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October 3, 2012

Employer Code: 0132
CalPERS ID: 6727554025
Job Number: P11-021

City of Daly City
Donald W. McVey, Finance Director
333 90th Street
Daly City, CA 94015

Dear Mr. McVey:

Enclosed is our final report on the results of the public agency review completed for the City of Daly City. Your City's written response, included as an appendix to the report, indicates disagreement with part of Finding 2, disagreement with the Recommendation for Finding 5, and disagreement with Finding 6 and Finding 7. We reviewed the information contained in your City's response pertaining to the Findings and based on this information, our recommendations remain as stated in the report. However, we expanded Findings 1, 2 and 6 to further clarify these findings. 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 City 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
Anthony Suine, Chief, BNSD, CalPERS
Honorable City Council Members, City of Daly City

Office of Audit Services

Public Agency Review

City of Daly City

Employer Code: 0132
Job Number: P11-021

October 2012

CITY OF DALY CITY

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CITY OF DALY CITY

RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Daly City's (City) enrolled individuals, member compensation, required health and 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:

- Required language for statutory compensation items reportable to CalPERS was not contained in a written labor policy or agreement.
- Non-reportable deferred compensation and bonus pay were reported as special compensation.
- Payrates were not reported in accordance with a publicly available pay schedule.
- Excluded employees were erroneously enrolled in CalPERS membership.
- Retired annuitants were not reinstated.
- Unused sick leave was incorrectly calculated.
- Eligibility verification for dependents enrolled in CalPERS Health Benefits Program was not timely obtained.

CITY BACKGROUND

The City of Daly City was incorporated on March 22, 1911, and has a council-manager form of government. The City provides a full range of municipal services, including, police, fire, library, recreation and related social services, street construction and maintenance, traffic signalization and control, engineering, code enforcement, parks operation and maintenance, general administration, planning, and community development. Memoranda of Understanding (MOU), Rules and Regulations, and employment agreements outline 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 August 1, 1946, to provide retirement benefits for local miscellaneous and safety employees. The City's current contract amendment identifies the length of the final compensation period as twelve months for all coverage groups. The City contracted with CalPERS effective December 1, 1989, to provide health benefits to all eligible employees.

All contracting public agencies, including the City, are responsible for the following:

- Determining CalPERS membership eligibility for its employees.

- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.
- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.
- Ensuring only eligible members and their dependents are enrolled for health coverage.
- Keeping accurate and up-to-date records of all health enrollment related information such as enrollment forms, parent-child relationship affidavits, divorce decrees, and other documentation.

SCOPE

As part of the Board approved plan for fiscal year 2011/2012, the OAS reviewed the City's payroll reporting and member enrollment processes as these processes relate to the City's retirement and health contracts with CalPERS. The review period was limited to the examination of sampled records and processes from January 1, 2009, through December 31, 2011. The on-site fieldwork for this review was conducted on March 5, 2012, through March 9, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

CITY OF DALY CITY

OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: The City did not have the required language in a written labor policy or agreement for the statutory items of special compensation reported to CalPERS, including Fair Labor Standards Act (FLSA) premium pay, holiday pay, and uniform allowance.

Recommendations:

The City should ensure the required language for reporting statutory items of compensation is contained in a written labor policy or agreement, including FLSA premium pay, holiday pay, and uniform allowance.

OAS recommends CASD work with the City to ensure the required language is contained in the City's written labor policy or agreement for all statutory items reported pursuant to Government Code Section 20636 and California Code of Regulations Section 571.

Condition:

Statutory items are reportable to CalPERS, including FLSA premium pay, holiday pay and uniform allowance pursuant to Government Code Section 20636. California Code of Regulations Section 571 clarifies and makes specific the criteria for reporting the statutory items, such as the item of special compensation must be contained in a written labor policy or agreement, must indicate the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation. We traced the statutory items reported to CalPERS for a sample of employees and determined the City properly reported the items to CalPERS. However, the City did not have the required language in a written labor policy or agreement. Sampled employees for each statutory item came from various employee groups, including: represented Fire Shift employees for the FLSA premium pay; represented Fire, Fire Management and Police Management employees for the holiday pay, and represented Street Maintenance Workers, Grounds Keepers, Plant Maintenance, Stationary/Operator Engineers, and Police and Fire Safety Executive employees for the uniform allowance.

