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April 30, 2012

Employer Code: 0015
Job Number: P11-008

City of Berkeley
David Hodgkins, HR Director
2180 Milvia St.
Berkeley, CA 94704

Dear Mr. Hodgkins:

Enclosed is our final report on the results of the public agency review completed for the City of Berkeley. Your agency's written response, included as an appendix to the report, indicates agreement with the issues noted in the report. 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
Honorable Council Members, City of Berkeley
Brian Zandipour, Deputy City Auditor, City of Berkeley

Office of Audit Services



Public Agency Review

City of Berkeley

Employer Code: 0015
Job Number: P11-008

April 2012

CITY OF BERKELEY

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CITY OF BERKELEY

RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Berkeley's (City) enrolled individuals, member compensation, required retirement documentation 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:

- Non-reportable compensation was reported and reportable compensation was under-reported.
- Payrate was incorrectly reported.
- Incorrect amounts of unused sick leave were certified to CalPERS.

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

CITY BACKGROUND

The City of Berkeley is a municipal corporation created under the laws of the State of California. The City operates under its own charter. The current charter provides for a Council-Manager form of government and the City is governed by an elected mayor and eight-member council. The City provides the following services: public safety; sanitation and sewer; housing; leisure; health and human services, including City funded health clinics; animal control; public improvements; planning and zoning; library services; and general and administrative services.

The City contracted with CalPERS effective March 1, 1942, to provide retirement benefits for local safety and miscellaneous employees. The City's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups.

SCOPE

As part of the Board approved plan for fiscal year 2011/2012, 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, 2008, through June 30, 2011. The on-site fieldwork for this review was conducted on September 12, 2011 through September 14, 2011, and from September 19,

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2011, through September 22, 2011. The review objectives and a summary of the procedures performed, sample sizes, sample periods and findings are listed in Appendix B.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The City reported non-reportable compensation and under-reported reportable compensation to CalPERS.

Recommendations:

The City should discontinue reporting non-reportable holiday compensation and correctly report Fair Labor Standards Act (FLSA) premium pay earned up to the employee's normal work schedule to CalPERS.

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

Conditions:

Non-reportable Holiday Pay reported:

The fire employees' Memorandum of Understanding (MOU) provided shift fire employees 12 hours of additional compensation each month for holiday pay. OAS found that fire employees received holiday pay, which included two City declared holidays in which the City offices were not closed. Specifically, the City declared March 8 of each year as International Women's Day, and September 9, Admission Day, as holidays; however, the City office does not close for business on those days.

OAS judgmentally sampled two shift fire employees to determine whether holiday pay for those two holidays was excluded from CalPERS reporting as they are not considered approved holidays for retirement purposes. OAS found that in service periods 9/10-4 and 3/11-4, the two sampled fire employees were compensated for those holidays and the City incorrectly reported the compensation to CalPERS.

FLSA premium pay under reported:

The City utilized the actual hours work method for computing and reporting shift fire employees' FLSA premium pay to CalPERS. The City correctly paid FLSA premium for hours worked in excess of the 212-hour FLSA threshold during the 28-day work period. OAS judgmentally selected two shift fire employees that

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worked in the 6/11-3 service period to determine whether FLSA premium pay was correctly reported to CalPERS. The two sampled employees worked ten 24-hour shifts in a 28-day work period for a total of 240 hours. The City correctly paid FLSA premium pay to the employees for the 28 hours, worked between the 212-hour threshold and the actual 240 hours worked, at half the rate. However, the City erroneously reported only 12 hours at half the rate, instead of 28 hours. The City under-reported FLSA premium pay for the shift fire employees sampled in service period 6/11-3.

Criteria:

Government Code: § 20636(c)(1), § 20636 (c)(6)

California Code of Regulations: § 571(a)(5)

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Finding 2: The City incorrectly under-reported the payrate for an elected official.

Recommendation:

The City should report payrates pursuant to publicly available salary schedules.

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

Condition:

OAS reviewed the payrates for a sample of 30 employees in service period 5/11-4, and one elected official in service period 5/11-0 to determine whether the payrates reported to CalPERS were authorized in accordance with public salary information.

