

# **Office of Audit Services**



## **Public Agency Review**

### **City of Montebello**

**Employer Code: 0130  
CalPERS ID: 1885224868  
Job Number: P11-020**

**May 2014**



California Public Employees' Retirement System  
Office of Audit Services  
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May 30, 2014

Employer Code: 0130  
CalPERS ID: 1885224868  
Job Number: P11-020

City of Montebello  
Francesca Tucker-Schuyler, City Administrator  
1600 West Beverly Boulevard  
Montebello, CA 90640-3932

Dear Ms. Tucker-Schuyler:

Enclosed is our final report on the results of the public agency review completed for the City of Montebello (Agency). Your 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: City Council, City of Montebello  
David Kim, Finance Director  
Risk and Audit Committee Members, CalPERS  
Gina M. Ratto, Interim General Counsel, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Anthony Suine, Chief, BNSD, CalPERS

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## RESULT IN BRIEF

The primary objective of our review was to determine whether the City of Montebello (Agency) complied with applicable sections of the California Government Code, California Code of Regulations (CCR) and its contract with the California Public Employees' Retirement System (CalPERS).

The Office of Audit Services (OAS) noted the following findings during the review. Details are noted in the Results section beginning on page two of this report.

- Retired annuitants were unlawfully employed.
- Eligible employees were not enrolled into membership timely.
- Records to determine membership eligibility were not maintained.
- Incorrect payroll information was reported.
- Special compensation was incorrectly reported.
- Retroactive earnings and salary adjustments were incorrectly reported.
- Value of Employer Paid Member Contributions (EPMC) were incorrectly reported.

The following observations were noted during the review:

- Incorrect hourly payrates were listed in the pay schedule.
- Employment agreements contained erroneous information.

OAS recommends the Agency comply with applicable sections of the California Government Code, CCR and its contract with CalPERS. We also recommend the Agency work with the appropriate CalPERS divisions to resolve issues identified in this report.

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## SCOPE

The Agency contracted with CalPERS on July 1, 1946, to provide retirement benefits for local safety (fire and police) and miscellaneous employees. By way of the Agency's contract with CalPERS, the Agency agreed to be bound by the terms of the contract and by the Public Employees Retirement Law (PERL). The Agency also agreed to make its employees members of CalPERS subject to all provisions of the PERL.

As part of the Board approved plan for fiscal year 2011/2012, the OAS reviewed the Agency's payroll reporting and member enrollment processes as these processes relate to the Agency's retirement contract with CalPERS. The review period was initially limited to the examination of sampled records and processes from January 1, 2009 through December 31, 2011. OAS expanded the review period to encompass April 2006 through June 2012 for additional testing of salaries paid to employees in top management classifications and to review individuals classified as independent contractors working for the Agency. The on-site fieldwork for this review was conducted from February 6 through February 9, 2012.

The review objectives and a summary of the procedures performed are listed in Appendix A.

## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** The Agency unlawfully employed retired annuitants.

### **Condition:**

- A. The Agency unlawfully employed a retired annuitant in a permanent position as the Director of Finance. The employee retired from the position of Director of Finance and was subsequently rehired by the Agency through an independent contractor agreement for the same duties performed as the Director of Finance, without reinstatement from retirement. Specifically, the retired annuitant's date of retirement from the position of Director of Finance was April 2, 2009. The retired annuitant immediately entered into a service agreement as an independent contractor performing the same scope of duties that he performed in holding the position of Director of Finance. The retired annuitant worked from April 2, 2009 through March 16, 2011, and exceeded the 960 hours limitation during fiscal year 2009/2010, working a total of 2,002.50 hours, and the 12 month limitation under Government Code 21221(h).