Criteria:

Government Code: § 20049, § 20636(a), § 20636(c)(1), § 20636(c)(2), § 20636(c)(6), § 20636(d)

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

CITY OF DALY CITY

Finding 2: The City erroneously reported non-reportable compensation in the form of deferred compensation and bonus pay.

Recommendations:

The City should discontinue reporting deferred compensation and bonus pay to CalPERS.

OAS recommends CASD deny all non-reportable items of compensation. CASD should make the appropriate adjustments to the members' accounts and other areas needing adjustment pursuant to Government Code Section 20160.

Conditions:

Deferred Compensation

The City erroneously reported $506.00 in City paid deferred compensation for the City Manager in sampled service period 7/11-4. Specifically, the City Manager received a five percent pay increase over and above the other executive employees due to the city paid deferred compensation effective April 10, 2007. The City Council adopted a resolution providing for an increase to the City Manager's pay in two separate amounts, one as a "5% Salary Adjustment" and the other as a "5% Contribution to Deferred Compensation." The publicly available pay schedule identifies two line items for the City Manager, one line item as a biweekly payrate and the other line item as a biweekly "Supplemental Pay (Deferred Compensation)" amount. The City Manager's city paid deferred compensation is not reportable pursuant to the definition of payrate under Government Code section 20636(b)(1) and (2). In addition, the City reported the city paid deferred compensation as special compensation which is not in the exclusive list of reportable special compensation items under California Code of Regulations section 571(a).

Only compensation earnable, as defined under Government Code section 20636 and corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits. The Government Code sections cited in the City's written response are only applicable to state members and were not used to support this finding (see applicable Criteria below).

Bonus Pay

The City erroneously reported bonus pay at two percent of base salary for three executive employees in the sampled service period 7/11-4. The City adopted a performance based compensation plan by City resolution on November 27, 1995.

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Bonus pay is reportable to CalPERS if it meets the criteria specified in the California Code of Regulations section 571, including that there must be a program or system in place to plan and identify performance goals and objectives. The City stated that the goals and objectives are discussed between the City Manager and the executive employee throughout the year and they are not memorialized in written form.

Criteria:

Government Code: § 20160, § 20636(a), § 20636(b)(1), § 20636(b)(2), § 20636(c)(1), § 20636(c)(2), § 20636(c)(6), § 20636(e)(1)

California Code of Regulations: § 571(a), § 571(a)(1), § 571(b), § 571(c), § 571(d)

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Finding 3: The City did not have publicly available pay schedules that met the requirements of California Code of Regulations Section 570.5.

Recommendations:

The City should list all employee payrates on a pay schedule and disclose the information pursuant to publicly available pay schedules as required in California Code of Regulations Section 570.5.

OAS recommends CASD work with the City to determine the impact of this nondisclosure and make the necessary adjustments, if any, to members' accounts pursuant to Government Code Section 20160.

Condition:

Pursuant to Government Code Section 20636 and California Code of Regulations Section 570.5, the City is required to have publicly available pay schedules to specify the payrates reportable to CalPERS. We determined the City did not have pay schedules that met the criteria, including, but not exclusively:

- No pay schedules were available for the executive management, unrepresented management, and elected official employees for the service period tested.
- One salary schedule included the wrong effective date resulting in publicly available pay schedules that did not reflect the actual salaries pursuant to the City's Memoranda of Understanding (MOU) provisions.
- Salary schedules that did not identify the correct time base, such as a 40 hour work week versus a 37.5 hour work week.