The payrates reviewed were paid and reported to CalPERS in accordance with public salary information except in one instance. Specifically, the earnings and payrate for an elected official were incorrectly reported in service period 5/11-0. According to the published salary schedule, the monthly payrate for the elected official was \$2,460.00; however, the City erroneously reported the payrate and earnings as \$2,270.72. The City paid the elected official on a bi-weekly basis, similarly to other City employees; however, the City reported the combined earnings of two bi-weekly pay periods rather than reporting the actual monthly payrate and earnings.

Criteria:

Government Code: § 20636(b)(1)

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Finding 3: The City did not certify the correct amount of unused sick leave days to CalPERS.

Recommendation:

The City should ensure the correct amount of unused sick leave is certified to CalPERS so that a retiree receives the appropriate amount of additional service credit upon retirement. An Amended Employer Certification form (BSD-200-A) should be submitted to CalPERS BNSD in order to adjust incorrect unused sick leave balance certifications.

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

Condition:

OAS judgmentally selected a sample of 14 employees that retired from the City during the review period to determine whether the City accurately reported the retiring members' unused sick leave balances. Sick leave hour balances were correctly converted to days by using the divisor of 8. Unused sick leave balances for sampled retirees were computed and properly reported to CalPERS, except in two instances. Specifically, the City certified the unused sick leave balances of zero days for one retiree and 177.696 days for the other. However, documentation provided by the City showed that the retirees' unused sick leave balances at retirement were 95.057 and 167.969 respectively. It is noted that the City submitted an Amended Employer Certification to CalPERS indicating the correct unused sick leave balances for these two retirees when the error was found during the OAS field review.

Criteria:

Government Code: § 20965

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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 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
Alan Feblowitz, Manager
Adeeb Alzanoon
Jose Martinez

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APPENDIX A

BACKGROUND

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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 (HAS) 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.

APPENDIX B

OBJECTIVES

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OBJECTIVES

The objectives of this review which covers the period July 1, 2008, through June 30, 2011, were limited to the determination that the City complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations and that prescribed reporting and enrollment procedures as they relate to the City's retirement contract were followed. OAS completed a prior review covering the period of time from July 1, 1998, to June 30, 2001.

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:
 - Provisions of the Contract 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
 - City ordinances as necessary
 - Various other documents as necessary

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

Sample Size and Period: Reviewed 31 employees covering two sampled service periods - the first service period in August 2010 (8/10-3) and the second service period in May 2011 (5/11-4).

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See Finding 1: The City reported non-reportable compensation to CalPERS-Holiday pay.

- Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City reported compensation earnable.

See Finding 1: The City under-reported reportable compensation to CalPERS-FLSA Premium pay.

- Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City correctly reported compensations earnable.

No Finding

- ✓ 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 31 sampled employees that worked for the City in the first service period of May 2011 (5/11-4), including one individual paid on a monthly basis.

See Finding 2: The City under-reported payrate for a member.

- ✓ 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.

Sample Size and Period: Reviewed 31 sampled employees that worked for the City in the first service period of May 2011 (5/11-4).

No Finding

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- Reviewed PERS listing to determine whether contribution codes were reported correctly.

No Finding

- Reviewed PERS listing to determine whether pay codes were reported correctly.

No Finding

- ✓ Reviewed the City's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.

Sample Size and Period: The City has a contract exclusion to exclude temporary/part-time employees working on specific jobs. OAS reviewed a sample of 19 employees that worked in fiscal year 2010/2011.

No Finding

- ✓ 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: Reviewed three retired annuitants that worked for the City during the review period.

No Finding

- ✓ Independent contractors:

Sample Size and Period: Reviewed a sample of five independent contractors that performed work for the City during the review period.

No Finding

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- ✓ Reviewed the City's calculation and reporting of unused sick leave balances.

Sample Size and Period: Reviewed 14 retiring members covering the review period.

See Finding 3: The City did not certify the correct amount of unused sick leave days.

APPENDIX C

CRITERIA

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CRITERIA

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

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 assignments, workday or hours or other work conditions.