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Pursuant to Government Code section 21220, a person who has been retired under this System for service may not be employed in any capacity, thereafter, by a contracting agency, unless he has first been reinstated from retirement. Any retired member in violation of this shall reimburse the System for any retirement allowance received during the period or periods of employment that are in violation of the law. Pursuant to Government Code 21221(h), a retiree may serve without reinstatement from retirement upon appointment of a contracting agency to a position deemed to be of a limited duration and requiring specialized skills or during an emergency to prevent stoppage of public business; however, the appointment may not exceed a total of 960 hours in any fiscal year, without approval from CalPERS board, and may not exceed a total of twelve months.

Furthermore, OAS found that the Agency paid the retired annuitant a salary that exceeded that paid to other employees performing comparable duties. Upon retirement, the Director of Finance's authorized monthly payrate was \$10,240.00. However, the retired annuitant was paid \$85.00 an hour or \$14,733.33 monthly for performing the same duties that he performed in the position of Director of Finance prior to retirement. This represented a 44 percent increase above the salary received while performing the duties of the Director of Finance as an employee of the Agency.

- B. Two retired annuitants exceeded the 960-hour threshold and were not reinstated from retirement. One retired annuitant worked 1,084 hours by pay period ending December 19, 2009. Another retired annuitant, incorrectly classified as an independent contractor, worked 1,476 hours by the pay period ending February 27, 2011. The retired annuitant, employed through a staffing services agency, performed duties of Interim City Administrator from August 24, 2010 through May 12, 2011. Government Code section 21224 limits the number of hours a retired person works to no more than 960 hours each fiscal year. The Agency is out of compliance since both of these retired annuitants exceeded 960 hours in a fiscal year.
- C. A retired annuitant did not have a bona fide separation in service. The annuitant retired at age 51 from a CalPERS contracting agency on April 2, 2011. Based on the applicable retirement formula, the normal retirement age was 55. The Agency hired this annuitant as an independent contractor on May 12, 2011 to work as Interim City Administrator. The CCR section 586.2 states a member who has not attained normal retirement age shall have a bona fide separation in service. A bona fide separation in service includes a separation of service of at least 60 calendar days between the date of the member's retirement and the first day of work for the employer as a

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retired person. Therefore, the Agency was out of compliance with employment of this retired annuitant since a bona fide separation did not exist.

***Recommendation:***

The Agency should ensure that retired annuitants who work under its direction and control are correctly classified and comply with the applicable Government Code sections and CCR.

The Agency should request CalPERS' approval to employ a retired annuitant as an independent contractor by submitting the independent contractor's employment agreement to CalPERS Benefit Services Division (BNSD) prior to the retired annuitant accepting employment.

The Agency should monitor the hours worked by retired annuitants, including those misclassified as independent contractors, to ensure that the 960-hour threshold is not exceeded in a fiscal year without reinstating retired annuitants into membership.

The Agency should not employ a CalPERS retired annuitant who has not yet attained normal retirement age, as defined in CCR section 586.1, unless the annuitant has met the bona fide separation requirements as defined in CCR section 586.2.

Government Code section 21220 addresses the conditions and consequences of unlawful employment of a person who has been retired under this system. The Government Code states that any retired member employed in violation of this article shall reimburse this system for any retirement allowance received during the period or periods of employment that are in violation of law, pay to this system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the member is determined by the executive officer to be at fault.

The Government Code also states that any public employer that employs a retired member in violation of this article shall pay to this system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon and contribute toward reimbursement of this system for administrative expenses incurred in responding to this situation, to the extent the employer is determined by the executive officer of this system to be at fault.

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OAS recommends the Agency work with CalPERS Benefit Services Division (BNSD) to determine the appropriate course of action.

***Criteria:***

Government Codes: § 20125, § 20160, § 20221, § 21220, § 21220.5, § 21221(h), § 21224

CCR: § 586.1, § 586.2



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**Finding 2:** The Agency did not enroll an eligible employee into membership.

