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April 27, 2012

Employer Code: 0209
Job Number: P10-027

City of Vernon
Mark Whitworth, City Administrator
4305 Santa Fe Avenue
Vernon, CA 90058

Dear Mr. Whitworth:

Enclosed is our report¹ on the results of the public agency review completed for the City of Vernon. Your agency's written response, which is included as Appendix G to the report, indicates agreement with Findings 4, 5, 8, and 10 and disagreement with Findings 1, 2, 3, 6, 7, and 9 noted in the report.

We reviewed your response as well as its attached 499 pages of documentation. We did not identify any new information to cause us to withdraw any of the findings in our report. Therefore, based on our review of the information contained in the thousands of pages of documents provided by the City during the review process and the City's written response and attachments, our recommendations remain as stated in the report. However, after review of your written response, we expanded Finding 6 to further clarify the issue regarding reported compensation exceeding the limit established by the Internal Revenue Code. In addition, we revised Finding 2 to clarify our observation.

In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your agency and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed by Margaret Junker
MARGARET JUNKER, Chief
Office of Audit Services

Enclosure

cc: Risk and Audit Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Mary Lynn Fisher, Chief, BNSD, CalPERS
City Council Members, City of Vernon

¹ The enclosed review report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS' divisions will notify the City of the final determinations on the report findings and provide appeal rights at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within thirty days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Office of Audit Services



Public Agency Review City of Vernon

Employer Code: 0209
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April 2012

CITY OF VERNON

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
City Background.....	2
Scope.....	2
Office of Audit Services Review Results	3
Finding 1: Failure to Provide Required Documentation	3
Finding 2: Payrate/Earnings Reported	5
Finding 3: Membership Enrollment and Service Credit	12
Finding 4: Elected Officer	23
Finding 5: Classification and Coverage Group	25
Finding 6: Reported Earnings Exceeded IRC Limits	28
Finding 7: Compensation Earnable Incorrectly Reported.....	30
Finding 8: Payroll Elements Incorrectly Reported	34
Finding 9: Special Compensation not Reported	36
Finding 10: Special Compensation Over-Reported	38
Observation	39
Conclusion	40
CalPERS Background.....	Appendix A
Objectives	Appendix B
Criteria	Appendix C
Payrate/Earnings Summary	Appendix D
Income Limitation Summary	Appendix E
Attendance Pay List	Appendix F
City’s Written Response.....	Appendix G

CITY OF VERNON

RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Vernon's (City) enrolled individuals, member compensation, retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Information to determine the accuracy of retirement benefits, reportable compensation, and membership enrollment was not provided.
- Documentation was not provided to determine whether payrate and earnings were accurately reported.
- Employees were incorrectly enrolled and received additional arrears service credit for which they were not entitled, based on erroneous information provided by the City.
- The City failed to notify CalPERS when an "Elective Officer" was convicted of perjury that resulted in forfeiture of several years of service.
- Attorneys were erroneously reported under a safety coverage group and membership classification, which would result in overpayment of retirement benefits.
- Reported earnings exceeded compensation limits established by Internal Revenue Code Section 401(a)(17).
- Payrates were incorrectly reported.
- Non-reportable compensation was erroneously reported.
- Special compensation was incorrectly included in reported payrates and earnings.
- Payroll adjustment was incorrectly reported.
- An incorrect work schedule code was reported.
- A statutory item of special compensation (value of uniforms) was not reported nor was it contained in a written labor policy or agreement.
- Fair Labor Standards Act (FLSA) premium pay policy was not contained in a written labor policy or agreement.
- Special compensation was incorrectly reported for an ineligible employee.

The pertinent sections of the Government Code and California Code of Regulations for each finding are described in greater detail in Appendix C.

CITY OF VERNON

CITY BACKGROUND

The City of Vernon was incorporated on September 16, 1905, as a General Law City and became a Charter City on July 1, 1988. The City operates under a Council-City Administrator form of government. City resolutions and employment agreements generally outline all City employees' salaries and benefits and state the terms of employment agreed upon between the City and its employees.

The City contracted with CalPERS effective November 1, 1948, to provide retirement benefits for local miscellaneous employees, local police officers, and local firefighters. The contract was amended to include local prosecutors effective February 6, 2005. The City's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups. The City does not contract with CalPERS to provide health benefits.

SCOPE

As part of the Board approved plan for fiscal year 2010/2011, the OAS reviewed the City's payroll reporting and member enrollment processes as these processes relate to the City's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from July 1, 2002, through June 30, 2010. The review period was expanded as deemed necessary during the review. The on-site fieldwork was conducted from December 6, 2010, through December 16, 2010, and from January 24, 2011, through January 27, 2011.

OAS requested pertinent information to determine whether compensation earnable and enrollment in the retirement system was properly reported to CalPERS. Some of the requested information was provided by the City to OAS; however, documentation was not provided to support council members' payrates subsequent to April 1, 2007, to support payrates and earnings for employees working in multiple positions, to support representations related to employees who received additional service credit, and to support representations related to the eligibility of city attorneys for safety classification during the review period.

Though hampered by the unavailability of necessary information, OAS completed the review based on information provided by the City and obtained through other sources.

The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed in Appendix B.

CITY OF VERNON

OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The City failed to provide information necessary to determine the accuracy of retirement benefits, reportable compensation, and membership enrollment in the retirement system.

Recommendations:

The City must provide the specific information upon request by CalPERS in order to determine the accuracy of retirement benefits, reportable compensation, and membership enrollment in the retirement system per Government Code Sections 20221 and 20222.5. Failure to provide requested information can result in termination of the City's contract pursuant to Government Code Section 20572.

The City must work with the CalPERS CASD and BNSD to provide all supporting documentation that can be located or prepared in the future in order to determine the accuracy of retirement benefits, reportable compensation, and membership enrollment.

Condition:

Prior to the on-site field visits in December 2010 and January 2011, OAS requested pertinent information to determine whether compensation earnable and membership enrollment in the retirement system was properly reported to CalPERS. In addition, during and subsequent to our on-site field visits, OAS repeatedly made additional requests for information. Requests for information included, but were not limited to, the following documents:

- Publicly available pay schedules for the period July 1, 2002, through June 30, 2010
- Employment contracts
- Memoranda of Understanding
- Rules and regulations
- The City's Charter
- Job duty statements
- City Council minutes from July 1, 2002, to the present
- Documents used to specify compensation earnable
- Payroll journals

CITY OF VERNON

- Personnel files
- Payroll records

Despite our repeated requests, the City failed to provide documentation to support the following:

- The payrates and earnings reported to CalPERS for employees working in multiple positions.
- The additional arrears service credit sought by and provided to certain individuals.
- The classification of City attorneys as safety members.
- City council members' payrates subsequent to April 1, 2007.

While the City provided thousands of pages of documents, many of the documents provided were in a form that would require a substantial amount of time for OAS to find relevant requested information. Additionally, the City redacted requested documents prior to providing the documents to OAS. Furthermore, certain employee files were confiscated by the County of Los Angeles District Attorney's Office, and thus were not provided. As a result, the City failed to comply with OAS requests for information. The City's failure to provide the information necessary impeded this review. Although OAS completed this review based on information provided by the City and obtained through other sources, certain findings could not be finalized due to the City's failure to provide necessary information and documents.

Criteria:

Government Code § 20085, § 20221, § 20222.5, § 20572

CITY OF VERNON

Finding 2: The City failed to provide documentation in conformance with the Public Employees' Retirement Law (PERL) and the City's contract with CalPERS. As a result, OAS was unable to determine whether payrates and earnings were accurately reported, including for individuals simultaneously working in multiple positions.

Recommendations:

Only compensation earnable, as defined under Government Code Section 20636 and the corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits.

The City should ensure documentation is maintained and provided upon CalPERS' request to verify that payrates and earnings are accurately reported for all employees. Payrates for each position must be clearly set forth in publicly available pay schedules and must be included in public documents available for public scrutiny. Where concurrent service is rendered in two or more positions, one or more of which is full time, service in the part-time position constitutes overtime and should not be reported. If concurrent service occurs in two or more full-time permanent positions, then the position with the highest payrate should be reported and the other would constitute overtime.

OAS recommends CASD deny all incorrectly reported payrates and earnings, and when unable to determine correct payrates based on documentation provided, the determination should be based on the proper interpretation of compensation earnable. CASD should work with the City to make any necessary adjustments to reported payrates, service credit or other areas needing adjustment pursuant to Government Code Section 20160.

Condition:

OAS selected a sample of nine individuals to review from the City's records who worked concurrently in multiple positions. The City provided employment agreements and salary resolutions for certain positions including directors, administrators, and attorneys and provided some established publicly available pay schedules approved in open City Council sessions. However, for the individuals that worked simultaneously in multiple positions, the City failed to provide documentation to substantiate the number of hours worked per position

CITY OF VERNON

and reportable payrates for each position. The City failed to provide information concerning these individuals that OAS deemed necessary in the administration of this system.

OAS reviewed the documentation provided by the City and found instances where the City failed to comply with the PERL statutes and corresponding regulations related to compensation, compensation earnable and overtime. Specifically, OAS identified instances where the City improperly combined payrates, amended required hours of work while continuing to pay and report full-time earnings, increased hourly rates paid outside of regular earnings, and assigned concurrent multiple positions while reporting one full-time payrate. Although OAS is not charged with rendering judgments on the remuneration paid by the City, we noted unusual large salary increases and non-employee compensation amounts up to greater than \$1.3 million per year. In addition, while W-2 compensation amounts may include some non-reportable items; OAS noted significantly higher amounts of employee compensation reported on W-2 forms in comparison to earnings reported to CalPERS.

As a result of the City's failure to provide all information requested as well as the conflicting information provided by the City, OAS was unable to determine the total number of hours worked per position as well as the reportable payrate and earnings for the nine sampled individuals. Specifically, OAS noted one or more of the following inconsistencies for all sampled individuals:

- Individual was often assigned to multiple positions concurrently.
- The percentage of time worked in each position specified by the City was not consistent with the time base established in the employment agreement.
- The reported base payrate appeared to be a result of combining the payrates of multiple full-time positions.
- Individual received compensation through both payroll (employee compensation) and accounts payable (non-employee compensation).
- Employment agreements stated an hourly payrate and/or a monthly base salary; however, required hours of work fluctuated, ranging from approximately 75.33 hours to 173.33 hours per month.
- Employment agreements did not identify approved payrates and time bases applicable to each position concurrently assigned to an employee.
- Amended employment agreements revised the hours required for a position; however, the reported payrate and earnings to CalPERS remained constant.
- Additional hours worked outside of the established hours required for a position and identified as non-employee compensation fluctuated in conjunction with the revision of time bases in the amended employment agreements.

CITY OF VERNON

- Bi-weekly payroll registers indicated 80 hours worked for the monthly base payrate, which equated to full-time at 173.33 hours per month; however, employment agreements outlined reduced time bases for the payrate.
- Individual received amounts of non-employee compensation as much as \$1.3 million per year payable to the individual and to the individual's law firm.
- Individual received significant salary increases (up to 24.55 percent in a fiscal year).
- Employee compensation reported on the W-2 form far exceeded what was reported as earnings to CalPERS. In one instance, the employee compensation was over four times greater than the earnings reported to CalPERS.

Three sampled individuals are discussed in detail below:

First sampled individual (see Appendix D, Individual #1 for additional detail):

This individual appeared to have provided services in six positions, some concurrently, between July 2003 and April 2008.

- Effective July 1, 2004, the individual worked as Special Assistant to the City Attorney. The City reported the individual's payrate to CalPERS as full-time, with a monthly payrate of \$12,445.
- Effective July 1, 2005, the individual was assigned a second full-time position as the Acting City Clerk with a monthly base payrate of \$7,875.
- The City combined the monthly salaries of both full-time positions, which totaled \$20,320 per month, and incorrectly reported this amount to CalPERS as the full-time monthly base payrate (further discussed under Finding 7).

Combining the two positions and salaries resulted in a 63.23 percent increase in payrate. The individual was then assigned additional positions as Capital Project Administrator effective July 1, 2005, and Acting Executive Director of the Vernon Historic Preservation Society effective April 5, 2006. On July 1, 2006, while serving in all four positions, the employee received an annual salary increase of 3.5 percent for a combined monthly base payrate of \$21,032. The City continued to incorrectly report the monthly payrate of \$21,032 as one full-time position.

Subsequently, while the individual's reported monthly base payrate remained at \$21,032, the following actions occurred:

- On January 17, 2007, the individual entered into an employment agreement with the City to perform duties of Assistant City Attorney II; however, the City reduced the time base for the contract to 100 hours per month. Hours worked

CITY OF VERNON

in excess of 100 were paid at \$365 per hour. The resolution approving and adopting the employment agreement was certified and attested thereto by this same individual while concurrently working in the position as the Acting City Clerk.

- Effective March 5, 2007, the amended employment agreement reduced the hourly rate for hours worked in excess of 100 hours per month to \$225 per hour.
- Effective October 1, 2007, the amended employment agreement increased the hours worked as Assistant City Attorney II from 100 hours to a minimum of 160 hours a month and compensation for hours worked in excess of 185 in a month was to be paid at \$225 per hour.

In addition, OAS noted the following inconsistencies:

- The City reported the individual under work schedule code 173 (indicating an average of 173.33 hours a month as full-time for the position) for the period of July 2003 through April 2008.
- Information in the payroll registers conflicted with information from the employment agreements. For example, the payroll register for the pay period ending March 31, 2007, indicated the base monthly payrate (not including longevity pay) for this individual was \$21,032 for working 80 hours bi-weekly, equating to 173.33 hours worked per month, not 100 hours per month as stated in the employment agreements.
- While serving as the Assistant City Attorney II, the individual also held the positions of Special Assistant to the City Attorney and Acting Executive Director of the Vernon Historic Preservation Society.
- In addition to regular earnings, the individual received significant amounts of non-employee compensation during calendar years 2007 and 2008.
- The individual separated from employment effective April 7, 2008, and the earnings reported to CalPERS in calendar year 2008 totaled \$77,718.73. However, other documentation provided by the City indicated that the individual's earnings in 2008 were significantly higher at \$289,653.64.

In summary, the base payrate reported to CalPERS for this individual essentially remained unchanged at \$20,320, effective July 1, 2005, and \$21,032 after a 3.5 percent salary increase on July 1, 2006, through the individual's separation date of April 7, 2008, although amended employment agreements assigned multiple positions, adjusted the hourly payrate for additional hours worked, and increased or decreased required hours of work. The amounts paid to this individual for hours worked in excess of the required hours specified in the employment agreement were paid as non-employee compensation and not reported to CalPERS. According to records provided by the City, non-employee

CITY OF VERNON

compensation in the amounts of \$216,991.35 and \$120,686.37 was paid to the employee for calendar years 2007 and 2008, respectively. In addition, in calendar year 2008, the City reported \$77,718.73 as total earnings to CalPERS through the individual's separation date of April 7, 2008; however, other documents indicated that the individual's earnings at the City were \$289,653.64.

As a result of insufficient and conflicting information provided by the City, OAS was unable to substantiate the payrate and earnings reported for this individual. OAS recommends CASD assess the impact of incorrect reporting and make corrections to improperly reported compensation amounts.

Second sampled individual (see Appendix D, Individual #7 for additional detail):

This individual was identified by the City as working in up to 10 positions as follows:

- July 1, 1977: Appointed to the position of City Clerk/Director of Finance.
- July 24, 1978: Appointed to an additional position of City Treasurer.
- October 19, 1978: Appointed to the third position of City Administrator/City Clerk.
- May 5, 1981: Appointed to the fourth position of Chief Executive Officer of Electrical Department.
- December 13, 1988: Appointed the fifth and sixth positions of Executive Director of the Redevelopment Agency and Secretary of the Redevelopment Agency.
- December 7, 1993: Appointed to the seventh, eighth, and ninth positions of Executive Director of the Industrial Development Authority, Secretary of the Industrial Development Authority, and the Treasurer of the Industrial Development Authority.
- December 17, 2003: Appointed to the tenth position of the Executive Director of the Vernon Historic Preservation Society.

During the periods the individual worked in the multiple positions listed above, the City incorrectly reported the monthly payrate and earnings as one full-time position. The City failed to provide the information necessary to determine whether these positions were part-time or full-time positions. The City should have reported whether these positions were full-time or part-time, the payrate for each position and, if all positions were part-time, then the corresponding earnings from the percentage of time worked in each position separately up to one full-time position. Aggregate earnings exceeding full-time are considered overtime and not reportable to CalPERS.

CITY OF VERNON

In addition, OAS found that the City reported payrates that included exceedingly high salary increases during the time period that this individual worked for the City while holding multiple concurrent positions. For example, between 1985 and 1992, the individual's reported earnings increased 233.44 percent, from \$7,773 to \$25,918. During this period the individual received annual salary increases ranging from 10.25 percent to 24.55 percent while concurrently holding multiple positions at the City. Documentation provided by the City indicated that the individual may have concurrently held up to ten positions with the City from 1997 to 2005; however, the payrates and earnings were combined and reported as one item indicating one position. The increases in salary continued throughout the years until the individual retired effective July 1, 2005, with a final reported monthly payrate of \$44,128.

Following the numerous years of substantial salary increases, it appeared the City limited the annual salary increases during the final compensation period and the two preceding years to 3 percent. By doing so, the individual was not impacted by Government Code Section 20636(e)(2) which limits increases in compensation earnable for employees not in a group or class during the final compensation period and the two years immediately preceding the final compensation period to the average increase in compensation earnable for employees in the same membership classification.

As a result of insufficient and conflicting information provided by the City, OAS was unable to substantiate the payrate and earnings reported for this individual. OAS recommends CASD assess the impact of incorrect reporting and make corrections to improperly reported compensation amounts.