Only compensation earnable, as defined under Government Code Section 20636 and corresponding regulations, can be reported to CalPERS and considered in calculating retirement benefits. The City must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate under the Retirement Law. Additionally, the City must ensure that all pay schedules are properly reviewed, authorized and approved by the City's Board in accordance with requirements of applicable public meeting laws.

Criteria:

Government Code: § 20049, § 20160, § 20630, § 20636(a), § 20636(b)(1), § 20636(b)(2), § 20636(d)

California Code of Regulations: § 570.5

CITY OF DALY CITY

Finding 4: The City erroneously enrolled two employees who were excluded from CalPERS membership pursuant to the City's contract with CalPERS.

Recommendations:

The City should immediately cancel the membership of all excluded employees.

OAS recommends CASD work with the City to make the necessary adjustments to the members' accounts pursuant to Government Code Section 20160.

Condition:

OAS reviewed the contract between CalPERS and the City that was in effect during the review period and identified that the City had membership exclusions for various classifications. OAS performed a search for the classifications in the employee roster and identified two part-time hourly employees who were in the excluded classification of Library Aide. Pursuant to Government Code Section 20305, part-time employees may be enrolled in membership when eligibility is met unless they are excluded by a provision of a contract. OAS identified that the employees were enrolled in CalPERS membership by the City. One employee was enrolled on August 1, 2001, and contributions had been reported, and the other was enrolled on January 9, 2012, and contributions had not yet been reported. The employees were not eligible for CalPERS membership because they were excluded by contract provision. The City acknowledged that they had erroneously enrolled both employees and reported contributions for one employee.

Criteria:

Government Code: § 20160, § 20305(a)(1)

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Finding 5: The City unlawfully employed two retired annuitants who exceeded 960 hours worked in a fiscal year.

Recommendations:

The City should monitor the hours worked by retired annuitants in order to limit the hours worked to 960 hours in a fiscal year, or immediately reinstate a retired annuitant into CalPERS membership if the retired annuitant's employment continues beyond the 960-hour threshold.

OAS recommends BNSD have the City pay CalPERS the employer contributions which should have been paid during the period the retired annuitant was unlawfully employed, plus interest and administrative expenses.

In addition, OAS recommends BNSD have the retired annuitant reimburse CalPERS for any retirement allowance received during the period of unlawful employment, pay CalPERS employee contributions that should have been paid during the period of unlawful employment, and reimburse CalPERS for administrative expenses incurred in handling the situation.

Condition:

OAS obtained the time sheets for five sampled retired annuitants and traced the hours worked. OAS identified two retired annuitants who exceeded the 960-hour threshold. One worked 968.50 hours in fiscal year 2009/2010 surpassing the 960 hour threshold in May 2010. The other worked 963 hours in fiscal year 2010/2011 surpassing the 960 hour threshold in June 2011.

Government Code Section 21220 provides that a retired member receiving a monthly allowance from CalPERS, shall not, except as otherwise provided, be employed in any capacity thereafter by a CalPERS employer unless the member has first been reinstated from retirement. Any person employed in violation of Section 21220 shall be reinstated to CalPERS membership as of the date the unlawful employment began.

Criteria:

Government Code § 20160, § 21220, § 21224(a)

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Finding 6: The City was converting unused sick leave hours by a divisor of seven and a half hours instead of the required eight hours.

Recommendations:

The City should report unused sick leave hours using a divisor of eight.

OAS recommends BNSD work with the City to identify retirees who had incorrect calculations and make the necessary adjustments pursuant to Government Code Section 20160.

Condition:

The City's contract with CalPERS provides for the optional benefit of converting unused sick leave to additional service credit for retiring miscellaneous members pursuant to Government Code Section 20965. OAS reviewed a sample of five retirees and found the City properly computed and reported the retirees' balance of unused sick hours except in one instance. The City erroneously converted one sampled retiree's balance of unused sick hours using a divisor of seven and a half hours, instead of the required eight hours, because the retiree worked a 37.5 hour work week. As a result, the number of unused sick leave days reported to CalPERS was overstated by 6.650 days.

