January 1, 2006 to June 30, 2014. (The backup documentation supporting the employee time devoted to these mandates has been previously provided to you.) The City also incurred capital costs for the replacement of receptacles when

required. The audit must either modify the unit cost to continue to reflect reimbursement for the maintenance, repair and replacement of the trash receptacles, or allow the City to claim the actual costs. If the Controller's office believes that it does not have the authority under the Parameters and Guidelines to modify the unit cost or allow the City to be reimbursed for its actual costs, then it should provide reimbursement at the full unit cost minus the savings the City realized as a result of the CalMet contract.

**B. Finding No. 2**

Finding No. 2 reduces the City's claim in the amount of \$186,921 based on the assertion that the City used Proposition A funds for the purchase and maintenance of the trash receptacles. Finding No. 2 is also erroneous. The Parameters and Guidelines provide that reimbursement for this mandate received from any "federal, state or non-local source" shall be identified and deducted from the City's claim. Proposition A is not a federal, state or non-local source within the meaning of the Parameters and Guidelines.

**1. Proposition A**

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Proposition A provides that twenty-five percent of the sales tax revenue will be returned to local jurisdictions for local transit purposes. These funds are generally referred to as "Local Return funds."

Under guidelines adopted by the Metropolitan Transportation Authority for the use of Local Return funds, the City has discretion as to the use of those funds as long as the use complies with the guidelines and is for public transit purposes. One of the eligible uses is for bus stop improvements and maintenance. Local Return Guidelines, Section II.A.2. The City was not required, however, to use the funds for that purpose. Instead, the City had the discretion to use the funds for any appropriate project.

*The guidelines specifically provide that Proposition A Local Return funds may be used as an advance with respect to a project, with the funds subsequently being returned to the Proposition A account when the advance is reimbursed from another source. The guidelines specifically provide, "Local Return funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines." In that case, the reimbursement must be returned to the appropriate Proposition A Local Return fund. Guidelines, Section 4.C.10.*

**2. The Draft Audit's Conclusion that Proposition A Funds Constituted Reimbursement from a Federal, State or Non-Local Source is Erroneous**

Finding No. 2 disallows \$186,921 of the City's costs based on the assertion that the Proposition A funds advanced by the City should be offset against the City's claim. In support of this disallowance, Finding No. 2 cites the Parameter and Guidelines provision quoted above, that "reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim." This finding is erroneous for several reasons.

First, Proposition A is a local tax. It is therefore not a federal or state source.

Second, Proposition A is not a non-local source. It is a local sales tax imposed on local citizens.

Third, it was entirely proper for the City to use Proposition A funds as an advance, with the expectation that the funds would be paid back to the Proposition A account to be used for other transit purposes when the City recovers the funds pursuant to its Test Claim. As discussed, Proposition A guidelines specifically provide that "Local Return funds may be used to advance a project which will subsequently be reimbursed by federal, state or local grant funding, or private funds, if the project itself is eligible under the Local Return Guidelines." In this regard, Proposition A did not require the City to use Proposition A funds for the installation and maintenance of trash receptacles; the City had discretion to use Proposition A funds as an advance and then to use those funds for other transit projects upon their recovery pursuant to the Test Claim. (It should be noted that the draft audit on page 9 contains the erroneous statement that the City adopted a Bus Bench Program that was fully funded by Proposition A. Instead, the City included a statement in its budget about its obligation to install and maintain trash receptacles.)

Thus, it cannot be said that the City's lawful use of Proposition A funds to advance the installation and maintenance of the trash receptacles, with the understanding that, upon reimbursement through the Test Claim, those funds would be returned to the appropriate Proposition A fund for use on other transit projects, was reimbursement from a non-local source. Because the Proposition A funds will be returned to the Proposition A fund to be used for other purposes, the advancement (not payment) of those funds was not a reimbursement.

To find differently would be contrary to article XIII B, section 6, of the California Constitution. That section was adopted to protect local government's tax revenues. There would be no reduction of the City's claim if the City had used other sales tax revenue to pay for the installation and maintenance of the trash receptacles. Proposition A funds are no different. They are also derived from a one-half cent sales tax, no different from any other sales tax.