Third sampled individual (see Appendix D, Individual 2 for additional detail):

This individual was selected from a list provided by the City specifying the percentage of time worked by employees working in multiple positions. During the period from March 16, 2009, through May 10, 2009, the following positions and percentages of time worked were listed for the individual: Assistant City Attorney 1 for 100 percent of the time, City Administrator for 10 percent of the time, and Special Counsel for 5 percent of the time. However, the employment agreement in place during this period stated that the individual's base pay was \$27,500 per month for working only 100 hours as the Assistant City Attorney 1. From May 11, 2009, through January 4, 2010, the list provided by the City identified this same individual as the Assistant City Attorney 1 for 100 percent of the time and Special Counsel for 5 percent of the time. However, the employment agreement in place during this period stated that the individual's hourly rate was \$365 per hour for working a minimum of 75 1/3 hours per month.

CITY OF VERNON

The City continued to report a monthly payrate of \$27,500 ($\$365.00 \times 75.333 = \$27,496.55$) as the Assistant City Attorney 1. The City's payroll information submitted to CalPERS and payroll registers during this period indicated that the individual's base pay and earnings were \$27,500 per month for working full-time at 80 hours bi-weekly (equating to 173.33 hours per month).

Although the City continuously reported the monthly payrate and earnings as \$27,500 to CalPERS, it appeared that the City increased the individual's compensation substantially, despite reducing the hours worked by adjusting the hourly pay received through non-employee compensation. According to records provided by the City, the non-employee compensation for calendar years 2002 through 2009 ranged from \$52,709.53 to \$1,307,360.99 per year.

As a result of insufficient and conflicting information provided by the City, OAS was unable to substantiate the payrate and earnings reported for this individual. OAS recommends CASD assess the impact of incorrect reporting and make corrections to improperly reported compensation amounts.

Note: See Appendix D for a summary of complete details for all nine sampled individuals.

Criteria:

Government Code § 20085, § 20160, § 20221, § 20222.5, § 20572, § 20630(b), § 20635, § 20636(a), § 20636(b)(1), § 20636(d), § 20636(e)

California Code of Regulations § 572

CITY OF VERNON

Finding 3: The City submitted erroneous information to support the enrollment of ineligible individuals into CalPERS membership. This provided ineligible individuals with excessive service credit and the erroneous purchase of additional service. The City also incorrectly reported individuals who performed services as independent contractors.

Recommendations:

The City must provide accurate membership information in order for CalPERS to determine the correctness of retirement benefits per Government Code Sections 20221 and 20222.5.

The City should not enroll employees excluded from membership per Government Code Section 20300(b) and (h).

The City must provide accurate membership information and must not provide false information. Government Code Section 20085(a) provides in pertinent part that it is unlawful to make, or cause to be made, any knowingly false material statement or material misrepresentation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, increase, deny, or reduce any benefit administered by the system. Government Code Section 20085(a) also provides it is unlawful to knowingly aid, abet, solicit or conspire with any person to do an act prohibited by this section.

CalPERS must insure that its contracts with public agencies provide retirement benefits only to the agencies' common law employees to ensure retirement benefits are properly administered and in order to preserve its tax-qualified status under the Internal Revenue Code Section 401(a). The CalPERS Board of Administration determines who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

OAS recommends CASD deny any inappropriately granted service credit and erroneous purchase of additional service credit. CASD should make the appropriate adjustments to reported payrate, service credit, and other areas needing adjustment pursuant to Government Code Section 20160.

CITY OF VERNON

Condition:

The City reported and represented that certain individuals worked for the City as employees rather than independent contractors and sought to acquire prior service credit for these individuals for time served when they were ineligible for CalPERS membership. OAS determined that approximately three individuals may have provided services as independent contractors, rather than common law employees, for periods of time wherein the City sought to acquire additional prior service credit. Final findings could not be reached as OAS has not been provided sufficient information to finalize determinations on this issue prior to the issuance of this report. It is for that reason, that OAS recommends that the City continue to work with CalPERS CASD to finalize these determinations for the individuals identified and for any other individuals that might be identified.

The City submitted membership forms to retroactively enroll three sampled individuals into CalPERS membership. However, the forms contained erroneous information. The use of this erroneous information by CalPERS resulted in each of these individuals improperly receiving excessive service credit in the following amounts: 16.1 years, 7.7 years, and approximately two years.

In addition, the erroneous membership information submitted to CalPERS enabled two of the ineligible employees to erroneously purchase five years of additional service credit.

First sampled individual:

The City contacted CalPERS by letter on April 22, 2002, to request a review of the eligibility status for a "contract financial consultant." The City stated that the individual "has worked for us since 1986, principally as a financial analyst...." Notwithstanding this representation, OAS located correspondence from this individual to the City as early as May 6, 1987, that was on the individual's Law Office letterhead, and Agreements from that time period that stated he would provide consultant services. Early Agreements included no language that the individual would serve as an employee of the City in any capacity. An Agreement dated July 1, 2000, stated, "Consultant and the agents and employees of Consultant in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of the City."

On June 7, 2002, based on the information provided at the time, CalPERS responded and informed the City that although it appeared the individual was

CITY OF VERNON

-serving as an employee rather than an independent contractor, it also appeared that the individual may not qualify for enrollment in CalPERS under Government Code Section 20300(h).

Despite this correspondence from CalPERS, on July 15, 2002, the City submitted a Member Action Request form to CalPERS enrolling the individual into membership. On the form, the City certified that the individual was hired on June 1, 1986, in the position of "Administrative/Finance" and the effective date for membership was also June 1, 1986. However, the City had never reported this individual as an employee to CalPERS prior to this request in 2002.

In September 2002, CalPERS informed the individual that past contributions were due for the prior service credit. In June 2003, the City informed CalPERS that the member's portion of the cost of the arrears service credit would be paid by the City and submitted six payments for past contributions totaling \$98,701.77, which included an over-payment of \$520.86 that was subsequently refunded to the City.

During the on-site fieldwork, OAS reviewed City records and determined that this individual was not employed as a financial analyst from June 1, 1986, through July 27, 2002. Instead, the individual was an attorney who appeared to have rendered professional legal services to the City as an independent contractor consultant to the finance department. However, the attorney did not hold the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney during this period. Therefore, the attorney was not eligible for CalPERS membership during this period due to an exclusion of persons rendering professional legal services per Government Code Section 20300(h) and because he was an independent contractor per Section 20300(b). The information reviewed also appears to confirm this individual served as an independent contractor and not as an employee during the period from June 1, 1986, through July 27, 2002.

For the purposes of the PERL and for the programs administered by the Board of Administration of CalPERS (the Board), the standard used for determining whether an individual is the employee of another person or entity is the California common law employment test as set forth in the California Supreme Court case entitled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist., v. Superior Court (Cargill)* (2004) 32 Cal. 4th 491, and which was adopted by the Board in a precedential decision, *In the Matter of Lee Neidengard*, Precedential Dec. No. 05-01, effective March 22, 2005.

CITY OF VERNON

Applying the California common law, the most important factor in determining whether an individual performs services for another as an employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is no clear independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS, applying the common law, will consider the following additional factors in determining whether an individual is an employee:

- (a) whether or not the one performing the services is engaged in a distinct occupation or business;
- (b) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) the length of time for which the services are to be performed;
- (f) the method of payment, whether by the time or by the job;
- (g) whether or not the work is part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

OAS identified the following facts which appear to suggest that the City improperly represented to CalPERS that this individual was an employee in 2002. The following facts support a finding that this individual served as an independent contractor, and not a common law employee between 1986 and 2002.

- No documentation was provided to suggest that the individual was hired in 1986 as an employee of the City. Agreements, Resolutions, and confirming correspondence all reference an Agreement that the individual would serve as a consultant.
- No documentation was provided to suggest that the City controlled the manner and means related to how the individual would perform his legal services.
- No documentation was provided to show that this individual was paid as an employee or that payroll was reported to the IRS as an employee before July 2002.
- Documentation from May 1986 shows that the individual was being retained as a consultant and was to be paid \$125 per hour. The Agreement was

CITY OF VERNON

approved by the City Council in Resolution Number 5279. Neither provides the authority to hire this individual as an employee.

- Documentation from July 2000 shows that services were to be performed by the individual's Law Offices as an independent contractor and not as an employee or agent of the City. This Agreement was approved by the City Council in Resolution Number 7576.
- Documentation from July 2002 shows that services were to be performed as a consultant and again confirmed that, "Consultant and the agents and employees of Consultant in performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of the City." This Agreement was approved by the City Council in Resolution Number 7576.
- Personnel Action Form dated July 23, 2002, showing this individual's date of hire as July 28, 2002, also confirms "reclassification: contract to employee."
- Resolution 8049, dated September 4, 2002, provided in part that the City intends, "... to change [the individual's name] status to employee for purposes of such benefits in the Public Employees Retirement System."
- During the course of the review, OAS confirmed with the Director of Personnel for the City, that this individual was hired as a legal consultant to work for the City from 1986 through 2002, and that in 2002 this individual was hired by the City as an employee.
- In the Employment Relationship Questionnaire (Questionnaire) completed by the City's Deputy City Treasurer in February 2011, it was represented that this individual worked as a consultant for the City since June 1, 1986, and became a City employee on July 28, 2002. Additionally, the City stated that the individual "provides services to the City while serving as the principal in the Law Offices of [the individual's name]." The City also confirmed that the individual performed services at his law offices in Manhattan Beach, Los Angeles and San Francisco and at the City although the City never provided him with a permanent office space. According to the City, this individual's contracts allowed him to perform his duties from any location that he deemed appropriate.
- The City also confirmed in the Questionnaire that it did not provide this individual with a formal evaluation, as was the case with other City employees.
- No documents were provided to establish that the City required this individual to review or complete employee paperwork, policies, and so forth as required for other City employees during the time frame between 1986 and early July 2002.
- No documents were provided to establish that the City provided this individual with the benefits afforded other City employees between 1986 and early July 2002.

CITY OF VERNON

As a result of the erroneous certification submitted by the City on July 15, 2002, ineligible service was credited to this individual. OAS determined that the attorney received membership prior to meeting eligibility requirements and received 16.1 years of service credit for which the individual was not entitled. The City should work with CalPERS CASD so as to allow CASD to make a formal determination as to whether this individual was misreported by the City as an employee, rather than an independent contractor, for the period of June 1986 until early July 2002, and to assess the impact of this membership issue and determine what adjustments are needed.

Second sampled individual:

The City stated in an April 24, 2002 letter to CalPERS that this individual was employed as a Deputy City Attorney for the period of November 1, 1994, to March 16, 1999. However, the City had never reported this individual to CalPERS as an employee before 2002. On July 15, 2002, the City submitted a Member Action Request form to CalPERS to enroll the individual into membership, certifying a date of hire of November 1, 1993, and seeking a retroactive membership date to November 1, 1994. The City represented the individual's position as City Attorney. Additional documentation located by OAS suggested that the individual had served as an independent contractor, not an employee, between November 1994 and March 1999.

In September 2002, CalPERS informed the individual that past contributions were due for the prior service credit. In June 2003, the City informed CalPERS that the member's portion of the cost of the arrears service credit would be paid by the City and submitted five payments for past contributions totaling \$79,069.80.

OAS reviewed City records during the on-site fieldwork which revealed that from June 22, 1995, through March 30, 1999, the City contracted with the specified individual's Law Offices for legal services and the individual was principally assigned to provide such services. As a result, OAS concluded that the individual did not hold a position consistent with the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney during this period, and therefore was excluded from membership per Government Code Section 20300(h) and appeared to be an independent contractor, and not an employee, and therefore was also excluded by Section 20300(b) during this time period.

CITY OF VERNON

The following facts appear to support a finding that this individual served as an independent contractor, and not a common law employee between November 1994 and March 1999.

- No documentation, employment agreement, or other information was provided to OAS to suggest that the individual was hired in November 1994 as an employee of the City.
- No documentation was provided to suggest that the City controlled the manner and means related to how the individual would perform his legal services between November 1994 and March 1999.
- No documentation was provided to show this individual was paid as an employee or that payroll was reported to the IRS as an employee before March 1999.
- Documentation presented suggests that the individual began providing services to the City through a law office of another individual prior to 1996.
- In correspondence to the City Administrator dated August 13, 1996, it is represented that this individual would provide services on behalf of the law office at a discounted rate. In a Special Legal Services Agreement, dated June 22, 1995, between the City and the Law Offices of [another individual], the law firm agreed to provide legal services to the City for insurance defense claims based upon an attached task and hourly rate schedule. Section 6 of the Agreement provided, "It is understood and agreed that Firm will principally assign [individual identified by name] to provide such services. However, Firm may assign specific work on such claims to other members of the Firm." This agreement was approved and authorized by the City Council in Resolution Number 6839, dated August 20, 1996.
- Documentation from April 1, 1999, shows an Agreement for this individual to provide services (40 hours per month) as Assistant City Attorney until October 31, 1999. Thereafter, the agreement provides that the individual "shall be retained and hereby accepts the position of City Attorney upon the terms and conditions set forth." However, section 7 of the same agreement confirms that the individual will have the right to join with other attorneys and create a new legal firm at his discretion. This Agreement was authorized and approved by the City Council in Resolution Number 7292, dated March 16, 1999.
- In Resolution Number 8033, dated September 4, 2002, the City Council formally approved and authorized this individual to be appointed as a City employee. In an attached Amendment (Number One) to the Attorney Employment Agreement, dated July 28, 2002, between the City and this individual, the agreement provides, "Whereas, the City would like to change the relationship between [this individual] and the City such that [this individual] will be considered an employee of the City for purposes of Public Employees'

CITY OF VERNON

Retirement System benefits; and Whereas, [this individual] wishes to assume the obligations, liabilities and burdens of being an employee of the City....”

The agreement also provides that the City would pay the individual \$25,000 per month retainer salary for 142 hours of work per month. Additionally, for all hours over 142 hours per month, the City would pay \$160 per hour.

- No records were provided to show that the City paid this individual as an employee by payroll check during the period of November 1994 through March 1999.
- No records were provided to show that the City provided this individual with the benefits afforded other city employees during the period of November 1994 through March 1999.
- In the Employment Relationship Questionnaire completed by the City’s Deputy City Treasurer in February 2011, it was represented that this individual became an independent contractor for the City on May 14, 1984, and then on September 4, 2002, became a City employee. The City also represented that this individual performed legal services while serving as a partner at a law firm. The City confirmed that the individual provided services at his law office in Downey and at the City.
- The City provided this individual with no formal evaluations as was the case with other City employees.

OAS found that this individual was employed as the City Attorney effective November 1, 1999. However, for the period from November 1, 1999, through July 28, 2002, the City failed to provide documentation to substantiate that the individual met the time base and tenure requirements for enrollment into CalPERS membership. Due to this lack of documentation, OAS was unable to determine whether the individual qualified for membership for the period of November 1, 1999, through July 28, 2002.

As a result of the erroneous certifications submitted by the City on July 15, 2002, ineligible service credit was provided to this individual. OAS determined that the individual received membership prior to meeting eligibility requirements and received as much as 7.7 years of service credit for which the individual was not entitled. The City should work with CalPERS CASD so as to allow CASD to make a formal determination as to whether this individual was misreported by the City as an employee, rather than an independent contractor, for the periods of 1994 through 1999 and to assess the impact of this membership issue and determine what adjustments are needed.

CITY OF VERNON

Third sampled individual

On August 4, 2005, the City submitted a CalPERS Member Action Request form to CalPERS certifying that the individual was employed as Chief Assistant City Attorney with a retroactive hire and membership date of October 12, 2003. The City also submitted an earnings adjustment for the period from October 2003 to July 2005. Prior to August 2005, the City had never reported this individual as an employee to CalPERS.

OAS reviewed City records and found that the individual was not employed as Chief Assistant City Attorney until August 1, 2005. In addition, OAS found that the individual provided legal services to the City through a law firm for the period of October 12, 2003, through July 31, 2005, thus was excluded from membership per Government Code Section 20300(h) and appears to have been an independent contractor and also excluded under Section 20300(b) for the same period of time.

OAS identified the following facts which appear to suggest that the City improperly represented to CalPERS that this individual was an employee between October 2003 and July 2005. The following facts support a finding that this individual served as an independent contractor, and not a common law employee between October 2003 and July 2005.

- No documentation clearly established to have been prepared in 2003 was provided to suggest that the individual was hired in 2003 as an employee of the City. On a Personnel Action Form, dated August 4, 2005, the date of hire was noted as October 12, 2003. However, all paperwork pertaining to City employee benefits and City policies reference an August 2005 date. Documents referencing an August 2005 hire date include: authorization for deductions from pay check for vision benefits (declined August 23, 2005), enrollment in vision program (dated August 2, 2005), certification related to employment at the pleasure of the City Council (dated August 2, 2005), certification regarding City's smoking policy (dated August 2, 2005), and deferred compensation plan deferral form (dated August 6, 2005). W-4 forms were only provided for the years after 2005.
- No documentation was provided to suggest that the City controlled the manner and means related to how the individual would perform his legal services.
- Documentation shows that in November 2004, the City engaged a law firm to perform various legal services including, "legal opinions, various legal and transaction structure advisory work, other consulting and research services." The engagement letter dated November 17, 2004, was signed by a partner at

CITY OF VERNON

the law office and the letter head identified this individual as one of the attorneys then working for the law firm. The retainer letter did not state that any of the employees of the law firm would become employees of the City.

- Documentation from August 2005 included an Amended General Counsel Agreement between the City and a law firm that established the firm would serve as the City's General Counsel. Resolution 8823 adopted by the City Council approved the agreement on August 3, 2005.
- In December 2006, in Resolution Number 9179, the City Council authorized and approved Amendment Number One to the Amended General Counsel Agreement with the law firm whereby the City retained this individual to serve as the City's Acting City Attorney. In the Agreement, dated December 13, 2006, the City agreed to retain this individual as the City's Acting City Attorney notwithstanding the fact that the agreement was between the law firm and the City. Payments were only referenced in terms of hourly rates to be billed by the law firm. The City Council also approved and authorized Resolution Number 9180 which appointed this individual to serve as Acting City Attorney and confirmed compensation for said services should be paid pursuant to the Amended General Counsel Agreement dated August 3, 2005.
- No documents were provided to establish that the City required this individual to review or complete employee paperwork, policies, and so forth as required for other City employees during the time frame between 2003 and early August 2005.
- No documents were provided to establish that the City provided this individual with the benefits afforded other City employees between 2003 and early August 2005.