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, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

Government Code § 20965, states:

A local miscellaneous member and a local safety member, whose effective date of retirement is within four months of separation from employment with the employer which granted the sick leave credit, shall be credited at his or her retirement with 0.004 year of service credit for each unused day of sick leave certified to the board by his or her employer. The certification shall report only those days of unused sick leave that were accrued by the member during the normal course of his or her employment and shall not include any additional days of sick leave reported for the purpose of increasing the member's retirement benefit. Reports of unused days of sick leave shall be subject to audit and retirement benefits may be adjusted where improper reporting is found.

California Code of Regulations § 571, subdivision (a)(5), defines holiday pay as:

Additional compensation for employees who are normally required to work on an approved holiday because they work in positions that require scheduled staffing without regard to holidays. If these employees are paid over and above their normal monthly rate of pay for approved holidays, the additional compensation is holiday pay and reportable to PERS.

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California Code of Regulations § 571, subdivision (a)(5), defines Fair Labor Standards Act (FLSA) as:

Compensation paid for normal full-time work schedule including premium pay required by FLSA. For example, a firefighter's normal work schedule is 56 hours per week. FLSA states premium pay must be paid on all hours worked above 53 hours per week up to what is considered normal for employees on a full-time basis.... Any work performed above 56 hours per week would be considered overtime and would not be reported to PERS.

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APPENDIX D

STATUS OF PRIOR REVIEW

**FOLLOW UP ON PRIOR REVIEW FINDINGS
CITY OF BERKELEY EMPLOYER CODE 0015
PRIOR REVIEW P01-021, DATED NOVEMBER 2002**

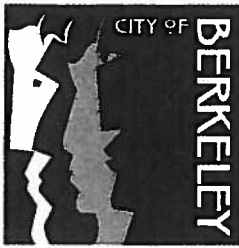
<i>Prior Review Finding</i>	<i>Prior Review Recommendation</i>	<i>Status of Prior Recommendation</i>
1. Unused sick leave balances reported incorrectly.	The City should begin converting unused sick leave hours for retiring fire employees by utilizing an 8-hour day.	<p>The City implemented the recommendation from the prior review to use a divisor of 8 when converting sick leave hours to days.</p> <p>A finding related to sick leave was noted during the current review.</p>

Conclusion: The City implemented part of the recommendation by utilizing a divisor of 8 when converting unused sick leave hours to days. However, the City under-reported the unused sick leave for one retiree and over-reported the unused sick leave for another retiree in our sample.

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APPENDIX E

CITY'S WRITTEN RESPONSE



Human Resources Department

Office of the
Director of Human Resources

April 20, 2012

Employer Code: 0015
CalPERS ID: 4652939061
Job Number: P11-008

Margaret Junker
Chief, Office of Audit Services
California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento CA 94229-2701

Dear Ms. Junker:

The purpose of this letter is to acknowledge receipt of your April 6, 2012 letter enclosing a draft report on the CalPERS payroll audit of the City of Berkeley for compliance with the contract for pension benefits. I have reviewed the report as has Brian Zandipour, Deputy City Auditor for Payroll Management. The City of Berkeley agrees with the findings and recommendations in the report.

Once the audit report is final, Brian Zandipour will contact the Customer Account Services Division of CalPERS to assess the impact of the Recommendations under Findings 1 and 2 of the report and with the Benefit Service Division on the Recommendation under Finding 3 of the report. On Finding 3, the report notes that the City submitted an Amended Employer Certification to CalPERS indicating the correct unused sick leave balances for the two retirees that was uncovered during the field review.

The City of Berkeley acknowledges the professionalism of Jose Martinez in conducting this audit and believes that City staff, especially Leo Reyes, Ann DelRosario and Brian Zandipour, also provided a high level of professionalism to assist Mr. Martinez in completing the audit.

If you have any questions concerning this matter, please contact me at (510) 981-6805.

Sincerely,

David W. Hodgkins

Director of Human Resources

cc: Christine Daniel, Interim City Manager
Brian Zandipour, Deputy City Auditor for Payroll Management