The authorities that the Controller's office shared with the City in conjunction with the exit interview are not to the contrary. *County of Fresno v. State of California*

held that Article XIII B, section 6 was designed "to protect the tax revenues of local governments from state mandates that would require expenditures of such revenues." *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487. Based on this holding, the Controller's office noted that "costs" within the meaning of Article XIII B, section 6, excludes expenses recoverable from sources other than taxes. Here, however, Proposition A is a local sales tax, one which falls directly within the protection of Article XIII B, section 6. Reimbursement of these tax revenues is therefore not inconsistent with the *County of Fresno*.

The Commission's decision in *Animal Adoption*, Commission on State Mandates Case No. 13-9811-I-02, is also inapplicable. This Improper Reduction Claim addressed the use of Proposition F funds, which were funds obtained through bonds issued pursuant to a ballot measure. Again, that is not the case here. Proposition A is a local sales tax.

The Commission's decisions in the *Two-Way Traffic Signal Program* and the *Behavioral Intervention Plans* claims are likewise inapplicable. In *Two-Way Signal* the funds were derived from a *state* gas tax, not from a local sales tax which Article XIII B, section 6 is meant to protect. Similarly, in *Behavioral Intervention Plans*, the funds were also state funds, not sales taxes. As the Commission said in *Behavioral Intervention Plans* "when funds *other than local proceeds of taxes* are thus applied, the Controller may reduce reimbursement accordingly. Commission on State Mandates Case No. CSM4464, Statement of Decision at 54 (2013) (emphasis added).

**C. Finding No. 2 is an Unlawful Retroactive Application of the Parameters and Guidelines**

There is another reason why Finding No. 2 is erroneous. The City commenced the advancement of Proposition A funds on or around July 1, 2002, the commencement of the first audit period, or shortly thereafter. As discussed above, at the time the City advanced the Proposition A funds for the installation and maintenance of the trash receptacles, the Proposition A guidelines specifically provided that the City could advance these funds and then return them to its Proposition A account when the expenditures were reimbursed.

The Parameters and Guidelines, on the other hand, were not adopted until March 24, 2011. It would be arbitrary and capricious to find that the Parameters and Guidelines retroactively prohibited an advancement of Proposition A funds in a way that was lawful when those funds were advanced.

In this regard, as a general rule a regulation will not be given retroactive effect unless it merely clarifies existing law. *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135. Retroactivity is not favored in the law. *Aktar v. Anderson* (1997) 58 Cal.App.4<sup>th</sup> 1166, 1179. Regulations that "substantially change the legal effect of past events" cannot be applied retroactively. *Santa Clarita*

*Organization for Planning and the Environment v. Abercrombie* (2015) 240 Cal.App.4<sup>th</sup> 300, 315.

That rule applies here. At the time the City advanced its Proposition A funds to use for the installation and maintenance of the trash receptacles, it was operating under the understanding, consistent with the Proposition A Guidelines, that the City could advance those funds and then return them to the Proposition A account for other use once the City obtained a subvention of funds from the state. To retroactively apply the Parameters and Guidelines, adopted in 2011, to preclude a subvention, *i.e.*, to now find that the City could not use its Proposition A funds as an advance only, substantially changes the legal effect of these past events. Such an application is unlawful.

### III. Conclusion

For the foregoing reasons, the draft audit should be modified. The City is entitled to reimbursement for time and resources expended in maintaining and repairing the trash receptacles during the entire audit period, including from January 1, 2006 forward, and there should be no offset for the City's advancement of Proposition A funds, which upon reimbursement will be returned to the Proposition A account.

Please call me at (562) 904-7265 if you have any questions.

Sincerely,

CITY OF DOWNEY



Anil Gandhi  
Director of Finance and Information Technology

c: Lisa Kurokawa, Audit Manager [lkurokawa@sco.ca.gov](mailto:lkurokawa@sco.ca.gov)

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