As a result of the erroneous certification and earnings adjustment submitted by the City, ineligible service credit was granted. OAS determined that the individual received retroactive membership effective October 12, 2003, even though membership eligibility requirements were not met. OAS further determined that the individual received nearly two years of service credit to which the individual was not entitled. The City should work with CalPERS CASD so as to allow CASD to make a formal determination as to whether this individual was misreported by the City as an employee, rather than an independent contractor, for the period of October 2003 through July 2005, and to assess the impact of this membership issue and determine what adjustments are needed.

Additional Retirement Service Credit (ARSC)

In addition, two of the three individuals mentioned above purchased five years of ARSC at a time when they did not meet eligibility requirements. In order for a

CITY OF VERNON

member to be eligible to purchase ARSC, the member must complete at least five years of credited CalPERS service.

OAS reviewed City records and determined that the individuals mentioned above were not entitled to membership for the time period during which they provided legal services for the City as independent contractors. Therefore, they did not complete five years of qualified service and were not eligible to purchase ARSC.

Over-reported Earnings

Furthermore, CalPERS records show that, as a result of the erroneous certification, the City over-reported earnings for two of the three individuals mentioned above. The reported earnings exceeded the compensation limit established by the Internal Revenue Code Section 401(a)(17) in one or more of the sampled calendar years (further discussed under Finding 6).

Criteria:

Government Code § 20085, § 20125, § 20221, § 20222.5, § 20300, § 20909

CITY OF VERNON

Finding 4: The City failed to notify CalPERS when an “Elective Officer” was convicted of perjury and thus forfeited several years of service.

Recommendations:

The City must notify CalPERS when an elected officer is convicted of certain enumerated felony crimes specified in statute. Government Code Section 1243 provides in pertinent part that any elected official who takes public office, or is re-elected to public office, on or after January 1, 2006, and who is convicted during or after holding office of any felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes arising directly out of his or her official duties as an elected public officer, shall forfeit that portion of his rights and benefits that accrued on or after January 1, 2006, on account of his service in the elected public office held when the felony occurred. Section 1243(d) further provides, “[t]he public agency that employs an elected public officer described in subdivision (d) shall notify the public retirement system in which the officer is a member of the officer’s conviction.”

OAS recommends BNSD and CASD determine the adjustments to the member’s retirement account and allowance, if any, upon conclusion of the case.

Condition:

An elective officer for the City was re-elected to office on April 11, 2006, and the term began October 25, 2006. The elected officer served as mayor from the time of re-election until his retirement on July 1, 2009. In December 2009, the ex-official was convicted by the Superior Court of California on several charges, including perjury for conduct directly related to his official duties as the mayor of the City. As a result of the conviction, the ex-official was ordered to repay a sum equal to all salary, benefits and other compensation paid to the defendant by the City during the term for which he was elected at the April 11, 2006 municipal election. However, the City failed to notify CalPERS immediately after the verdict of the ex-official’s conviction.

CalPERS became aware of the court decision from media reports in September 2010 and initiated communication requesting information from the City regarding this conviction. CalPERS informed the City and the retiree of benefit adjustments that were to take place. However, due to an appeal filed with

CITY OF VERNON

the Court of Appeal, CalPERS delayed the implementation of the adjustments pending conclusion of the case.

Criteria:

Government Code § 1243, § 20085, § 20343

CITY OF VERNON

Finding 5: The City incorrectly reported attorneys under coverage group 79001, a safety classification that provides an enhanced retirement benefit formula of 3% @ 55.

Recommendations:

The City should report city attorneys under the appropriate member classification and coverage group, based on position's job duties, as required by the PERL. The City should not report attorneys as safety members unless the position's primary duties are to engage in the active enforcement of criminal laws.

OAS recommends CASD reclassify the members to the correct miscellaneous coverage group and make the necessary classification adjustment to the members' accounts.

Condition:

A public agency can amend its contract with CalPERS to provide a safety classification to certain groups of employees who perform specific duties provided for in statute. The purpose of providing the safety classification is to enhance the employees' retirement benefits and the enhanced benefit carries an additional cost to the City. Pursuant to the City's contract with CalPERS, the retirement formula for the City's miscellaneous members is 2% @ 55 which was later enhanced to 2.7% @ 55, effective June 22, 2008. However, if an attorney were to meet the criteria for safety status, the applicable retirement formula, pursuant to the City's request, would increase to the enhanced benefit formula of 3% @ 55.

In February 2004, the City requested the cost associated with transferring the City Attorney and his staff attorney from the City's Miscellaneous Plan to the City's Safety Plan and requested CalPERS respond confidentially and only to the City Treasurer. In June 2004, in correspondence signed by the City Administrator, the City represented to CalPERS that the positions of City Attorney, Deputy City Attorney, and Assistant to the City Attorney had been reclassified and that employees working in these positions were, "primarily engaged in the active enforcement of criminal laws within any court operating in Los Angeles County." Based on this representation by the City and pursuant to the City's request, CalPERS confirmed that the City could elect to amend their contract with CalPERS to include Government Code Section 20423.6, which provides safety membership for public prosecutors, public defenders, and public

CITY OF VERNON

defender investigators who are "...primarily engaged in the active enforcement of criminal laws within any court operating in a county...." The City requested the change in retirement formula apply to all prior service for those serving in the category of prosecutor. The City amended its contract with CalPERS, effective February 6, 2005, to include Government Code Section 20423.6 and started reporting the attorneys under the safety classification.

OAS identified five attorneys employed at the City who were reported to CalPERS as safety members. Four of the attorneys were no longer working as employees for the City; however, one attorney remained employed by the City and continued to be reported under the safety classification. To determine whether the sampled attorneys were properly reported under the safety classification, OAS requested that the City provide documentation or evidence to substantiate that the attorneys' primary duties were to engage in active enforcement of criminal laws. The City failed to provide such documentation. Based on the limited documentation provided, and the fact that the documentation failed to elaborate on specific duties, OAS was unable to verify the accuracy of the City's representation that the five sampled attorneys' primary duties were to engage in active enforcement of criminal laws. As a result of the City's failure to supply adequate information to substantiate its prior representation, OAS concluded that the attorneys were not eligible for a safety classification under Government Code Section 20423.6, and the City improperly reported the sampled attorneys under the safety classification.

Beginning in September 2010, a separate review was conducted by CalPERS Membership Analysis and Design Unit (MADU) to determine whether the same five attorneys were correctly reported under the safety classification. MADU contacted the City and the five attorneys and requested information to substantiate the attorneys' enrollment under the safety classification. The City and three of the attorneys failed to provide information pursuant to MADU's request. MADU reviewed information provided by the remaining two attorneys and determined that one did not qualify for the safety category. The information and the response from the other attorney did not provide any additional information to clarify the issue.

The City failed to provide the information necessary to substantiate its prior representation that the sampled individuals' primary duties were to engage in the active law enforcement of criminal laws and accordingly have failed to demonstrate eligibility for safety status under the PERL.

CITY OF VERNON

Criteria:

Government Code § 20085, § 20221, § 20222.5, § 20423.6

CITY OF VERNON

Finding 6: The City reported earnings that exceeded the compensation limit established by the federal Internal Revenue Code.

Recommendation:

The City should ensure that reported employee compensation for employees who became members on or after July 1, 1996, does not exceed the annual compensation limits established by the Internal Revenue Code Section 401(a)(17). When an employee reaches the compensation limit, the City should stop reporting member contributions as outlined in the CalPERS Procedures Manual.

OAS recommends CASD make all necessary compensation limit adjustments to the members' accounts.

Condition:

OAS reviewed the employee earnings reported to CalPERS for six sampled employees during calendar years 2003 through 2009. OAS found that the City reported earnings for the six sampled employees reviewed that exceeded the annual compensation limits established by the Internal Revenue Code Section 401(a)(17) for one or more of the calendar years reviewed. For example, in calendar year 2009, Internal Revenue Code Section 401(a)(17) set the compensation limit at \$245,000. However, for that year, the City reported earnings of \$374,999.92 – almost \$130,000 more than the limit set by the Internal Revenue Code – for one employee (Employee 3 in Appendix E).

Note: See Appendix E for a list of annual limits and amounts reported.

The following information was added subsequent to the issuance of the draft report to provide clarification:

The City over-reported compensation for the six sampled employees by not following the specific payroll reporting requirements outlined on page 94 of the CalPERS Procedures Manual (Manual). The Manual explains that once an employee reaches the compensation limit established by the Internal Revenue Code, Section 401(a)(17), the member's earnings should be reported using Contribution Code 01. Additionally, no member contributions should be reported for the periods that remain in the calendar year. This reporting method allows for the employee to continue earning service credit; however, their final

CITY OF VERNON

compensation will be capped at the limit in effect for each 12-consecutive month period used to calculate their retirement allowance.

The City continued to report the sampled employees' compensation using Contribution Code 11 and continued to report member contributions on employee earnings after the employees reached the compensation limits. As a result of the erroneous reporting, CalPERS was unaware employee earnings had reached the compensation limits and thus compensation was over-reported.

In addition, during the course of the review, OAS found the sampled employees discussed above did not qualify for membership prior to July 1, 1996. Furthermore, two additional individuals discussed in Finding 3 also exceeded the earnings limitation because the individuals did not qualify for membership prior to July 1, 1996. The sampled employees and individuals discussed in Finding 3 either did not provide services to the City prior to this time, worked as independent contractors, rendered professional legal services, did not work under an appointment or employment contract with a fixed term of full-time continuous employment in excess of six months, or did not work 1,000 hours or more in a fiscal year. As a result, the sampled employees and individuals discussed in Finding 3 were not eligible for membership prior to July 1, 1996, thus reportable compensation was limited pursuant to Internal Revenue Code.

Criteria:

Government Code § 20300, § 20305, § 21752.5
CalPERS Procedures Manual, page 94

CITY OF VERNON

Finding 7: The City failed to properly report compensation earnable. The City reported incorrect payrates to CalPERS and improperly reported compensation that was not reportable.

Recommendations:

The City should ensure that only compensation earnable, as defined under the PERL and corresponding regulations, is reported to CalPERS. The City should also ensure that the payrate reported to CalPERS is the authorized full-time payrate for the position, and that all employees' salaries are properly reviewed, authorized and approved by the City Council. Furthermore, the City should not report pay that fails to meet the definition of compensation earnable and/or constitutes overtime.

OAS recommends CASD make the necessary payrate adjustments to the members' accounts.

Condition:

Payrate Improperly Reported: City Council Members

- The City incorrectly reported the monthly payrate and earnings to CalPERS for City council members. Specifically, the City incorrectly calculated the monthly payrate and earnings by determining the bi-weekly payrate and then multiplying this rate by the number of bi-weekly pay periods in the month. For example, in March 2006, a council member's monthly base payrate was \$2,173 (Resolution No. 8780, effective July 1, 2005), so the City used the following calculation to determine the reported payrate:
 - $\$2,173 \text{ (base monthly payrate)} \times 12 \text{ (months)} / 26 \text{ (bi-weekly pay periods in a year)} = \$1,002.92 \text{ (bi-weekly rate)} \times 3 \text{ (pay periods in March)} = \$3,008.76 \text{ (March base payrate)}$.

As a result of this incorrect calculation method, the base payrate was under reported in months that contained two pay periods and over-reported in the months containing three pay periods.

- The City over-reported the compensation earnable of the City council members. Specifically, the City erroneously included additional compensation (attendance pay received by City council members for serving

CITY OF VERNON

on other boards, commissions, or committees) with the full-time compensation received for services rendered as council members. Compensation for attending meetings of other entities does not meet the definition of compensation earnable.

Elected City council members are “elective officers” as defined by the Government Code. Council members who have elected to be CalPERS members and who are compensated are deemed to be serving on a full-time rather than a part-time basis and receive one year of service credit for each year of tenure in office.

OAS reviewed compensation paid (per Resolution No. 8690, effective April 2, 2005) and reported in the 2/06-4, 3/06-3, and 3/06-4 service periods for a sampled City council member and determined that the City incorrectly reported an additional \$180, \$380 and \$380, respectively, as regular earnings for attending meetings for other boards, commissions, or committees. If a City council member concurrently renders service in two or more positions, one or more of which is full-time, service in any concurrent part-time position is deemed overtime and is not reportable as compensation per Government Code Section 20635. Consequently, service on any additional board, commission or committee by a City council member should be considered overtime and should not be reported to CalPERS.

Subsequently, Resolution No. 9284, effective April 2, 2007, stated, in part, “The City Council of the City of Vernon desires to... (ii) consolidate the longevity and various allowance benefits into one new salary scale; (3) and increase the base compensation for Council Members by approximately six percent...” The Resolution further clarified that the longevity program benefit and the attendance allowance had been consolidated into the City council members’ base compensation resulting in a monthly salary of \$5,500.

To determine the highest supportable payrate for council members, OAS relied upon the following: The council members’ salaries, effective July 1, 2006, for service on the City Council, excluding longevity pay and amounts received for additional service with other boards, commissions, or committees, was \$2,249 per Resolution No. 9089. As previously discussed, Resolution No. 9284, effective April 2, 2007, consolidated undeterminable amounts of longevity pay and attendance allowance into base salary. In addition, the Resolution provided a six percent increase to base salary. Therefore, the highest supportable payrate for council members appears to be \$2,383.94 (\$2,249 + 6 percent).

CITY OF VERNON

OAS determined that the council members' compensation earnable in the amount of \$5,500, reported to CalPERS subsequent to April 1, 2007, was reported in error. The salary increase included attendance allowance which is not a reportable item of compensation. In addition, the salary increase included longevity pay and, based on the documentation provided, OAS was unable to determine the amount of the increase attributable to longevity pay or whether the longevity pay portion of the increase was properly reported for all council members. Prior to converting longevity pay to salary, the longevity pay was paid and reported in varying amounts based upon years of service. Resolution No. 9284 failed to identify the amount of longevity pay that was to be added to base pay. As a result, OAS was unable to determine if the longevity pay was reportable for council members following the passage of Resolution No. 9284. Some council members may have been eligible to have longevity pay reported as special compensation, if they worked the requisite number of years to qualify for longevity pay prior to the passage of Resolution No. 9284, and the longevity pay met the definition under Section 20636 and regulation section 571.

Note: See Appendix F for a full list of attendance pay items paid to City council members.

Payrate Improperly Reported: Over-reported and Under-reported Payrate

- The City incorrectly reported the payrate for its fire chief during several sampled service periods in fiscal years 2006/2007 and 2007/2008. The City provided records to OAS, which indicated that the actual monthly base payrate for the fire chief ranged from \$10,692 to \$15,809.35. Furthermore, the City included special compensation in the payrate, which resulted in an inflated payrate that ranged from \$12,830.40 to \$16,599.82 per month. However, the City over-reported the monthly payrate to CalPERS numerous times, which erroneously ranged from \$17,961.99 to \$46,477.17. The City was not able to identify the cause of the over-reporting beyond the amounts of special compensation that was incorrectly included in the base payrate.
- The City under-reported the payrate for another employee during the 7/08-4 service period. Specifically, the City provided records to OAS which indicated that the monthly payrate for this employee was \$4,295. The employee received disability pay in the 7/08-4 service period, which the City correctly did not report. However, the City incorrectly reported the reduced payrate to CalPERS that matched the reduced bi-weekly earnings. The City should have reported the authorized full-time equivalent monthly payrate for the position.

CITY OF VERNON

Payrate Improperly Reported: Police Captain/Interim Police Chief

- The City incorrectly reported the payrate and earnings for the police captain/interim police chief during service period 7/10-3, covering June 20, 2010, to July 3, 2010. The employee was promoted from the position of police captain to interim police chief effective July 1, 2010, part way through the 7/10-3 service period. The City incorrectly reported the aggregate earnings for both positions and the corresponding payrate to the new position as a single payroll entry. The City should have reported the payrates and corresponding earnings for each position as separate line entries to CalPERS.

Overtime Improperly Reported as Payrate: Special Assistant to City Attorney and Acting City Clerk

- As a result of the review conducted in Finding 2 (Individual #1), OAS gathered sufficient information to determine that, effective July 1, 2005, the City combined the payrates and regular earnings for two separate full-time positions and incorrectly reported the combined amount as the monthly payrate and earnings for one employee. Specifically, one employee worked for the City full-time as Special Assistant to the City Attorney with a base payrate of \$12,445 per month. This employee was assigned a second full-time position as Acting City Clerk with a base payrate of \$7,875 per month. The combined payrate and earnings of the two positions was incorrectly combined and over-reported to CalPERS as one monthly payrate and corresponding earnings. OAS determined that the employee was assigned to two full-time positions simultaneously and received compensation for both. Therefore, one of the two full-time positions would be considered overtime per Section 20635 and not reportable to CalPERS, as overtime does not meet the definition of reportable compensation.

Criteria:

Government Code § 20049, § 20221, § 20222.5, § 20630(b), § 20635, § 20636(a), § 20636(b)(1), § 20636(d), § 20899

California Code of Regulations § 570.5, § 571(a)(1)

CITY OF VERNON

Finding 8: The City incorrectly reported payroll element information to CalPERS.

Recommendations:

- a) The City should report items of compensation using the correct pay codes. Special compensation should be reported separately from payrate and regular earnings using the pay code 09.
- b) The City should review its records and correct erroneous payroll reporting to reflect the correct payroll adjustments. The City should follow the procedures outlined in the CalPERS manual.
- c) The City should ensure that the correct work schedule code is reported for employees who work an average of 173 hours per month.

OAS recommends that CASD work with the City to assess the impact of these incorrect payroll reporting elements and make any necessary payroll adjustments to the members' accounts.