The CalPERS Procedures Manual, page 109, states that regardless of their work schedule, all employees will have any accumulated unused hours of sick leave service credit divided by eight to determine the number of days to report to CalPERS for the purposes of enhancing the retirement benefit.

<u>The following information was added subsequent to the issuance of the draft report to provide clarification:</u>

As noted in the City's response, CalPERS has updated the Public Agency and Schools Reference Guide (Reference Guide) which can also be found on the CalPERS web site. However, the procedure for converting unused sick leave has not changed. In addition, on page 109, the Reference Guide clarifies the conversion using eight hours and states, "Sick leave/educational leave information must be reported in 8 hour days only."

Criteria:

Government Code § 20160, § 20965

CITY OF DALY CITY

Finding 7: The City did not obtain the Affidavit of Parent-Child Relationship form to support one sampled dependent's enrollment in CalPERS Health Benefits Program.

Recommendations:

The City should obtain a properly completed Affidavit of Parent-Child Relationship form from employees with dependents enrolled as economically dependent children. Employees must also submit an Affidavit of Parent-Child Relationship form for each child annually up to age 26.

The City should cancel the enrollment of all ineligible dependents enrolled in CalPERS Health Benefits Program.

OAS recommends CASD work with the City to ensure that all ineligible dependents are disenrolled from CalPERS Health Benefits Program and make the necessary adjustments to members' accounts pursuant to Government Code Section 20160.

Condition:

The City contracted with CalPERS to provide health benefits to all eligible employees effective December 1, 1989. The City is responsible for providing employees with enrollment information and has the authority to request documentation needed to determine the eligibility of family members.

OAS reviewed a sample of five employees to assess the health benefits eligibility and enrollment of members and their dependents. OAS identified that the City had not obtained an Affidavit of Parent-Child Relationship form as required in January 2011, to support one dependent's enrollment in CalPERS Health Benefits Program. Once the form was submitted to the City by the member during the on-site fieldwork, the City determined the dependent no longer met eligibility and immediately removed the dependent from CalPERS Health Benefits Program.

Criteria:

Government Code: § 20085, § 20160

California Code of Regulations: § 599.500 (o)

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 and health 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. This 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, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 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.

Respectfully submitted,

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

Date: October 2012
Staff: Michael Dutil, CIA, Senior Manager
Alan Feblowitz, CFE, Manager
Jodi Epperson
Kathy Chan

APPENDIX A

BACKGROUND

CITY OF DALY CITY

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. In addition, 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. 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.

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 employer's 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

CITY OF DALY CITY

OBJECTIVES

The objectives of this review were limited to the determination of:

- 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 January 1, 2009, through December 31, 2011. OAS completed a prior review covering the period of January 1, 2004 to December 31, 2006.

SUMMARY

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.

- ✓ Reviewed:
  - o Provisions of the Contract and contract amendments between the City and CalPERS
  - o Correspondence files maintained at CalPERS
  - o City Council minutes and City Council resolutions
  - o City written labor policies and agreements
  - o City salary, wage and benefit agreements including applicable resolutions
  - o City personnel records and employee hours worked records
  - o City payroll information including Summary Reports and CalPERS listings
  - o Other documents used to specify payrate, special compensation, and benefits for all employees
  - o Health Benefits Program enrollment records and supporting documentation
  - o City ordinances as necessary
  - o 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.

CITY OF DALY CITY

- ✓ 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.
- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the City's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the City's enrollment practices for retired annuitants to determine if retirees were lawfully employed and reinstated when 960 hours were worked in a fiscal year.
- ✓ Reviewed the City's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the City's affiliated entities to determine if the City shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the City or by the affiliated entity.
- ✓ Reviewed the City's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick.
- ✓ Reviewed health records to determine whether the City properly enrolled eligible individuals into CalPERS Health Benefits Program, if contracted for Health Benefits.