Condition:

- a) The City incorrectly reported payrate and earnings to CalPERS. Specifically, the City incorrectly included items of special compensation (longevity, POST and educational incentive payments) in the reported base payrates and regular earnings for 13 sampled employees during numerous periods tested subsequent to January 2002.
- b) OAS determined that the City incorrectly reported payroll adjustments to CalPERS during the 8/09-4, 8/09-5, 9/09-3, and 9/09-4 service periods for one sampled employee. Specifically, the City determined that the employee was overpaid \$18,667.38; however, the City did not identify what period(s) the overpayment occurred. To correct the overpayment, the City reduced the employee's earnings over four service periods beginning in late August 2009. The City incorrectly reported the reduced payrate and earnings during service periods 8/09-4, 8/09-5, 9/09-3, and 9/09-4. The City should have reported the employee's normal payrate and earnings during service periods 8/09-4, 8/09-5, 9/09-3, and 9/09-4. To correct the payroll reporting error due to the overpayment, the City should report the correction as a payroll adjustment as outlined in the CalPERS Procedures Manual. The City should enter the

CITY OF VERNON

original transaction, including the original service period, using contribution codes 03 or 13 and report member earnings, contribution amount and survivor contributions as negative amounts. This would remove the incorrect entry. Once this is done, the City should then enter the correct transaction, again using the original service period and contribution code 03 or 13.

- c) The City reported an incorrect work schedule code for one sampled employee in the 6/10-3 sampled service period. Specifically, the City incorrectly reported a work schedule code of 243 – indicating the employee worked an average of 243 hours per month – for a 40-hour-per-week employee who worked an average of 173 hours per month.

Criteria:

Government Code § 20221, § 20222.5

- a) CalPERS Procedures Manual, page 71
- b) CalPERS Procedures Manual, page 106 and page 107
- c) Government Code § 20630, § 20636(a), § 20636(b)(1), § 20636(c)(1), CalPERS Procedure Manual, page 99

CITY OF VERNON

Finding 9: The City failed to properly report special compensation. Two statutory items of special compensation were not contained in a written labor policy or agreement and one of the items was not reported to CalPERS.

- a) Value of uniforms and uniform maintenance were not reported and were not contained in a written labor policy or agreement.
- b) The City's FLSA policy was not in a written labor policy or agreement.

Recommendations:

- a) The City should ensure that the values of uniforms and uniform maintenance are reported for all employees required to wear a uniform and that the uniform allowance policy is contained in a written labor policy or agreement.
- b) The City should ensure that all items of special compensation, including FLSA, are contained in a written labor policy or agreement.

OAS recommends CASD ensure the City implements the recommendations noted above and make all compensation adjustments to active and retired members' accounts.

Condition:

- a) The City correctly paid and reported uniform allowance for sampled employees in the police and fire departments; however, the City did not report the monetary value of uniforms and uniform maintenance for miscellaneous employees who received uniforms. The City should have reported these values as uniform allowance to CalPERS for employees required to wear uniforms. In addition, uniform allowance, a statutory item of special compensation, was not contained in a written labor policy or agreement.
- b) The City correctly reported 10 hours of FLSA premium pay at the half-time rate of pay, based on a 24-day cycle. However, the City provided OAS with two documents which contained conflicting information. The first document pertaining to FLSA was a memo dated April 8, 1986, which stated that the FLSA cycle for fire department employees was 27 days. The second document was an undated calendar establishing work periods, which stated that the FLSA cycle for fire department employees was 24 days. As a result of the conflicting information, OAS determined that the City did not have

CITY OF VERNON

documentation supporting the current FLSA policy. FLSA, a statutory item of compensation, must be contained in a written labor policy or agreement.

Criteria:

Government Code § 20636(c)(2), § 20636(c)(6)

California Code of Regulations § 570.5, § 571(a)(5), § 571(b)

CITY OF VERNON

Finding 10: The City over-reported special compensation to CalPERS.

Recommendations:

The City should ensure that only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, is reported to CalPERS.

OAS recommends CASD deny the portion of longevity pay that was improperly over-reported and make the appropriate compensation adjustments to the member's account pursuant to Government Code Section 20160.

Condition:

The City reported 25 percent longevity pay for the City Administrator during the 7/02-3, 7/03-3, and 7/04-3 sampled service periods. Salary resolution numbers 8007, 8228, and 8473, effective during the 2002/2003, 2003/2004, and 2004/2005 fiscal years, respectively, stated that the City Administrator would be paid longevity pay at 25 percent of base pay upon reaching 25 years of consecutive uninterrupted service. However, the same resolutions stated that all other similarly situated city management positions were eligible for longevity pay of 20 percent at 25 years of service and longevity pay of 25 percent at 30 years of service. As a result, the City Administrator was the only employee within the group or class of employees hired prior to June 30, 1994, entitled to receive 25 percent longevity pay at 25 years of service.

The City Administrator had not attained 30 years of service during the period reviewed. The City should have limited the amount of longevity pay reported to the same percentage received by the group or class of management employees hired prior to June 30, 1994. One employee may not be considered a group or class of employment. Therefore, OAS determined that longevity pay was over-reported for the City Administrator.

Criteria:

Government Code § 20160, § 20636(c)(2), § 20636(e)(1)

CITY OF VERNON

Observation: An employee held two positions simultaneously as the Fire Chief and Interim City Administrator but all earnings were reported under the safety coverage group which would result in a higher retirement allowance.

OAS noted during the December 2010 on-site visit that one sampled employee was working in a miscellaneous position as City Administrator while simultaneously working for the City as Fire Chief. Specifically, while working as the Fire Chief, the employee also worked as the interim City Administrator from July 21, 2010 through September 15, 2010 and worked as the permanent City Administrator effective September 16, 2010. CalPERS' database indicated that the City did not report any additional compensation after the assignment to the additional position of City Administrator. However, the City continued to report this employee under the safety coverage group. The City must report each position to CalPERS separately and identify the percentage of time spent in each position, the base payrate and appropriate coverage group.

CITY OF VERNON

CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the City's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings, observation and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared.

Respectfully submitted,

Original Signed by Margaret Junker
MARGARET JUNKER, CPA, CIA, CIDA
Chief, Office of Audit Services

Date: April 2012
Staff: Michael Dutil, CIA, Senior Manager
Diana Thomas, CIDA, Manager
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Karen Harlan, CIA

CITY OF VERNON

APPENDIX A

BACKGROUND

CITY OF VERNON

BACKGROUND

California Public Employees' Retirement System

The California Public Employees' Retirement System (CalPERS) provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CalPERS Customer Account Services Division (CASD) manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides services for eligible members who apply for service or disability retirement. CalPERS' Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits. The Health Account Services section, as part of the CASD, provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employers' knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.

CITY OF VERNON

APPENDIX B

OBJECTIVES

CITY OF VERNON

OBJECTIVES

The objectives of this review were to determine:

- Whether the City complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the City's retirement and health benefits contracts with CalPERS were followed.

This review covers the period of period July 1, 2002, through June 30, 2010.

SUMMARY

Procedures, Sample Sizes, Sample Periods, and Findings

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the City's personnel and payroll procedures, reviewed documents, and performed the following procedures. Related sample sizes, sample periods and findings are listed.

- ✓ Reviewed:
 - Contracts and contract amendments between the City and CalPERS
 - Correspondence files maintained at CalPERS
 - City Council minutes and City Council resolutions
 - City written labor policies and agreements
 - City salary, wage and benefit agreements including applicable resolutions
 - City personnel records and employee hours worked records
 - City payroll information including Summary Reports and PERS listings
 - Other documents used to specify payrate, special compensation and benefits for all employees
 - Various other documents as necessary

See Finding 1: Required documentation not provided.

- ✓ Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City correctly reported employees' compensation.

Sample Size and Period: Reviewed 15 employees covering two sampled service periods - the service periods in December 2009 (12/09-3) and June 2010 (6/10-3). In addition, four former employees employed during the

CITY OF VERNON

review period were reviewed and the sampled service periods were selected based on separation dates.

See Finding 9: Special compensation was not reported and/or not contained in a written labor policy or agreement.

See Finding 10: Special compensation was over-reported.

See Finding 7: Non-reportable compensation was reported.

- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to City public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the City's governing body in accordance with requirements of applicable public meeting laws.

Sample Size and Period: Reviewed six sampled employees in the service period in June 2010 (6/10-3). Reviewed one sampled employee during service periods 2/06-4, 3/06-3, and 3/06-4. Reviewed 13 sampled employees ranging over eight fiscal years, from July 2002 through June 2010. In addition, the review period was expanded, as necessary, for employees working in multiple positions.

See Finding 2: Unable to determine reportable payrate and earnings.

See Finding 7: Payrates were incorrectly reported.

- ✓ Reviewed PERS listing reports to determine whether the following payroll reporting elements were reported correctly: contribution code, pay code, work schedule code, service period, member contributions, payrate, member earnings, member name, social security number, and coverage group.

Sample Size and Period: Reviewed 19 sampled employees in the service period in June 2010 (6/10-3). Coverage Group Sample Size: Reviewed 15 employees in the service period in June 2010 (6/10-3). Four former employees employed during the review period were tested and sampled service periods were selected based on separation dates.

See Finding 6: Earnings exceeded the compensation limits established by IRC.

See Finding 8: a) Special compensation was incorrectly included in the reported base payrates and earnings.

CITY OF VERNON

b) Payroll adjustment was incorrectly reported.

c) Incorrect work schedule code was reported.

See Finding 5: Incorrect coverage group and membership classification were reported.

- ✓ Reviewed the City's membership enrollment practices, including employee service credit and temporary/part-time employees, to determine whether individuals met CalPERS membership requirements.

Sample Size and Period: Reviewed three employees for service credit errors, reviewed one employee's membership eligibility status during the review period, and reviewed four temporary/part-time employees in fiscal year 2008/2009 and one in fiscal year 2009/2010.

See Finding 3: Ineligible employees received additional service credit.

See Finding 4: City failed to notify CalPERS of an elected officer's conviction, which resulted in the forfeiture of several years of service.

- ✓ Reviewed the City's enrollment practices for retired annuitants to determine if retirees were reinstated when 960 hours were worked in a fiscal year.

Sample Size and Period: No retired annuitants worked for the City during the review period.

No Finding

- ✓ Reviewed the employment status of independent contractors.

Sample Size and Period: Reviewed eight independent contractors in the 2008 and 2009 calendar years. Reviewed one independent contractor for the period of 1986 to 2002, another for the period of 1994 to 2002, and a third for the period of 2003 to 2005.

See Finding 3: City incorrectly reported individuals who performed services as independent contractors.

CITY OF VERNON

APPENDIX C

CRITERIA

CITY OF VERNON

CRITERIA

Government Code § 1243, states:

- (b) If an elected public officer is convicted during or after holding office of any felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes rising directly out of his or her official duties as an elected public officer, he or she shall forfeit all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction. The elected public officer shall forfeit only that portion of his or her rights and benefits that accrued on or after January 1, 2006, on account of his or her service in the elected public office held when the felony occurred. Any contributions made by the elected public officer to the public retirement system that arose directly from or accrued solely as a result of his or her forfeited service as an elected public officer shall be returned, without interest, to the public officer.
- (e) The public agency that employs an elected public officer described in subdivision (b) shall notify the public retirement system in which the officer is a member of the officer's conviction.

Government Code § 20049, states:

Labor policy or agreement means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

Government Code § 20085, states, in part:

- (a) It is unlawful for a person to do any of the following:
 - (1) Make, or cause to be made, any knowingly false material statement or material representation, to knowingly fail to disclose a material fact, or to otherwise provide false information with the intent to use it, or allow it to be used, to obtain, receive, continue, increase, deny, or reduce any benefit administered by this system....
- (b) For purposes of this section, "statement" includes, but is not limited to, any oral or written application for benefits, report of family relationship..., or continued eligibility for a benefit or the amount of a benefit administered by this system.
- (c) A person who violates any provision of this section is punishable by imprisonment in a county jail not to exceed one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that imprisonment and fine.
- (d) A person violating any provision of this section may be required by the court in a criminal action to make restitution to this system... for the amount of the benefit unlawfully obtained....

CITY OF VERNON

Government Code § 20125, states:

The board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

Government Code § 20160, states:

(a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part. Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive

CITY OF VERNON

manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

Government Code § 20221, states:

Each state agency, school employer, and the chief administrative officer of a contracting agency or any other person who its governing body may designate shall furnish all of the following:

(a) Immediate notice to the board, in the manner prescribed by the system, of the change in status of any member resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death.

(b) Any additional information concerning any member that the board may require in the administration of this system.

(c) The services of its officer and departments that the board may request in connection with claims by members against this system.

Government Code § 20222.5, states:

(a) The board may, during the course of an audit, require each state agency, school employer, including each school district represented by a school employer, and contracting agency, to provide information or make available for examination or copying at a specified time and place, or both, books, papers, any data, or records, including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine the correctness of retirement benefits, reportable compensation, enrollment in, and reinstatement to this system.

(b) The information obtained from an employer under this section shall remain confidential pursuant to Section 20230.

Government Code § 20300, states, in part:

The following persons are excluded from membership in this system:

(b) Independent contractors who are not employees.

(h) Except as otherwise provided in this part, persons rendering professional legal services to a city, other than the person holding the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney.

Government Code § 20305, subdivision (a), states, in part:

An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system unless:

(1) He or she is a member at the time he or she renders that service and is not otherwise excluded pursuant to this article or by a provision of a contract....

CITY OF VERNON

(3)(B) The person completes...1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which...1,000 hours of service were completed.

Government Code § 20343, states:

Notwithstanding Section 21259, a person ceases to be a member for any portion of his or her service as an elected public officer that is forfeited pursuant to Section 1243.

Government Code § 20423.6, states, in part:

(a) Local safety member also includes local prosecutors, local public defenders, and local public defender investigators.

(3) A city officer or employee who meets all of the following criteria:

(A) He or she is or, on or after January 1, 2002, was employed in the office of the city attorney.

(B) He or she is or, on or after January 1, 2002, was primarily engaged in the active enforcement of criminal laws within any court operating in a county.

(C) His or her job classification is or, on or after January 1, 2002, was city attorney, deputy city attorney, chief deputy city attorney, assistant city attorney, chief assistant city attorney, or any other similar classification or title.

(D) His or her effective date of retirement is on or after the date this section becomes applicable to the member's contracting agency as provided in subdivision (g).

(g) This section shall not apply to any officers and employees of a contracting agency or to the agency unless and until the contracting agency elects to be subject to this section by amendment to its contract with the board, made as provided in Section 20474, or by express provision in its contract with the board. If a contracting agency elects to be subject to this section, the contracting agency shall include all local prosecutors, local public defenders, and local public defender investigators described in this section.

Government Code § 20572, subsection (a), states, in part:

(a) If a contracting agency...fails for three months after demand by the board therefore to file any information required in the administration of this system with respect to that agency's employees, or if the board determines that the agency is no longer in existence, the board may terminate that contract by resolution adopted by a majority vote of its members effective 60 days after notice of its adoption has been mailed by registered mail to the governing body of the contracting agency.

CITY OF VERNON

Government Code § 20630, subdivision (b), states, in part:

Compensation shall be reported in accordance with Section 20636 and shall not exceed compensation earnable, as defined in Section 20636.

Government Code § 20635, states, in part:

When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service. For the purposes of this part, overtime is the aggregate service performed by an employee as a member for all employers and in all categories of employment in excess of the hours of work considered normal for employees on a full-time basis, and for which monetary compensation is paid.

If a member concurrently renders service in two or more positions, one or more of which is full time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full time, the position with the highest payrate or base pay shall be reported to this system. This provision shall apply only to service rendered on or after July 1, 1994.

Government Code § 20636, subdivision (a), defines compensation earnable by a member as the payrate and special compensation of the member.

Government Code § 20636, subdivision (b)(1), defines payrate, in part, as follows:

"Payrate" means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

Government Code § 20636, subdivision (c)(1), states:

Special compensation of a member includes a payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

Government Code § 20636, subdivision (c)(2), states:

Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

CITY OF VERNON

Government Code § 20636, subdivision (c)(6), states:

The board shall promulgate regulations that delineate more specifically and exclusively what constitutes special compensation as used in this section. A uniform allowance, the monetary value of employer-provided uniforms... shall be included as special compensation....

Government Code § 20636, subdivision (d), states:

Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

Government Code § 20636, subdivision (e), states:

(1) As used in this part, "group or class of employment" means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. One employee may not be considered a group or class.

(2) Increases in compensation earnable granted to an employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

Government Code § 20899, states:

In computing the amount of service to be credited to a member who is entitled to credit under this part for service as an elective officer, a year of service shall be credited for each year of tenure in the office. A person serving in the office shall be deemed to be serving on a full-time rather than a part-time basis for all purposes of this part.

Government Code § 20909, states, in part:

(a) A member who has at least five years of credited state service, may elect, by written notice filed with the board, to make contributions pursuant to this section and receive not less than one year, nor more than five years, in one-year increments, of additional retirement service credit in the retirement system.

Government Code § 21752.5, states:

The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of this system on or after July 1, 1996, shall not exceed the limitations in Section 401(a)(17) of Title 26

CITY OF VERNON

of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the applicable annual compensation limit.

California Code of Regulations § 570.5, states,

(a) For purposes of determining the amount of “compensation earnable” pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

- (1) Has been duly approved and adopted by the employer’s governing body in accordance with requirements of applicable public meetings laws;
- (2) Identifies the position title for every employee position;
- (3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- (4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
- (5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer’s internet website;
- (6) Indicates an effective date and date of any revisions;
- (7) Is retained by the employer and available for public inspection for not less than five years; and
- (8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

- (1) Documents approved by the employer’s governing body in accordance with requirements of public meetings laws and maintained by the employer;
- (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
- (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;

CITY OF VERNON

(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

California Code of Regulations § 571, subdivision (a)(1), defines longevity pay as: Additional compensation to employees who have been with an employer, or in a specified job classification, for a certain minimum period of time exceeding 5 years.

California Code of Regulations § 571, subdivision (a)(5), defines uniform allowance as:

Compensation paid or the monetary value for the purchase, rental and/or maintenance of required clothing, including clothing made from specially designed protective fabrics, which is a ready substitute for personal attire the employee would otherwise have to acquire and maintain. This excludes items that are solely for personal health and safety such as protective vests, pistols, bullets, and safety shoes.

California Code of Regulations § 571, subdivision (b), states:

The Board has determined that all items of special compensation listed in subsection (a) are:

- (1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:
 - (A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
 - (B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;
 - (C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
 - (D) Indicates an effective date and date of any revisions;
 - (E) Is retained by the employer and available for public inspection for not less than five years; and
 - (F) Does not reference another document in lieu of disclosing the item of special compensation;

California Code of Regulations § 572, states, in part:

An employee who is not in a "group or class of employment" within the meaning of the Public Employees' Retirement Law, may request an exception from the "average increase" procedure set forth in Section 20023(e). The local employer may request this exception on the employee's behalf.

CITY OF VERNON

CalPERS Procedures Manual, page 71, states, "All special compensation is required to be reported separately as special compensation, as it is earned."

CalPERS Procedures Manual, page 94, explains that if an employee's compensation reaches the annual compensation limit established by Internal Revenue Code Section 401(a)(17), the employer should continue reporting the Pay Code, Payrate, Member Earnings and a Contribution Code 01, but no member contributions for the periods that remain in the calendar year.

CalPERS Procedure Manual, page 99, defines the work schedule code as "A 3-digit numeric code" used in calculating both the employer rate and member's retirement benefit. It identifies what you, the employer, consider to be full-time employment for employees in the same work group, such as by department or duties, but not by individual employee. Approved work schedule codes range from 34 to 60 hours per week.... The work schedule code typically will not vary from report to report.

CalPERS Procedure Manual, page 106, states, in part, "When contribution code 03 or 13 is used to report corrections for more than one service period, you must use a separate entry for each service period so that CalPERS can properly credit service to a member's account."

CalPERS Procedure Manual, page 107, states, in part, "To correct pay rate and earnings...that was previously reported in error...enter the original transaction including the original service period, but use contribution codes 03 or 13 and report member earnings, contribution amount and survivor contribution as negative amounts. This removes the incorrect entry. Now, enter the correct transaction, again using the original service period and contribution code 03 or 13."

CITY OF VERNON

APPENDIX D

PAYRATE/EARNINGS SUMMARY

City of Vernon
 Employment Summary 2002-2008
 Individual 1

Effective Date	Employment Agreements / Employer Documents				Authorized Salary Schedules		Reported to CalPERS (monthly)			Total Reported Annual Hours and Earnings		Annual Compensation (5)		
	Position(s)	Payrate	Hours	Rate for Additional Hours	Payrate	Payrate	Payrate (1)	Earnings (1)(4)	Hours	Hours (monthly hours X 12 months)	Earnings(1)	Employee Compensation	Other Non-Employee Compensation	Total Annual Compensation
7/7/2003	Systems Coordinator I	5,668.00	N/A	N/A	\$5,668.00	\$5,642.00	\$5,642.00	\$5,642.00		\$65,523.87	\$70,867.21	\$0.00	\$70,867.21	
4/1/2004	Special Assistant to the City Attorney	\$12,083.00	N/A	N/A	\$12,083.00	\$12,687.00	\$12,687.00	\$12,687.00		\$133,278.70	\$131,556.57	\$0.00	\$131,556.57	
7/1/2005	Special Assistant to the City Attorney, Acting City Clerk	\$12,445.00 (2) \$7,875.00	N/A	N/A	\$12,445.00 \$7,875.00					\$204,509.66	\$200,693.19	\$0.00	\$200,693.19	
4/5/06	Special Assistant to the City Attorney, Acting City Clerk, and Capital Projects Administrator of the Light and Power Department, and Acting Executive Director of the Vernon Preservation Society	\$12,445.00 (2) \$7,875.00 (2) (3)	N/A	N/A	Assistant City Attorney and Acting City Clerk	\$21,336.00 (2)	\$21,336.00	\$21,336.00			\$260,347.37	\$271,659.73	\$0.00	\$271,659.73
7/1/2006	Special Assistant to the City Attorney, Acting City Clerk, Acting Executive Director of the Vernon Preservation Society	\$12,881.00 (2) \$8,151.00	N/A	N/A	\$12,881.00 \$8,151.00				173.33					
1/17/07	Special Assistant to the City Attorney, Assistant City Attorney II, Acting Executive Director of the Vernon Preservation Society	\$21,032.00	100/month	\$365.00	\$21,032.00	\$22,084.00 (2)	\$22,084.01	\$22,084.01						
3/5/07	Special Assistant to the City Attorney, Assistant City Attorney II, Acting Executive Director of the Vernon Preservation Society	\$21,032.00	100/month	\$225.00	\$21,032.00	Assistant City Attorney II					\$265,008.12	\$285,925.29	\$216,991.35	\$502,916.64
10/2/2007	Special Assistant to the City Attorney, Assistant City Attorney II, Acting Executive Director of the Vernon Preservation Society	\$21,032.00	Minimum of 160/ month	\$225/ after 185 hours	\$21,032.00									
2008	Employee separated from CalPERS membership effective 4/7/08										\$77,718.73	\$289,653.64	\$120,686.37	\$410,340.01

1 Reported payrate and earnings were obtained from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.).
 2 Employee was paid for two separate full-time positions but both were reported to CalPERS as one full-time monthly payrate.
 3 Employment documents did not identify any changes made to salary; added positions of Capital Projects Administrator and Acting Executive Director of the Vernon Preservation Society.
 4 Bi-weekly earnings reported to CalPERS converted to monthly earnings for comparison purposes.
 Example: Bi-weekly earnings of \$2,604.00 equals \$5,642.00 monthly (\$2,604.00 multiplied by 26 service periods, divided by 12 months equals \$5,642.00).
 5 Total annual compensation is not indicative of amounts reported to CalPERS.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings.

City of Vernon
Employment Summary 1986 -2009
Individual 2

Effective Date	Employment Agreements / Employer Documents						Authorized Salary Schedules		Reported to CalPERS (monthly)			Total Reported Annual Hours and Earnings		Annual Compensation (6)		
	Position(s)	Payrate	Hours	Rate for Additional Hours	Payrate	Hours	Payrate	Rate for Additional Hours	Payrate (1)	Earnings (1)/(5)	Hours	Hours (monthly hours X 12 months)	Earnings(2)	Employee Compensation	Other Non-Employee Compensation	Total Annual Compensation
5/20/86	Consultant	\$125/hour		N/A												
7/1/00	Legal, Financial, Administrative Consultant	\$20,000.00	1,680/year	\$100.00												
3/1/02	Legal, Financial, Administrative Consultant	\$27,500.00	2,400/year	\$100.00												
7/28/02	Finance Administrator and Legal, Financial, Administrative Consultant	\$27,500.00	2,080/year	\$100.00												
2003																
2/5/04	City Attorney and Legal, Financial, Administrative Consultant	\$27,500.00	2,080/year	\$100.00												
7/1/05	City Attorney	\$27,500.00	100/mo.	\$365.00												
12/13/06	Assistant City Attorney I and Acting City Administrator	\$27,500.00 (2)	100/mo.	\$365.00												
5/7/07	City Administrator and Assistant City Attorney I	\$27,500.00 (3)	100/mo.	\$365.00												
2008																
3/16/09	City Administrator, Assistant City Attorney I and Special Counsel	\$27,500.00 (4)	100/mo.	\$365.00												
5/15/09	Assistant City Attorney I and Special Counsel	\$275/hour	1,200/year	\$365.00												
6/1/09	Assistant City Attorney I and Special Counsel	\$365/hour	75.33/mo.	\$365.00												

- 1 Reported payrate and earnings were obtained from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.).
- 2 Employment documents did not identify any changes made to salary or timebase; assigned positions of Acting City Administrator and Assistant City Attorney I.
- 3 Employment documents did not identify any changes made to salary or timebase; assigned permanent position of City Administrator.
- 4 Employment documents did not identify any changes made to salary or timebase; added position of Special Council.
- 5 Bi-weekly earnings reported to CalPERS converted to monthly earnings for comparison purposes.
Example: Bi-weekly earnings of \$12,692.31 equals \$27,500.00 monthly (\$12,692.31 multiplied by 26 service periods, divided by 12 months equals \$27,500.00).
- 6 Total annual compensation is not indicative of amounts reported to CalPERS.
- 7 The City incorrectly reported payroll information for May 1986 through July 2002 as "additional arrears service credit." (Refer to Finding 3)
- 8 Reported payrate and earnings included a payroll reporting error resulting in over-reported payroll. (Refer to Finding 8)
- 9 Paid to law offices of this individual.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings.

City of Vernon
 Employment Summary 2005-2010
 Individual 3

Employment Agreements / Employer Documents				Authorized Salary Schedules			Reported to CalPERS (monthly)			Total Reported Annual Hours and Earnings		Annual Compensation (6)		
Effective Date	Position(s)	Payrate	Hours	Rate for Additional Hours	Payrate	Payrate (1)	Earnings (1)(5)	Hours	Hours (monthly hours X 12 months)	Earnings(1)	Employee Compensation	Other Non-Employee Compensation	Total Annual Compensation	
2006										\$26,538.44	\$13,304.22	\$345,266.17	\$358,570.39	
5/7/07	Director of Light and Power and Director of Gas Municipal Utility Department	\$28,750.00	160/month	\$225.00	\$28,750.00 Director of Light and Power	\$28,749.99	\$28,749.99			\$344,999.74	\$345,209.74	\$236,618.29	\$581,828.03	
2008										\$344,999.72	\$344,999.72	\$362,095.41	\$707,095.13	
2/13/09	Director of Utilities and Government Infrastructure, Director of Light and Power, and Director of Gas Municipal Utility Department	\$28,750.00 (2)	160/month	\$225.00	\$28,750.00 Director of Light and Power	\$28,749.99	\$28,749.99							
3/16/09	Director of Light and Power, Director of Gas Municipal Utility Department, and Director of Utilities and Government Infrastructure	\$32,000.00	160/month	\$300.00	\$32,000.00 Director of Utilities and Government Infrastructure				173.33					
5/15/09	Director of Light and Power, Director of Gas Municipal Utility Department, Director of Utilities and Government Infrastructure, and City Administrator	\$32,000.00 (3)	160/month	\$300.00	\$32,000.00 City Administrator					\$374,999.93	\$386,269.15	\$396,378.09	\$784,647.24	
8/17/09	Director of Light and Power, Director of Gas Municipal Utility Department, Director of Utilities and Government Infrastructure, City Administrator, and Purchasing Agent	\$32,000.00 (4)	160/month	\$300.00										
8/2/10	Director of Light, Power and Gas Capitol Projects	\$32,000.00	per month	N/A	\$32,000.00 Director of Light and Power					\$317,538.45				

1 Reported payrate and earnings were obtained from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.).
 2 Employment documents did not identify any changes made to salary; added position of Director of Utilities and Government Infrastructure.
 3 Employment documents did not identify any changes made to salary; added position of City Administrator.
 4 Employment documents did not identify any changes made to salary; added position of Purchasing Agent.
 5 Bi-weekly earnings reported to CalPERS converted to monthly for comparison purposes.
 Example: Bi-weekly earnings of \$13,269.23 equals \$28,749.99 monthly (\$13,269.23 multiplied by 26 service periods, divided by 12 months equals \$28,749.99).
 6 Total annual compensation is not indicative of amounts reported to CalPERS.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings.

City of Vernon
 Employment Summary 2003-2009
 Individual 4

Effective Date	Employment Agreements / Employer Documents				Authorized Salary Schedules		Reported to CalPERS (monthly)			Total Reported Annual Hours and Earnings		Annual Compensation (5)		
	Position(s)	Payrate	Hours	Rate for Additional Hours	Payrate	Payrate(1)	Earnings (1)(4)	Hours	Hours (monthly hours X 12 months)	Earnings(1)	Employee Compensation	Other Non-Employee Compensation	Total Annual Compensation	
11/17/04	Consultant	\$420.00 per hour	n/a	n/a	n/a	(6)	(6)	(6)			(7)	(7)	(7)	
8/1/05	Chief Assistant City Attorney	\$27,500.00	100/month	\$365.00	\$27,500.00 Chief Assistant Attorney	\$27,500.00	\$27,500.00			\$139,615.41	\$127,048.03	(8)	\$127,048.03	
12/13/06	Acting City Attorney	\$27,500.00	100/month	\$365.00						\$267,017.72	\$335,471.24	(8)	\$335,471.24	
2/27/07	Acting City Attorney and Legal Counsel of the Redevelopment Agency	\$27,500.00 (2)	100/month	\$365.00										
3/5/07	City Attorney	\$27,500.00	100/month	\$365.00										
3/19/07	City Attorney and Legal Counsel of the Vernon Natural Gas Financing Authority	\$27,500.00 (3)	100/month	\$365.00	\$28,463.00 City Attorney	\$28,463.00 (9)	\$28,463.00	173.33	2.080	\$341,556.02	\$341,976.01	\$498,004.47	\$839,980.48	
11/19/07	City Attorney, Director of Industrial Development, and Legal Counsel of the Redevelopment Agency	\$28,463.00	100/month	\$385.00										
2008											\$341,976.01	\$698,224.32	\$1,040,200.33	
2009											\$355,112.78	\$445,412.15	\$800,524.93	

1 Reported payrate and earnings were obtained from CalPERS database and were not verified for payroll reporting errors. (e.g. special compensation incorrectly included, etc.).
 2 Employment documents did not identify any changes made to salary; added position of Legal Counsel - Redevelopment Agency.
 3 Employment documents did not identify any changes made to salary; added position of Legal Counsel - Redevelopment Agency.
 4 BI-weekly earnings reported to CalPERS converted to monthly for comparison purposes.
 Example: BI-weekly earnings of \$12,692.31 equals \$27,500.00 monthly (\$12,692.31 multiplied by 26 service periods, divided by 12 months equals \$27,500.00).
 5 Total annual compensation is not indicative of amounts reported to CalPERS.
 6 The City incorrectly reported payroll information for October 2003 through August 2005 as "additional arrears service credit". (Refer to Finding 3)
 7 Compensated through this individual's law offices; therefore, W-2's and 1099-MISC forms were not available. (Refer to Finding 3)
 8 Compensated through this individual's law offices; therefore, 1099-MISC forms were not available.
 9 The amounts reported to CalPERS did not match the employment contracts; however, the authorized salary schedules were in accordance with the amounts being reported to CalPERS.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings.

City of Vernon
 Employment Summary 2005-2010
 Individual 5

Effective Date	Employment Agreements / Employer Documents				Authorized Salary Schedules	Reported to CalPERS (monthly)			Total Reported Annual Hours and Earnings		Annual Compensation (5)		
	Position(s)	Payrate	Hours	Rate for Additional Hours		Payrate (1)	Earnings (1)(4)	Hours	Hours (monthly hours x 12 months)	Earnings(1)	Employee Compensation	Other Non-Employee Compensation	Total Annual Compensation
1/22/08	Finance Director	\$28,333.00	120/month	\$375.00						\$300,765.71	\$286,573.91	\$217,257.09	\$503,831.00
8/31/09	Finance Director and City Treasurer	\$28,333.00 (2)	120/month	\$375.00						\$339,996.02	\$351,872.78	\$218,242.07	\$570,114.85
3/1/10	Finance Director, City Treasurer and Executive Director of the Redevelopment Agency	\$28,333.00 (3)	120/month	\$375.00	\$28,333.00 Finance Director	\$28,333.00	173.33	2,080.00		\$339,996.01	\$428,754.02	n/a	n/a
8/2/10	Finance Director, City Treasurer, and Executive Director of the Redevelopment Agency	\$28,333.00	Full-time	\$0.00									

- 1 Reported payrate and earnings were obtained from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.).
- 2 Employment documents did not identify any changes made to salary; added position of City Treasurer.
- 3 Employment documents did not identify any changes made to salary; added position of Executive Director of the Redevelopment Agency.
- 4 Bi-weekly earnings reported to CalPERS converted to monthly for comparison purposes.
 Example: Bi-weekly earnings of \$13,076.77 equals \$28,333.00 monthly (\$13,076.77 multiplied by 26 service periods, divided by 12 months equals \$28,333.00).
- 5 Total annual compensation is not indicative of amounts reported to CalPERS.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings.

City of Vernon
 Employment Summary 2007-2009
 Individual 6

Employment Agreements / Employer Documents				Authorized Salary Schedules		Reported to CalPERS (monthly)		Total Reported Annual Hours and Earnings		Annual Compensation (3)			
Effective Date	Position(s)	Payrate	Hours	Rate for Additional Hours	Payrate	Payrate (1)	Earnings (1)(2)	Hours	Hours (monthly hours X 12 months)	Earnings (1)	Employee Compensation	Other Non-Employee Compensation	Total Annual Compensation
12/19/07	Assistant Director of Industrial Development, Executive Director of the Redevlopment Agency	\$20,000.00	160/month	\$175.00	\$20,000.00 Assistant Director of Industrial Development Department	\$20,000.00	\$20,000.00	173.33	2,080	\$240,000.01	n/a	n/a	n/a
2008											\$234,615.78	\$58,286.50	\$292,902.28
2009											\$249,650.78	\$47,393.74	\$297,044.52

1 Reported payrate and earnings were obtained from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.).
 2 Bi-weekly earnings reported to CalPERS converted to monthly for comparison purposes.
 Example: Bi-weekly earnings of \$9,230.77 equals \$20,000.00 monthly (\$9,230.77 multiplied by 26 service periods, divided by 12 months equals \$20,000.00).
 3 Total annual compensation is not indicative of amounts reported to CalPERS.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings.