APPENDIX C

City's Written Response

CITY OF DALY CITY

DEPARTMENT OF FINANCE
AND
ADMINISTRATIVE SERVICES

DONALD W. McVEY
DIRECTOR

July 25, 2012

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

RE: June 27, 2012 Draft Report on Review of City of Daly City

Dear Ms. Junker:

We appreciate the opportunity to provide a response to the draft of the above referenced report. Our comments on each Finding follow.

Finding 1: The City did not have the required language in a written labor policy or agreement for the statutory items of special compensation reported to CalPERS.

Response: It is unclear from the finding what employees or items of special compensation are being referred to here. Items of special compensation are set forth in written memorandums of understanding for represented employees. For unrepresented employees we have performed an internal review and discovered that there are a limited number of unrepresented employees for which documentation is lacking. We will insure that all such special compensation is documented by a City Council resolution supporting those items.

Finding 2: The City erroneously reported non-reportable compensation in the form of deferred compensation and bonus pay.

Deferred Compensation

The City erroneously reported $506.00 in City paid deferred compensation for the City Manager in sampled service period 7/11-4. A review of the compensation history for the City Manager revealed the City Council adopted a resolution, effective April 10; 2007, providing for a five percent City paid contribution as deferred compensation for the City Manager. OAS identified that the City has been reporting the City paid deferred compensation as special compensation to CalPERS since April 2007. City paid deferred compensation is a non-reportable item pursuant to Government Code Section 20636.

Response:

The City disagrees with this conclusion for two reasons. First, because the code section cited applies to state members, and second because it covers "payments that are to be credited to employee accounts in deferred compensation plans."

Government Code Section 20636 (g) (4)

> "Payrate" and "special compensation" ***for state members*** do not include any of the following:
>
> (E) Employer payments that are to be credited as employee contributions provided by this system, or employer payments ***that are to be credited*** to employee accounts in deferred compensation plans.

The compensation to the City Manager includes a five percent amount that we consider to be a portion of base pay, not deferred compensation payments. The section of law cited as controlling is called out to apply to state members, not local members. Additionally, even if this section were to apply to local members, the City Manager receives this pay whether or not she participates in the City's deferred compensation program. There is no mandate that this amount be contributed to a deferred compensation plan. This amount appears on the City Manager's pay history as a direct payment to the employee, not a direct transfer to a deferred compensation plan. It therefore does not meet the criteria of "payments that are to be credited" as required in 20636 (g) (4) (E).

Bonus Pay

The City erroneously reported bonus pay at two percent of base salary for three executive employees in the sampled service period 7/11-4. The City adopted a performance based compensation plan by City resolution on November 27, 1995. Bonus pay is reportable to CalPERS if it meets the criteria specified in the California Code of Regulations Section 571, including that there must be a program or system in place to plan and identify performance goals and objectives. The City stated that the goals and objectives are discussed between the City Manager and the executive employee throughout the year and they are not memorialized in written form.

Response:

It is the City's position that it has met the criteria for Bonus Pay. Section 571 does not list any specific requirements, other than requiring that a program or system be in place. We have a written policy in place that was approved by the City Council. The fact that goals and objectives are planned and identified orally between the City Manager and executive management is not in its self a valid reason to question this bonus pay program.

This item of pay and the methodology was subjected to audit approximately five years ago. No issues were raised at that time; therefore we have continued our practice unchanged. While we are willing to work with CalPERS to correct this to your satisfaction going forward we do not believe any retroactive change is justified.

Finding 3: The City did not have publicly available pay schedules that met the requirements of California Code of Regulations Section 570.5

Response: It has been the practice of the City to use an end date on our salary schedules which matches the end date of the particular memorandum of understanding or City Council resolution. Pay rates continue unchanged until superseded by a new labor agreement. We will alter our practice and discontinue including the end date to clarify that a salary schedule is status quo unless changed.

Posted salary schedules have also been updated to include a key to identify the correct time base.