City of Vernon
Employment Summary 1977-2006
Individual 7

Effective Date	Employer Documents (5)	Position(s)	Payrate	Authorized Salary Schedules		Reported to CalPERS (monthly)		
				Payrate	Hours	Payrate (1)	Earnings (1)(3)	Hours
7/1/77		City Clerk/Director of Finance	(2)	(2)	(4)	(4)		(4)
7/24/78		City Clerk/Director of Finance and City Treasurer	(2)	(2)	(4)	(4)		(4)
10/19/78		City Clerk/Director of Finance, City Treasurer, and City Administrator/City Clerk	(2)	(2)	(4)	(4)		(4)
5/5/81		City Clerk/Director of Finance, City Treasurer, City Administrator/City Clerk, and Chief Executive Officer of the Electrical Department	(2)	(2)	(4)	(4)		(4)
12/13/88		City Clerk/ Director of Finance, City Treasurer, City Administrator/City Clerk, Chief Executive Officer of the Electrical Department, and Executive Director and Secretary of the Redevelopment Agency	(2)	(2)	\$15,634.00	\$15,634.00		
12/7/93		City Clerk/ Director of Finance; City Administrator/City Clerk; Chief Executive Officer of the Electrical Department; Executive Director and Secretary of the Redevelopment Agency; and Executive Director, Secretary, and Treasurer of the Industrial Development Authority	(2)	(2)	\$26,493.00	\$26,493.00		173.33
12/17/03		City Clerk/ Director of Finance; City Treasurer, City Administrator/City Clerk; Chief Executive Officer of the Electrical Department; Executive Director and Secretary of the Redevelopment Agency; Executive Director, Secretary, and Treasurer of the Industrial Development Authority; and Executive Director of the Vernon Historic Preservation Society	(2)	(2)	\$33,276.00 City Administrator/ City Clerk	\$42,843.00		
5/3/06 (6)		City Clerk/ Director of Finance, City Treasurer, City Administrator/City Clerk, Chief Executive Officer of the Electrical Department, Executive Director and Secretary of the Redevelopment Agency, Executive Director of the Industrial Development Authority, and Executive Director of the Vernon Natural Gas Financing Authority (6)			retired 7/1/05 (6)			

1 Reported payrate and earnings were taken from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.).

2 Documentation not provided by the City.

3 Bi-weekly earnings reported to CalPERS converted to monthly earnings for comparison purposes.

Example: Bi-weekly earnings of \$7,215.69 equals \$15,634.00 monthly (\$7,215.69 multiplied by 26 service periods, divided by 12 months equals \$15,634.00)

4 Reporting history available on microfiche at CalPERS

5 Documentation provided by the City did not specify if, or when, this employee no longer held each position, with the exception of the position of Executive Director of the Vernon Historic Preservation Society ending subsequent to retirement on April 5, 2006.

6 The employee retired effective July 1, 2005. The City's documentation specified the employee held the position of Executive Director of the Vernon Historic Preservation Society until April 5, 2006 and was appointed to the position of the Executive Director of the Vernon Natural Gas Financing Authority subsequent to retirement effective May 3, 2006.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings. (Note: Individual was not paid non-employee compensation)

City of Vernon
 Employment Summary 2005-2010
 Individual 8

Effective Date	Employer Documents		Authorized Salary Schedules		Reported to CalPERS (monthly)		
	Position(s)	Payrate	Payrate	Payrate	Payrate	Earnings (4)	Hours
6/23/05	Interim Fire Chief	\$9,792.00	\$9,792.00	\$9,792.00	\$11,750.00 (1)	\$11,750.00 (1)	
7/1/06	Fire Chief	\$10,692.00	\$10,692.00	\$10,692.00	\$17,961.99 (2)	\$12,830.00 (2)	173.33
7/21/10	Fire Chief, Interim City Administrator	\$16,599.00 (3)	\$16,599.00 (3)	\$16,599.00	\$17,429.00 (3)	\$17,429.00 (3)	
9/16/10	Fire Chief, City Administrator	\$16,599.00 (5)(3)	\$16,599.00 (5)(3)	\$16,599.00	\$17,429.00 (3)	\$17,429.00 (3)	

- 1 Reported payrate and earnings were obtained from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.).
- 2 Reported payrate and earnings included special compensation and/or over-reported payrate errors (See Finding 7 and 8).
- 3 Reported payrate and earnings included special compensation. (See Finding 8)
- 4 BI-weekly earnings reported to CalPERS converted to monthly earnings for comparison purposes.
 Example: BI-weekly earnings of \$8,044.15 equals \$17,429.00 monthly (\$8,044.15 multiplied by 26 service periods, divided by 12 months equals \$17,429.00).
- 5 Employment documents did not identify any changes made to salary or timebase; added position of City Administrator.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings. (Note: Individual was not paid non-employee compensation)

City of Vernon
 Employment Summary 2004-2010
 Individual 9

Effective Date	Employer Documents		Reported to CalPERS (monthly)		
	Position(s)	Payrate	Payrate (1)	Earnings (1)/(2)	Hours
4/21/04	Chief Deputy City Attorney	\$12,499.99	\$12,500.00	\$12,500.00	
5/7/07	Chief Deputy City Attorney and Risk Manager	\$15,111.00	\$15,110.99	\$15,110.99	173.33
3/1/10	Chief Deputy City Attorney, Risk Manager, City Clerk, Executive Director of the Vernon Natural Gas Financing Authority, and Secretary of the Redevelopment Agency	\$19,474.99 (3)	\$19,474.99 (3)	\$19,474.99 (3)	

- 1 Reported payrate and earnings were taken from CalPERS database and were not verified for payroll reporting errors (e.g. special compensation incorrectly included, etc.). Secretary of the Redevelopment Agency.
- 2 Bi-weekly earnings reported to CalPERS converted to monthly earnings for comparison purposes.
 Example: Bi-weekly earnings of \$8,988.46 equals \$19,474.99 monthly (\$8,988.46 multiplied by 26 service periods, divided by 12 months equals \$19,474.99)
- 3 Reported payrate and earnings included 25% longevity pay converted into base payrate.

Summary: Employment summary was constructed from documents provided by the City of Vernon and CalPERS' database to reflect inconsistencies in employment agreements, pay schedules, timebases, reported payrates, earnings and hours worked. As a result, OAS was unable to determine the actual reportable payrates and earnings.

CITY OF VERNON

APPENDIX E

INCOME LIMITATION SUMMARY

CITY OF VERNON

EMPLOYEE COMPENSATION EXCEEDING THE COMPENSATION LIMITS ESTABLISHED BY INTERNAL REVENUE CODE SECTION 401(a)(17)

Employee 1

Calendar Year	Internal Revenue Code Compensation Limit	Earnings Reported To CalPERS
2008	\$230,000.00	\$300,765.71
2009	\$245,000.00	\$339,996.02

Employee 2

Calendar Year	Internal Revenue Code Compensation Limit	Earnings Reported To CalPERS
2008	\$230,000.00	\$233,699.96

Employee 3

Calendar Year	Internal Revenue Code Compensation Limit	Earnings Reported To CalPERS
2007	\$225,000.00	\$344,999.72
2008	\$230,000.00	\$344,999.72
2009	\$245,000.00	\$374,999.92

Employee 4

Calendar Year	Internal Revenue Code Compensation Limit	Earnings Reported To CalPERS
2009	\$245,000.00	\$299,999.96

Employee 5

Calendar Year	Internal Revenue Code Compensation Limit	Earnings Reported To CalPERS
2006	\$220,000.00	\$260,347.37
2007	\$225,000.00	\$265,008.12

CITY OF VERNON

Employee 6

Calendar Year	Internal Revenue Code Compensation Limit	Earnings Reported To CalPERS
2004	\$205,000.00	\$330,000.06
2005	\$210,000.00	\$330,000.06
2006	\$220,000.00	\$335,555.80
2007	\$225,000.00	\$341,556.02
2008	\$230,000.00	\$341,556.02
2009	\$245,000.00	\$341,556.02

CITY OF VERNON

APPENDIX F

ATTENDANCE PAY LIST

CITY OF VERNON

CITY COUNCIL MEMBERS' ATTENDANCE PAY ITEMS

Attendance Pay Item	Amount Per Item
Personnel Committee	\$50.00
Finance Committee	\$100.00
Disbursement Review Subcommittee	\$100.00
Police Fire Commission	\$50.00
Redevelopment Agency (not to exceed 4 meetings per month)	\$30.00
Industrial Development Authority	\$50.00
East Los Angeles College Community Task Force Cities	\$100.00
Southeast Water Coalition Alternate	\$100.00
Board Meetings of Water Replenishment District of Southern California	\$100.00
Board Meetings of Central Basin Municipal Water District	\$100.00
Committee Meetings of Central Basin Municipal Water District	\$100.00
Southeast Cities Traffic Improvement Authority Slauson Avenue 710 Freeway Interchange Project Director and Alternate Committee	\$100.00
Committee Meetings of the Alameda Corridor Transportation Authority	\$100.00
Board Meetings of the Vernon Historical Preservation Society	\$50.00
Committee Meetings of the Public Benefits Resource Committee	\$100.00
For meetings exceeding two 2 hours but not exceeding one half day 4 four hours	\$250.00
For meetings which exceed one half day	\$500.00

CITY OF VERNON

APPENDIX G

CITY'S WRITTEN RESPONSE

January 31, 2012

VIA OVERNITE EXPRESS AND EMAIL
MARGARET_JUNKER@CALPERS.CA.GOV

Margaret Junker, Chief
Office of Audit Services
California Public Employees' Retirement System
400 "Q" Street, Room 2430
Sacramento, California 95811

Re: *Response By City of Vernon to December 2011 Draft Audit Report*
*Client-Matter: RI424/001*¹

Dear Ms. Junker:

The City of Vernon ("City") is in receipt of The Office of Audit Service's (OAS) December 2011 Draft Audit Report ("Draft Report") relating to the City's contract with the California Public Employees' Retirement System ("CalPERS"). The City appreciates OAS's efforts in conducting its compliance review, as well as the opportunity to comment on the Draft Report. Unfortunately, the Draft Report contains a number of factual errors, which we have detailed for you in this response.² We hope that this letter will help correct some of these errors. Nonetheless, we agree that there are a number of issues that need correction, as detailed below, and the City looks forward to working together with OAS to remedy any deficiencies in the City's compliance with its CalPERS contract.³

It is important to note that unlike many other cities, the City's CalPERS pension plan funds are held in a separate account at CalPERS and are not co-mingled with another jurisdiction. Further, the City is not facing a serious unfunded employee pension problem. According to actuarial studies performed by CalPERS, the Miscellaneous Employee Plan is

¹ **The appendices contain confidential information and should not be reproduced. They are submitted for CalPERS' use only and should not be made a part of any final audit report or other public document.**

² The City believes that it is premature to file a formal appeal at this time as no final decision has been made. However, in the event that CalPERS believes that its Draft Report triggers any timeline to file a formal appeal, CalPERS may consider this response the City's formal appeal of its decision and request for an administrative appeal pursuant to Title 2, California Code of Regulations, Section 555.1.

³ The City was given an extension by _____ Associate Program Evaluator, of CalPERS until January 31, 2012, to provide this response.

86.2% funded and the City's Public Safety Employee Plan is 83% funded (as of the June 30, 2009 valuation date).

CalPERS Owes Its Primary Fiduciary Duty To Its Members And Must Construe The Evidence In Their Favor Whenever Possible

Prior to addressing the specific findings and recommendations by CalPERS, it is important to establish the framework under which the law requires that the evidence be reviewed. Proposition 162 was approved by the voters in 1992. Among other things, it amended the California Constitution, Article 16, Section 17(b) by adding the highlighted portion to this section, as follows:

The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto and defraying reasonable expenses of administering the system. **A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.** (Emphasis added).

The amendment made it clear that of all the duties of a public pension retirement board, those owed to its members are paramount. In *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, the Court of Appeal addressed whether the proposition would be applied even if doing so would result in unexpected liabilities to public employers. The court determined that the Constitution's priority of fiduciary duties would be applied even in those situations where it would result in extra expenses to employers. The court relied on statements in the ballot pamphlet sent to voters regarding Proposition 162. The court stated:

The Ballot Pamphlet accompanying Proposition 162 warned "The requirement that pension system boards give highest priority to providing benefits to members and their beneficiaries could result in higher costs to employers. (See Ballot Pamp., Gen. Elect. (Nov. 3, 1992). Analysis of Leg. Analyst, p. 37). This weakens the City's claim that retroactive reclassification unfairly harms local agencies by causing unexpected liabilities. **Instead it reflects a policy in favor of paying employees what they earn. That is not inherently unfair.**" (*Ibid.* at p. 54 [emphasis added].)

FINDINGS, RECOMMENDATIONS, AND THE CITY'S RESPONSE

A. General Comments and Response to OAS's Scope of Review

As indicated earlier, the City appreciates being given an opportunity to comment on the Draft Report, and looks forward to working together with OAS to remedy any deficiencies in the City's compliance with its CalPERS contract. That said, the Draft Report's introductory

Margaret Junker, Chief

January 31, 2012

Page 3

comments appear somewhat internally inconsistent and contradict OAS's own findings and analysis as well as the factual record.

The Draft Report states that OAS was "hampered by the unavailability of necessary information . . ." (Draft Report 2.) That statement is difficult to reconcile with the fact that the Draft Report is over 80 pages in length and includes roughly 40 pages of findings, in addition to appendices with supporting calculations. More importantly, the City provided over 22,000 pages of documents to OAS, including questionnaires and declarations from employees, focused responses to specific OAS inquiries, summary charts and original documentation, among many other materials.

We recognize that it might have been difficult for OAS to digest and interpret all of the 22,000 pages it requested from the City. (*See* Draft Report 4 [noting the "thousands of pages of documents" the City provided, but stating that "many . . . were in a form that would require a substantial amount of time for OAS to find relevant requested information"].) The volume of material at issue, however, stemmed solely from the eight-year timeframe OAS selected for its review. Moreover, the City made every effort to facilitate OAS's review. In addition to the documents provided, the City also provided OAS with indices and cross-references. The City also provided OAS with an office at the City, and City staff cooperated with CalPERS auditors throughout this five-month process. The City was, at all times, willing and available to provide OAS with additional assistance; yet, OAS never sought further assistance from the City. In short, while it is unfortunate that OAS appears to have had difficulty interpreting the vast universe of documents and information provided as requested by OAS, it is unfair and inaccurate to suggest that these difficulties stemmed from any action, or inaction, on the part of the City.

In order to facilitate your review of our concerns, we have set forth the proposed findings and corresponding recommendations, followed by the City's response, including the factual amendments necessary to make particular findings accurate.

B. OAS's Finding 1 is inaccurate and fails to consider the extensive efforts undertaken by the City to respond to the requests made by CalPERS' Associate Program Evaluator.

Finding 1:

The City failed to provide information necessary to determine the accuracy of retirement benefits, reportable compensation, and membership enrollment in the retirement system.

Recommendation 1:

The City must provide the specific information upon request by CalPERS in order to determine the accuracy of retirement benefits, reportable compensation, and membership enrollment in the retirement system per Government Code Sections 20221 and 20222.5. Failure to provide requested information can result in termination of the City's contract pursuant to Government Code Section 20572.

Margaret Junker, Chief

January 31, 2012

Page 4

The City must work with CalPERS, CASD and BNSD to provide all supporting documentation that can be located or prepared in the future in order to determine the accuracy of retirement benefits, reportable compensation, and membership enrollment.

City's Response to Finding and Recommendation 1:

OAS alleges that the City failed to provide information and documents that were necessary to complete the CalPERS compliance review. (Draft Report 3-4.) The City respectfully disagrees. This conclusion fails to acknowledge the extensive efforts undertaken by the City to respond to the many requests made by CalPERS' Associate Program Evaluator, that include but are not limited to:

- On February 17, 2011, the City submitted to OAS questionnaires containing thirty-six specific inquiries for seven employees. To substantiate the answers included in these questionnaires, the City produced 776 documents. The questionnaires contained citations to the relevant files, and the documents were electronically organized into subfolders corresponding to the employee and the specific inquiry addressed. (See February 17, 2011 Letter ("Appendix A, Feb. 17, 2011 Letter").)⁴
- On February 17, 2011, the City also submitted answers to twenty-one questions posed by (See Appendix A, Feb. 17, 2011 Letter.)
- On February 24, 2011, the City submitted answers to four additional questions posed by . In response to questions, the City produced an additional ten pages of documents. (See February 24, 2011 Letter and Attachments ("Appendix B, Feb. 24, 2011 Letter").)
- On March 14, 2011, the City submitted answers to ten additional questions posed by (See March 14, 2011 Letter and Attachments ("Appendix C, Mar. 14, 2011 Letter").)
- On March 21, 2011, the City submitted a declaration detailing the duties performed by the Chief Deputy City Attorney and Risk Manager for the City of Vernon. ("Appendix D, Declaration").)
- On April 25, 2011, the City submitted questionnaires containing twenty-eight specific inquiries for six independent contractors. To substantiate the answers included in these questionnaires, the City produced twenty-five documents. The questionnaires contained citations to the relevant files, and the documents were electronically organized into subfolders corresponding to the independent contractor and the specific inquiry

⁴ With the February 17, 2011 letter, the City submitted two CDs of documentation, which are not included in the appendix here.

Margaret Junker, Chief
January 31, 2012
Page 5

addressed. (See April 25, 2011 Letter and Attachments (“Appendix E, April 25, 2011 Letter”).)⁵

- From December 2010 until April 2011, the City received over fifteen emails from [redacted] and provided detailed answers to more than forty-five additional inquiries and requests. (See Appendix K.)
- In response to [redacted] specific inquiries, the City produced approximately 22,000 pages of documents. The City produced and made thousands of additional documents available for [redacted] review during his visit to the City in January 2011.
- [redacted] spent approximately two weeks reviewing documents and interviewing employees at the City of Vernon. During this time he was given a dedicated office and access to any employees or documents requested. At no point in time during the CalPERS audit did [redacted] inform the City, in writing or orally, that he had not received adequate and accurate documentation.

Despite the City’s diligent efforts to compile information and locate documents requested by CalPERS, OAS alleges that the City failed to provide necessary documents. Specifically, OAS claims that many of the documents produced by the City “were in a form that would require a substantial amount of time for OAS to find relevant requested information.” (Draft Report 4.) The documents at issue were presented to [redacted] in precisely the form in which they exist. While it may have required more time for [redacted] to go through them, any difficulties he encountered were not attributable to the City. To the contrary, the City went to great lengths to assist [redacted] answering any inquiries with targeted and clear documentation, including citations where appropriate. The City also sent documents attached to original emailed requests or specific CalPERS questionnaires. These documents were sent over a five-month period in response to multiple inquiries. The volume of data provided to CalPERS is solely attributable to the scope of the audit, which covered eight years, and the broad data requests made by [redacted]. The City provided CalPERS with precisely what was requested. Indeed, the City attempted to get [redacted] to narrow the scope of his requests in order to pare down the volume of responsive materials, but he declined to do so. As a result, the City cannot, and should not, be criticized or penalized for complying with [redacted] specific instructions.

Additionally, OAS improperly criticizes the City for redacting certain documents provided to OAS. (*Ibid.*) The City’s redaction, however, was entirely appropriate given that [redacted] requested numerous documents that are protected by the attorney-client privilege and/or the attorney work product doctrine. The City is not required to waive its attorney client privileges as a condition of its contract with CalPERS. OAS also protests that certain employee files were taken by the Los Angeles District Attorney’s Office, and thus were not provided. The City of Vernon has no control over the District Attorney’s actions or files and should not be

⁵ With the April 25, 2011 letter, the City submitted one CD of documentation, which is not included in the appendix here.

Margaret Junker, Chief
January 31, 2012
Page 6

penalized for its inability to produce these documents. Clearly, the City's contract with CalPERS does not require it to produce documents that are neither in its custody nor control.

The OAS also alleges that the City failed to provide documentation to support payrates and earnings reported to CalPERS for employees working in multiple positions. (*Ibid.*) OAS appears to ignore numerous documents created and produced to support wages paid to various employees working multiple jobs, and further ignores the myriad interviews and email communications the City had with [redacted] regarding employees working in multiple positions. Notably, on February 22, 2011, the City submitted a schedule listing all employees who hold, or held, multiple concurrent positions. (February 22, 2011 Employee Schedule ("Appendix J, Employee Schedule").) The schedule referenced the resolutions or authoritative documents approving the compensation for the listed position. Additionally, a table allocating the percentage of time spent per position was provided. Although OAS may disagree with the City's position on multiple employment, it cannot support a claim that the City failed to provide documentation on this topic. We are at a loss to understand how OAS can complain that this information was not provided.

OAS also claims that the City failed to provide documentation to support the additional arrears service credit sought by and provided to certain individuals. (*Ibid.*) OAS also ignores the discussions the City conducted with [redacted] regarding arrears credit on January 27, 2011. Additionally, on February 17, 2011, the City provided numerous documents to [redacted] in response to his inquiries on this subject. (*See* Appendix A, Feb. 17, 2011 Letter.) The questionnaires submitted by the City on February 17, 2011, also include support for the arrears service credit sought by a number of these individuals.

OAS further asserts that the City failed to provide documentation to support the classification of City Attorneys as safety employees. (*Ibid.*) However, the City produced a substantial number of documents on this subject, including correspondence from CalPERS approving the classification. Notably, on February 17, 2011, the City provided documents regarding job descriptions and contracts for City Attorney positions in response to request. (*See* Appendix A, Feb. 17, 2011 Letter.) Additionally, on March 21, 2011, the City submitted a declaration detailing the duties performed by the Chief Deputy City Attorney and Risk Manager for the City. (Appendix D, Declaration.) OAS's finding that the City did not provide documentation on this topic is wrong. The City undertook diligent efforts to locate and produce documents addressing the safety classification.

OAS alleges that the City failed to provide documentation to support the City Council members' payrates subsequent to April 1, 2007. (*See* Appendix A, Feb. 17, 2011 Letter) However, this finding conflicts with the conclusions contained in OAS's report. In Finding Six, OAS quotes Resolution No. 9284, which became effective on April 2, 2007. (*See* Appendix I, Resolution No. 9284.) This resolution clearly provides the council members' payrates subsequent to April 1, 2007. No further documentation is required. We are at a loss to understand how OAS could come to this conclusion given the materials that were provided.

Lastly, OAS's conclusion that the City failed to provide necessary information is contradicted by OAS's later assertion that it was able to "complet[e] th[e] review based on

Margaret Junker, Chief

January 31, 2012

Page 7

information provided by the City.” (Draft Report 2). Indeed, OAS’s ability to undertake a comprehensive review is evidenced by its compilation of a roughly forty-page report plus appendices. OAS’s claims that the City failed to provide documentation necessary to complete the review are contradicted by the sheer volume of documents produced to _____ and the number of documents referenced and analyzed in the Draft Report.

C. The City’s documentation to the CalPERS auditor demonstrated that individuals simultaneously working in multiple positions did not have multiple payrates and were not given additional earnings.

Finding 2:

The City failed to provide documentation in conformance with the Public Employees’ Retirement Law (PERL) and the City’s contract with CalPERS. As a result, OAS was unable to determine whether payrates and earnings were accurately reported for individuals simultaneously working in multiple positions.

Recommendation 2:

Only compensation earnable, as defined under Government Code Section 20636 and the corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits.

The City should ensure documentation is maintained and provided upon CalPERS’ request to verify that payrates and earnings are accurately reported for employees who simultaneously work in multiple positions. Payrates for each position must be clearly set forth in publicly available pay schedules and must be included in public documents available for public scrutiny. Where concurrent service is rendered in two or more positions, one or more of which is full time, service in the part-time position constitutes overtime and should not be reported. If concurrent service occurs in two or more full-time permanent positions, then the position with the highest payrate should be reported and the other would constitute overtime.

The City should work the CalPERS CASD to assess the impact of this incorrect reporting and determine what adjustments are needed to correct any improperly reported compensation amounts and to determine whether any retirement benefit amounts must be corrected pursuant to Government Code Section 20160.

City’s Response to Finding and Recommendation 2:

OAS alleges that the City failed to provide documentation in conformance with the PERL and the City’s contract with CalPERS necessary for OAS to determine whether payrates and earnings were accurately reported for individuals working in multiple positions. (Draft Report 5.) This conclusion is inaccurate and mischaracterizes the extensive efforts undertaken by the City to respond to the requests made by CalPERS’ auditor. As discussed in greater detail previously, the City, in fact provided over 20,000 pages of relevant documentation, including a specific schedule of payrates, and remains committed to continue this process in order to assist

Margaret Junker, Chief

January 31, 2012

Page 8

CalPERS in concluding its audit. If there is something more specific that OAS requires, we will work to provide it.

OAS alleges that “for the individuals that worked simultaneously in multiple positions, the City failed to provide documentation to substantiate the number of hours worked per positions and reportable payrates for each position.” (*Ibid.*) This statement is not supported by the facts and the information provided. For example, on March 14, 2011, the City provided with a schedule listing all employees with concurrent multiple positions. (*See Appendix C, Mar. 14, 2011 Letter.*) The schedule listed each position and identified whether it received compensation and noted the authoritative document to support it. In the table, each employee was also allocated the percentage of time spent on each position.

OAS also erroneously asserts that the City paid individuals holding multiple positions for each one of their positions. (*See Draft Report 5-6.*) That is not correct. Documents were provided to substantiate the fact that employees with multiple positions would only be compensated for their primary position. In addition to the City’s March 14, 2011 schedule, several of the resolutions appointing an employee to another position clearly state that the City would not compensate the employee for holding an additional position. (*See Appendix C, Mar. 14, 2011 Letter.*) The City recognizes that some of its employees wear multiple hats and are nominally granted more than one title. However, that fact should not be confused with the City’s practice to pay each individual employee one payrate and *not* multiple payrates. This practice is completely acceptable and common in many cities. OAS is incorrectly allocating these employees’ wages among positions, rendering much of their compensation non-reportable as compensation for part-time work.

On Page 6 of the Draft Report, OAS also criticizes the City for purportedly “provid[ing] excessive salary increases” and “pa[ying] exorbitant amounts of non-employee compensation.” OAS is not charged with rendering judgments on the remuneration paid by the City and it is wholly inappropriate for the draft report to contain such a statement. It is well within the City’s discretion and authority to pay employees and/or consultants an agreed upon wage and/or rate. The Draft Report’s attempt to render a qualitative judgment about compensation levels is unwarranted and improper.

Furthermore, OAS apparently did not accept as “substantial information” the employee contracts or City resolutions that clearly stated the City would not compensate these employees for their added positions. OAS erroneously concluded that this information was lacking and concluded that the employees’ payrates were undeterminable. (*Ibid.*) How can that be the case when OAS was provided with the contracts and resolutions? For example, in Appendix D of the Draft Report, OAS identified only one payrate at any point in time throughout the employment for Individuals 2-6, 8 and 9. This is not accurate because that rate was the employees’ initial payrate for their primary position. An employee’s payrate never significantly increased despite the number of additional titles or responsibilities an employee acquired because employees were not being compensated for the added position. Both the supporting documentation provided by the City and OAS’s own schedule to Appendix D prove that at least seven of the nine sampled employees were not compensated for any additional positions or titles they held.

Margaret Junker, Chief

January 31, 2012

Page 9

OAS also generalized its findings to all personnel that held multiple positions. (*See* Draft Report 5-6.) This conclusion is incorrect and inconsistent with the documentation provided by the City and schedules CalPERS included in Appendix D to the Draft Report. Specifically, OAS incorrectly states that the City combined payrates. To support its finding, OAS relies upon information relating to three of the sampled individuals. Although at one time, Individual 1 and Individual 2 were compensated full-time for multiple positions and payrates of each position were combined and reported to CalPERS as one rate, this is not true for the remaining sampled individuals, whom the City demonstrably compensated only for their primary position. Employee contracts and supporting resolutions that were approved by the City Council clearly state that any added positions would not increase an employee's compensation, and that the City did not combine payrates for multiple positions. (*See* Appendix H (including City Ordinance No.1104; City Resolution No. 6946; City Resolution No. 7785; City Resolution No. 7978; City Resolution No. 8605; City Resolution No. 9189; City Resolution No. 9269; City Resolution No. 9524).) The only payrate reported was for the primary position; all other positions did not have payrates to report.

In addition, in Appendix D of the Draft Report, for Individuals 2-6, 8 and 9, OAS identified only one payrate given to an employee during the duration of their employment. (*See ibid.* at pp. 6-7.) This conclusion is incorrect and inconsistent with schedules in Appendix D. Contrary to OAS's interpretation of Appendix D, upon further review of the data, it is clear that only one payrate was included because that rate was the employees' initial payrate for his or her primary position. As discussed above, even if an employee was appointed to additional positions or given new responsibilities, a review of each employee's total compensation demonstrates that his or her payrate did not increase significantly to suggest that they were being compensated for the added position. OAS's schedules prove and confirm the City's position, and the supporting documents that were provided further reveal that employees were not compensated for additional positions; accordingly, there was only one distinguishable and determinable payrate to report.

OAS also alleges that certain Individuals reported W-2 compensation was inconsistent with the total amount of compensation actually received. (*Ibid.* at p. 7.) The City agrees that in certain cases the two figures are not identical. The W-2s can and do include forms of compensation that are not reportable to CalPERS (non-PERSable), such as Auto Benefits, Stand-by pay, and overtime. This is not a "finding," nor is it otherwise a negative fact.

The City also rejects any suggestion that it reported Form 1099 income to CalPERS as compensation. If Form 1099 income was reported as compensation to CalPERS, it was done in error. The City is willing to work with OAS to correct any such erroneous reporting.

Finally, OAS takes issue with how the City paid Individual 3. (*Ibid.* at pp. 10-11.) The monthly payrate of \$27,500 is correct, as is its annual equivalent of \$330,000. OAS's real issue is the total hours worked and how the City processed and reported the income through its payroll system to CalPERS. The City's payroll is processed on a biweekly basis. At the time Individual 3's hourly-rate was being entered into the system, rather than using the \$275/hour at 46.15 hours/biweekly ($1,200/26 = 46.15$ hours) as stated in his contract, 2,080 hours (80 hours biweekly) was used instead in error to derive an hourly rate of \$158.6538. Although the

Margaret Junker, Chief
January 31, 2012
Page 10

biweekly payrolls reflected 80 hours worked instead of the contracted 46.15 hours, the biweekly pay as well as its annual sum of \$330,000 is correct. The proof is in the math:

Contract	Payroll System
\$275/Hour x 1,200 Annual Hours = \$330,000	\$158.6538/Hour x 2,080 Annual Hours = \$330,000

D. The City did not submit erroneous information to support the enrollment of ineligible individuals into CalPERS membership.

Finding 3:

The City submitted erroneous information to support the enrollment of ineligible individuals into CalPERS membership. This provided ineligible individuals with excessive service credit and the erroneous purchase of additional service. The City also incorrectly reported individuals who performed services as independent contractors.

Recommendation 3 (In part):

The City must provide accurate membership information in order for CalPERS to determine the correctness of retirement benefits per Government Code Sections 20221 and 20222.5.

The City should not enroll employees excluded from membership per Government Code Section 20300(b) and (h).

* * *

CalPERS must insure that its contracts with public agencies provide retirement benefits only to the agencies' common law employees to ensure retirement benefits are properly administered and in order to preserve its tax-qualified status under the Internal Revenue Code Section 401(a). The CalPERS Board of Administration determines who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

The City should work with CalPERS CASD to assess the impact of and to correct these membership enrollment and reporting issues.

City's Response to Finding and Recommendation 3:

OAS alleges that the City submitted erroneous information to support the enrollment of ineligible individuals into CalPERS membership. (See Draft Report 12.) This statement is inaccurate and fails to consider the process the City undertook with CalPERS eligibility officials

Margaret Junker, Chief
January 31, 2012
Page 11

over many years, especially concerning the extension of retirement benefits to numerous contracting attorneys and consultants.

Beginning in 1979, the City granted retirement benefits to its then City Attorney. The City submitted the appropriate documentation to CalPERS, which clearly set forth the relationship between the parties. The City Attorney was to receive consideration as a salaried employee and, in addition, was to continue to bill the City hourly through his law firm for his City Attorney services. In addition, the City requested CalPERS grant this individual prior service credit from 1977, the date he commenced acting as the City Attorney. The City also, as it has with all its employees, paid for the member's portion of the cost of arrears service credit.

The test to determine whether the individual worker is an employee or consultant is a factual one based upon numerous criteria. The City sought to determine CalPERS eligibility *after the contract consultant in question began his service to the City*. Therefore, much of the criticism OAS is leveling against the City does not logically follow.

The City has in every instance of requesting retirement benefits for its consultants and attorneys carefully compiled a complete transcript of documents for review by CalPERS and arranged interviews with CalPERS eligibility officials *before any membership forms were submitted to CalPERS*.

The very purpose of submitting the contracts and work description of the individuals in question to CalPERS eligibility officials in advance was to receive guidance from CalPERS as to each individual's eligibility. OAS appears to be alleging today that the relationship between the City and the attorneys or consultants concerned is something different than what was represented at the time of the original membership inquiry. Such allegation is incorrect.

The City completely disclosed the relationship with its attorneys and consultants to CalPERS at the time of determining eligibility, submitting then-current and all previous contracts between the City and the attorney or consultant in question. At that time, the City described to CalPERS the work the attorney or consultant undertook for the City, and met with CalPERS eligibility officials in their Sacramento offices.

It was never the City's intent to obtain retirement benefits for individuals that later could be challenged on eligibility grounds.

The City undertook the same process with CalPERS in regard to requesting prior service credit for these same attorneys and consultants. The City submitted to CalPERS all prior agreements with its attorneys and consultants, which detailed the compensation to be paid and the scope of work to be undertaken.

OAS has sampled three individuals and has preliminarily determined that these consultants provided services as independent contractors instead of employees. The City comments to each bullet point below.

Margaret Junker, Chief

January 31, 2012

Page 12

Individual 1:

- City officials met with CalPERS actuarial official, _____, and eligibility official, _____ in March 2002 to discuss extending retirement benefits to its then contract financial consultant. The City discussed what work the individual had undertaken for the City currently and in the past. Copies of all current and past contracts were submitted to _____ for his review. The individual worked primarily for the City's Light & Power Department as a finance consultant. The City also disclosed to CalPERS that the individual represented the City as a public finance attorney from 1981 to 1986.
- The individual was acting primarily as a finance consultant to the Light & Power Department, but was at all relevant times, a licensed attorney in California. It is not surprising then that the OAS auditor located correspondence, dated May 6, 1987, from his law firm.
- Early agreements with this individual would logically not have language about his acting as an employee for the City – the entire purpose of the inquiry to CalPERS' eligibility official, _____ was to determine, given *the facts* as they existed, whether the individual was eligible for membership despite the wording of his various contracts from 1986 to 2002.
- The June 7, 2002 letter from _____ did state that the individual in question would be eligible as an employee, but *not* as an attorney, unless he was in a titled capacity in the City Attorney's office. _____ advised the City that the individual would only be eligible if he worked primarily as a finance consultant for the Light & Power Department, which he did. All legal matters for Light & Power were handled by the City Attorney's Office.
- Based upon _____ advice, the City submitted the enrollment paperwork to CalPERS, dated as of the date the individual began working as a financial consultant for the Light & Power Department. Since the City first sought CalPERS eligibility advice on the individual in 2002, the City would *not* have reported the individual as an employee to CalPERS *prior* to the request in 2002.
- The City believes OAS audit staff should have reviewed the individual's scope of work with the Light & Power Department before concluding that the individual worked for the finance department. Indeed, for many years, this individual had an office in the Light & Power Department between today's current Director and Assistant Director of Light & Power.
- OAS lists a series of "facts" to support its claim that the City made improper representations to CalPERS regarding this individual. (See Draft Report 15-16).

Margaret Junker, Chief

January 31, 2012

Page 13

- The City submitted all relevant documentation to CalPERS in 2002, describing all prior agreements and work relationships to determine eligibility. The documents submitted then are the same documents that OAS reviewed currently.
- The individual participated in interviews with CalPERS eligibility official accompanied by other City officials describing his work as primarily a finance consultant to the Light & Power Department.
- The City would *not* have documentation to show the individual was paid as an employee before July 2002 since the City did not seek CalPERS' advice as to whether the individual would be eligible for CalPERS membership until mid-2002.
- Again, since the City submitted all the individual's prior and current agreements in 2002 to CalPERS to determine eligibility, there would not have been language in these agreements concerning the hiring of the individual.
- The individual was primarily acting as a finance consultant to the City's Light & Power Department. The individual was also an attorney. These agreements were submitted to CalPERS in 2002 for review to determine eligibility.
- The City submitted all agreements concerning this individual to CalPERS eligibility officials.
- Once the City was advised by CalPERS' eligibility official that the individual could enroll in the system, the City went forward with the necessary paperwork.
- Once the City received confirmation that the individual could enroll in the CalPERS retirement system, the City amended the individual's contract accordingly.
- The City believes a more thorough interview with the Director of Personnel, as well as various other past and current Light & Power Department officials, may provide a more accurate understanding of the individual's relationship with the City over the years.
 - Since the City sought advice on whether the individual would qualify for CalPERS in 2002, it would necessarily follow that the individual was not paid through the City's payroll system until after that date.
 - The statements in the bullet point are applicable to the time period when the individual ceased acting primarily as a finance consultant in the Light & Power Department and began representing the City as an attorney in 2003.
 - The City engaged in a different process of evaluation for its attorneys and consultants. They worked directly for top management and the City Council.