Finding 4: The City erroneously enrolled two employees who were excluded from CalPERS membership pursuant to the City's contract with CalPERS.

Response: The City assumed that "if a person is currently a member of CalPERS (i.e., has contributions/service on account that have not been refunded), the person cannot be excluded from membership due to her/his time base (e.g., working less than 20 hours per week) or appointment length (e.g., 90 days)" meant once in PERS always in PERS and did not realize that two employees who were enrolled should have been excluded due to the City's contract.

The City has taken steps to ensure this does not happen again and attached a copy of the portion of the contract which indicates the City's excluded positions to the *Notice of Exclusion from CalPERS Membership* form.

Finding 5: The City unlawfully employed two retired annuitants who exceeded 960 hours worked in a fiscal year.

Response:

There were two retired annuitants who worked 968.5 and 963 hours, respectively. This excess equals 0.88% and 0.30% of the allowable 960 hours. These excess hours were not intentional and were an oversight. The amounts are de minimis and should not result in the actions suggested under Recommendations in this finding. Requiring that the retiree reimburse CalPERS for retirement income, and pay contributions, plus interest, and reimburse CalPERS for administrative costs is draconian and inappropriate given the minimal amount of the error. Further, the City has instituted administrative controls within the payroll function to help insure that any such errors are prevented in the future.

Finding 6: The City was converting unused sick leave hours by a divisor of seven and a half hours instead of the required eight hours.

Response:

We disagree with this finding and believe we are calculating unused sick days correctly for 37-1/2 hour per week employees. The employee in question is a 7-1/2 hour per day, 37-1/2 hour per week employee. Such employees earn 12 days of sick leave of 7-1/2 hours each year. When such an employee takes a sick day they use 7-1/2 hours of sick leave, or one day of sick leave. Government Code Section 20965 speaks to days of sick leave, not hours. We believe the recommendation has confused hours per work day/work week with hours relating to work schedule (such as 4/10 or 9/80 work schedules).

In the Condition section of the Finding, reference is made to the CalPERS Procedures Manual, Page 189 to support the position of dividing by eight hours. The manual referred to is out of date. The current Public Agency and Schools Reference Guide clarifies on Page 108 in the section title "CONVERSION OF SICK LEAVE/EDUCATIONAL LEAVE CREDITS FOR EMPLOYEES WORKING EIGHT HOURS PER DAY", that the calculation of dividing accumulated sick leave hours by eight hours **regardless of their work schedule (*not work day)*** to arrive at accumulated days **applies to eight hour per day employees** and therefore must be appropriately modified for 37-1/2 hour per week employees.

Using 7-1/2 hours as the divisor to calculate unused sick days is also consistent with crediting these employees with a full year of service credit when they are working 1,950 hours per year rather than 2,080 hours per year for 8 hour per day employees.

Finding 7: The City did not obtain the Affidavit of Parent-Child Relationship form to support one dependent's enrollment in CalPERS Health Benefits Program

Response:

The City disagrees with this finding. According to Circular Letter 600-0011-11 "effective immediately, an Affidavit of Parent-Child Relationship (HBD-40) must be completed and certified at the time of enrollment for each child and annually thereafter up to age 26. The Affidavit of Eligibility for Economically Dependent Children form (HBD-35) is obsolete and is no longer accepted."

Prior to the audit, the City was not aware that an employee had an economically dependent child enrolled in his health plan, as the ACES and my|CalPERS systems do not give the employer an option to produce a report that lists all employees with economically dependent children. As soon as we were made aware that an employee had an economically dependent child on his plan, the City asked him to complete the HBD-40 form to certify eligibility. Upon receipt of the form, the City determined the child was not

eligible and asked the employee to complete an HBD-12 form to discontinue the child's coverage retroactively to the beginning of the plan year effective January 1, 2012.

Again we thank you for the opportunity to respond and look forward to working with CalPERS to address any remaining issues.

Very truly yours,

Donald W. McVey
Director of Finance and
Administrative Services