- Since the City did not begin the process to determine eligibility of the individual until 2002, it would logically follow that the individual would not have employee paperwork prior to that date.
- The City began the process of determining eligibility in 2002.
- CalPERS repeatedly advised the City on the eligibility status of its attorneys and consultants. Special care was taken by the City since these individuals' relationships with the City were the subject of agreements and the parties changed their positions based upon their eligibility for CalPERS retirement benefits.

Individual 2:

- This individual was the City's Deputy, then Assistant City Attorney, working in the City Attorney's Office from November 1994 to October 1999.
- The City undertook the CalPERS eligibility process with CalPERS' eligibility official in 2002. Therefore, no paperwork would have been previously submitted. The City sought prior service credit for the individual from 1994, and as was its practice for all employees, paid for the member's portion of the cost of the arrears service credit.
- The individual worked under the direction of the City Attorney, who was also a member of the CalPERS system.
- The individual worked for the Office of the City Attorney.
- The individual worked for the Office of the City Attorney and held the titles of Deputy and Assistant City Attorney.
- The City addresses the facts recited by OAS in regard to the individual's employment status below:
 - The City submitted letters describing the individual's relationship with the City to CalPERS' eligibility official in 2002.
 - The individual's role in the City Attorney's Office and his subsequent contract as City Attorney in 1999 were submitted to CalPERS' eligibility official in 2002.
 - The individual would not have employee payroll data prior to 2002, as that is when the City reviewed with CalPERS' eligibility official the individual's ability to become a member.

- The individual was a titled Deputy, then Assistant City Attorney in the City Attorney's Office from 1994 to 1999.
- All of the agreements concerning this individual's relationship with the City were submitted to CalPERS' eligibility official in 2002, before any membership paperwork was initiated.
- After receiving eligibility advice from CalPERS eligibility official the City commenced the membership paperwork on this individual.
- In 2002, the City inquired regarding the individual's eligibility before enrolling the individual and paying a portion of his compensation through the City's payroll system.
- The City began the process of determining eligibility in 2002.
- The City commenced paying a portion of the individual's compensation through its payroll system, after it received advice from as to the individual's eligibility.
- The City had a different evaluation process for its attorneys and consultants.
- The City submitted a complete description of the individual's services to the City as Deputy, then Assistant City Attorney to CalPERS' eligibility official
- The City acted on the advice it received from CalPERS in 2002, with the document file then as it is today.
- CalPERS advised the City that the individual qualified for service credit for prior years.

Individual 3:

- The City sought retirement benefits for its Chief Assistant City Attorney when his agreement with the City was approved and a portion of his compensation was paid through the City's payroll system.
- The City sought prior service credit for the individual from the date he began representing the City as a member of the City Attorney's Office, to which he was assigned by his law firm.
- To the best of the City's knowledge, the individual was never granted any prior service credit by CalPERS.
- The City is confused as to why OAS is commenting on this individual at this time. The City submitted all the relevant facts concerning this individual to CalPERS official

, Compensation Review Unit, Employer Services Division, in a multi-page document on February 25, 2009. City employees also met with CalPERS officials after that date seeking advice on the eligibility of the individuals in question and what corrective action the City should undertake, if any. (See February 25, 2009 Letter and Attachments, (“Appendix F, Feb. 25, 2009 Letter”).)

- To the best of the City’s knowledge, CalPERS was already working on this matter with the City and reference to it as a finding in this Draft Report is inappropriate.

Finally, the City and CalPERS advised two of its consultant employees that they were eligible to purchase service credit. The City is uncertain as to what damages these individuals might incur if OAS now determines that they do not qualify. Moreover, there is no indication why the prior audits conducted by OAS in 2005 and subsequent years did not identify these issues.

E. The City did not track the outcome of a trial of one of its former officials.

Finding 4:

The City failed to notify CalPERS when an “Elective Officer” was convicted of perjury and thus forfeited several years of service.

Recommendation 4:

The City must notify CalPERS when an elected officer is convicted of certain enumerated felony crimes specified in statute. Government Code Section 1243 provides in pertinent part that any elected official who takes public office, or is re-elected to public office, on or after January 1, 2006, and who is convicted during or after holding office of any felony involving accepting or giving, or offering to give, any bribe, the embezzlement of public money, extortion or theft of public money, perjury, or conspiracy to commit any of those crimes arising directly out of his or her official duties as an elected public officer, shall forfeit that portion of his rights and benefits that accrued on or after January 1, 2006, on account of his service in the elected public office held when the felony occurred. Section 1243(d) further provides, “[t]he public agency that employs an elected public officer described in subdivision (d) shall notify the public retirement system in which the officer is a member of the officer’s conviction.”

The City should work with CalPERS BNSD and CASD to assess the impact of this failure to notify CalPERS of a conviction and determine the adjustments to the member’s retirement account and allowance.

City's Response to Finding and Recommendation 4:

The City recognizes its error in not tracking the outcome of a trial of its former elected official after leaving office in July 2009 so it would be able to report this fact to CalPERS. The City will work with CalPERS to correct any payroll reporting issues resulting from this omission.

- F. The City acknowledges it received inaccurate legal advice concerning the qualifications of its City Attorney's Office under coverage group 79001, and looks forward to working with CalPERS to correct any inaccurate reporting.**

Finding 5:

The City incorrectly reported attorneys under coverage group 79001, a safety classification that provides an enhanced retirement benefit formula of 3% @ 55.

Recommendation 5:

The City should report city attorneys under the appropriate member classification and coverage group, based on position's job duties, as required by the PERL. The City should not report attorneys as safety members unless the position's primary duties are to engage in the active enforcement of criminal laws.

The City should work the CalPERS CASD to assess the impact of and to correct this reporting issue.

City's Response to Finding and Recommendation 5:

The City hired an attorney to join its City Attorney Office from the Los Angeles City Attorney's Office whose primary duties there were to engage in the active enforcement of criminal laws. The City intended this attorney to primarily undertake the active enforcement of criminal laws in its own jurisdiction.

The City acknowledges it received inaccurate advice concerning the qualifications of its City Attorney Office under coverage group 79001. The City looks forward to working with CalPERS to adjust its account to properly re-classify the City Attorney's Office back to the Miscellaneous category.

- G. The City reported the earnings of some of its attorneys and consultants, consistent with advice received from CalPERS eligibility officials in 1979 and again in 2002, which was based upon the individual's in service date.**

Finding 6:

The City reported earnings that exceeded the compensation limit established by the federal Internal Revenue Code.

Recommendation 6:

The City should ensure that reported employee compensation for employees who became members on or after July 1, 1996, does not exceed the annual compensation limits established by the Internal Revenue Code Section 401(a)(17). When an employee reaches the compensation limit, the City should stop reporting member contributions as outlined in the CalPERS Procedures Manual. The City should work with CalPERS CASD to assess the impact of and to correct his reporting issue.

City's Response to Finding and Recommendation 6:

The City reported the earnings of some of its attorneys and consultants consistent with advice received from CalPERS eligibility officials in 1979 and again in 2002, which was based on the individual's in service date.

The City first established with CalPERS the individual's qualifications to become a member of the retirement system. Next, the City established with CalPERS the individual's qualifications to obtain prior service credit commencing on the individual's original starting date with the City. Based on these facts, for three individuals, their start dates are prior to the Internal Revenue Code Section 401(a)(17) limits referenced in Finding 6.

Regarding some of the other sampled employees, the City reached out to CalPERS in February 25, 2009, submitting a 70-page transcript of documents and correspondence addressed to of the Compensation Review Unit of the Employer Service Division, to examine the compensation of these individuals and their qualifications to be members of CalPERS and to acquire prior service credit. (See Appendix F, Feb. 25, 2009 Letter.) It would have been most helpful to the City if some of the issues OAS is referencing in its Draft Report had been discussed with the City in February 2009. Regardless, the City looks forward to working with CalPERS to resolve these issues.

Moreover, OAS incorrectly cites Government Code Section 21752.5 and CalPERS procedures for its contention that the City over-reported compensation. Neither supports CalPERS' position. Government Code section 21752.5 states,

The amount of compensation that is taken into account in computing benefits payable to any person who first becomes a member of this system on or after July 1, 1996, shall not exceed the limitations in Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account

for each 12-month period shall be subject to the applicable annual compensation limit.

This section merely limits benefits. It does not discuss reporting compensation to CalPERS. On the other hand, the CalPERS Procedures Manual specifically requires the City to report the excess compensation and pay contributions on it. It states,

If an employee's compensation reaches the limit, the employer should do the following:

....

Continue reporting Pay Code, Pay Rate, Member Earnings and a Contribution Code 01, but no member contributions for the periods that remain in the calendar year. Reporting the contribution code 01 allows the employee to continue earning service credit without making contributions on earnings that exceed the limit. If code 11 is used instead of 01, then the member will not receive service credit. While the law limits employee contributions, employer contributions should still be paid on all earnings that are reported. If an employee's pay rate increases after the time you cease reporting contributions, please indicate the higher pay rate and earnings on your payroll transaction in case legislation were to change the original limits established for the year.

Based on the above, the City took the appropriate action.

H. The City accurately reported compensation earnable.

Finding 7:

The City failed to properly report compensation earnable. The City reported incorrect payrates to CalPERS and improperly reported compensation that was not reportable.

Recommendation 7:

The City should ensure that only compensation earnable, as defined under the PERL and corresponding regulations, is reported to CalPERS. The City should also ensure that the payrate reported to CalPERS is the authorized full-time payrate for the position, and that all employees' salaries are properly reviewed, authorized and approved by the City Council. Furthermore, the City should not report pay that fails to meet the definition of compensation earnable and/or constitutes overtime.

The City should work with CalPERS CASD to assess the impact of this incorrect reporting and determine what adjustments are needed.

City's Response to Finding and Recommendation 7:

OAS's Finding is misleading and improperly suggests that the City inflated the amount of compensation earnable reported to CalPERS. OAS's own analysis and the factual record demonstrate that this statement is inaccurate and should be corrected. By and large, OAS's criticisms are technical in nature and relate to instances of over and under reporting compensation earnable, which the City has already corrected or is diligently working to remedy.

For example, OAS criticizes the City's method for calculating the payrate for City Council members, which involved multiplying their bi-weekly payrate by the number of pay periods in a given month. (Draft Report 29.) As OAS notes, this resulted in over reporting in months with three pay periods, and under reporting in months with two pay periods. (*Ibid.*) The overall compensation reported was accurate. Likewise, OAS states that the City correctly did not report disability payments to an unnamed City employee, but the City incorrectly reduced the payrate reported to CalPERS to reflect the employees lower compensation during this time period. (*Ibid.* at p. 31.) OAS also noted that, when the City's Police Captain was promoted to Interim Police Chief, the City incorrectly reported the pay rates together for a single period (two weeks) instead of separately. (*Ibid.* at p. 32.) These oversights, which the City working diligently to correct, are hardly instances of "improperly report[ing] compensation that was not reportable" nor do they justify a separate finding.

The City is also concerned by certain factual inaccuracies and omissions related to this Finding. OAS notes that Resolution No. 9284 increased City Council members' compensation to \$5,500 per month. (*Ibid.* at p. 30.) OAS then speculates that this increase improperly included compensation that was not reportable. (*Ibid.*) The City previously informed OAS that it disputed this interpretation of Resolution No. 9284, and the City continues to dispute this interpretation now. OAS cannot unilaterally dictate the salary the City pays its elected officials by refusing to recognize the City's duly enacted legislation. If OAS does not change its view, the City wishes to have its objection accurately noted in the Final Report. Similarly, OAS incorrectly claims that the City "was not able to identify the cause" of certain errors in reporting the Fire Chief's payrate in some pay periods from 2007 to 2008. The City explained to OAS, however, that these errors resulted from transitioning the Fire Chief from a fire-suppression schedule to a 40-hour work-week.

As for OAS's remaining items noted under this Finding, the City appreciates OAS's efforts and will work diligently to address these issues. At the same time, the City reiterates its position that OAS's own findings belie its claim that the City failed to provide information or was uncooperative.

I. The City did not intentionally misreport payroll element information to CalPERS.

Finding 8:

The City incorrectly reported payroll element information to CalPERS.

Recommendation 8:

- a) The City should report items of compensation using the correct pay codes. Special compensation should be reported separately from payrate and regular earnings using the pay code 09.
- b) The City should review its records and correct erroneous payroll reporting to reflect the correct payroll adjustments. The City should follow the procedures outlined in the CalPERS manual.
- c) The City should ensure that the correct work schedule code is reported for employees who work an average of 173 hours per month.

The City should work with CalPERS CASD to assess the impact of these incorrect payroll reporting elements and determine what adjustments, if any, are needed.

City's Response to Finding and Recommendation 8:

This Finding concerns technical errors that the City has proactively worked to address. The City will proactively work with OAS to remedy any prior reporting discrepancies.

OAS also notes that for one sampled employee, the City correctly identified that the employee's compensation was over-reported and proceeded to remedy this error by reporting a reduced payrate for the subsequent four pay periods. OAS's sole concern regarding this issue is procedural, not substantive, as the City should have remedied the overpayment through a payroll adjustment as outlined in the CalPERS Procedures Manual. Similarly, OAS's remaining concern under this Finding involves an incorrect work-schedule code for a single sampled employee. The City, of course, will work with OAS to remedy these errors, but notes that they belie the OAS's insinuation that the City inflated reported compensation earnable.

J. The City properly reported special compensation; OAS's Finding 9 is based on both legal and factual inaccuracies.

Finding 9:

The City failed to properly report special compensation. Two statutory items of special compensation were not contained in a written labor policy or agreement and one of the items was not reported to CalPERS.

- a) Value of uniforms and uniform maintenance were not reported and were not contained in a written labor policy or agreement.
- b) The City's FLSA policy was not in a written labor policy or agreement.

Recommendation 9:

a) The City should ensure that the values of uniforms and uniform maintenance are reported for all employees required to wear a uniform and that the uniform allowance policy is contained in a written labor policy or agreement.

b) The City should ensure that all items of special compensation, including FLSA, are contained in a written labor policy or agreement.

The City should work with CalPERS CASD to assess the impact of and to correct this issue.

City's Response to Finding and Recommendation 9:

This Finding is based on both legal and factual inaccuracies.

First, OAS asserts that the City should have reported uniform remuneration as special compensation for employees who received uniforms outside of a written labor agreement. This assertion is based on an erroneous interpretation of Title 2, Section 571 of the California Code of Regulations, which provides that remuneration for uniforms "must be reported to CalPERS" as special compensation only "if [it is] contained in a written labor policy or agreement." (Cal. Code Regs., tit. 2, § 571, subd. (a); see *id.*, § 571, subd. (a)(5) [emphasis added].) Contrary to OAS's Finding, the plain meaning of Section 571 does not require all remuneration for uniforms be made pursuant to a written labor agreement, or in turn to be reported to CalPERS as special compensation. CalPERS' own Procedures Manual repeatedly makes this point plain:

Special Compensation

Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement.

.....

* * *

Only those items listed in the CCR 571 (a) [items qualifying as special compensation, such as uniforms] and meeting the criteria listed in CCR 571 (b) [written labor policy or agreement and numerous other requirements] are reportable.

.....

Special compensation items must meet definitions listed in 571 (a) as well as the criteria outlined in 571(b) to be reported to CalPERS.

.....

If an item of special compensation reported for a member is not listed in CCR 571 (a) or is out of compliance with any of the standards in CCR 571 (b) as reported for an individual, then it shall not be used to calculate the final compensation for that individual.

(CalPERS Public Agency & Schools Procedures Manual 70-71, 79 [emphasis added].)

The second aspect of this Finding is similarly without merit. Because OAS received a “memo dated April 8, 1986” that incorrectly stated “the FLSA cycle for fire department employees was 27 days,” OAS has taken the extreme position that, because of “conflicting information,” the City effectively “did not have documentation supporting the current FLSA policy.” (Draft Report 35-36.) Article 8 of the current Memorandum of Understanding between the City and its Fire Association clearly states that the length of the work period is 24 days, which, as OAS recognizes, is an appropriate work period under the FLSA that the City has consistently used for reporting purposes. (*Ibid.* at p. 35.); (*see* Appendix G, Memorandum of Understanding at 3). The City’s current FLSA policy is correct and documented. OAS’s Finding should be revised to reflect this fact.

K. The City will work with CalPERS to correct any alleged overreporting of special compensation to CalPERS.

Finding 10:

The City over-reported special compensation to CalPERS.

Recommendation 10 (In part):

The City should ensure that only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, is reported to CalPERS.

City’s Response to Finding and Recommendation 10:

The City will work with CalPERS to correct any erroneous reporting of special compensation. It should be noted that while the Finding implies that there is a widespread problem, this is untrue. The Finding addressed one item of special compensation for one former employee for pay periods at least six years ago.

CONCLUSION

As noted above, the City agrees with some of the criticism set forth in the draft report but strenuously objects to any finding that the City failed to fully cooperate in the review or did not provide the requested information and documents. The City remains committed to working with CalPERS to provide any documentation or data it may still need to complete its audit and to correct any erroneous payroll reporting.

Please contact the undersigned if you have any questions.

Very truly yours,

LIEBERT CASSIDY WHITMORE


Steven M. Berliner

SMB/tp

Enclosures

cc: Mark Whitworth
Hema Patel
Chris Wall