***Condition:***

The Agency did not enroll an eligible employee that had previously established CalPERS membership. The employee was originally hired by the Agency through a consulting company for the Assistant City Administrator position effective September 12, 2011. The Agency later contracted directly with the employee through professional service agreements for the Assistant City Administrator and the City Administrator positions. This employee continued to work for the Agency through May 16, 2012. Government Code section 20305 requires Agencies to enroll employees with previous CalPERS membership immediately upon hire.

In addition, OAS noted variances in the authorized payrates and the payrates granted to the employee. When reporting the member's compensation to CalPERS, the Agency should ensure that only payrate and earnings pursuant to a publicly available pay schedule is reported.

***Recommendation:***

Notwithstanding how the Agency employs individuals, the Agency should immediately enroll employees with prior CalPERS membership upon hire.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make the necessary adjustments to the member's account pursuant to Government Code section 20160.

***Criteria:***

Government Codes: § 20028, § 20160, § 20305(a)(1)

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**Finding 3:** The Agency did not maintain the necessary records to determine membership eligibility for a temporary/part-time employee.

***Condition:***

The Agency did not provide information deemed necessary to determine if a temporary/part-time employee met membership eligibility. Although the Agency hired the individual through a consulting company, the individual worked in the position of City Administrator in an employer/employee relationship during fiscal year 2011/2012. The Agency misclassified the employee as an independent contractor and did not monitor the hours worked. Although the Agency provided invoices from the consulting company, the invoices did not provide sufficient information to determine the number of the hours worked by the employee. As required by Government Code section 20222.5 the Agency is required to provide information deemed necessary by CalPERS to determine membership eligibility.

***Recommendation:***

The Agency should work with CASD and provide supporting documentation in order to determine membership eligibility.

***Criteria:***

Government Codes: § 20221, § 20222.5, § 20572, § 22797

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**Finding 4:** The Agency incorrectly reported payroll information.

***Condition:***

The Agency incorrectly reported payroll information.

- A. The Agency incorrectly reported regular earnings for two fire shift employees in pay period ending December 31, 2011. When reporting bi-weekly earnings, the Agency incorrectly reported 106 hours as regular earnings instead of 112 hours as specified in the firefighters' Memorandum of Understanding (MOU) for shift employees. According to the MOU, fire shift employees' normal work-week consists of 56 hours which is equivalent to 112 hours each pay period. As a result of the incorrect reporting of regular earnings, special compensation was also under-reported.
  
- B. The Agency reported incorrectly 53 scheduled hours per week for all fire and fire shift employees. However, one fire employee's regular scheduled work week consisted of 40 hours per week and therefore, the scheduled hours per week should be reported as 40 hours. The MOU required the three fire shift employees to work an average of 56 hours, thus, the scheduled hours per week for fire shift employees should be reported as 56 hours.

***Recommendation:***

The Agency should ensure regular earnings and scheduled work hours per week are reported correctly for fire and fire shift employees pursuant to the MOU.

The Agency should work with CASD to make the appropriate adjustments to the member's accounts and other areas that require adjustments pursuant to Government Code section 20160.

***Criteria:***

Government Codes: § 20636(a), § 20636(b)(1), § 20636(c)(2), § 20636(c)(6), § 21221

CCR: § 571(a), § 571(a)(5), § 571(b), § 571(d)

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**Finding 5:** The Agency did not report special compensation pursuant to the CCR.

***Condition:***

Reportable special compensation is exclusively listed and defined in the CCR section 571. Reportable special compensation is required to be contained in a written labor policy or agreement, available to all members in a group or class, part of normally required duties, performed during normal hours of employment, paid periodically as earned, historically consistent with prior payments for the job classification, not paid exclusively in the final compensation period, and not final settlement pay.

- A. The Agency did not report special compensation of holiday pay that was cashed out for two fire employees in January 2012. The Agency's fire personnel MOU stated that employees hired prior to March 26, 2008 may continue to earn vacation/holiday/sick leave and those hired after are only eligible for the annual leave program. The two employees were hired prior to March 26, 2008 and were entitled to receive cash out of holiday pay which is a reportable item of special compensation.
  
- B. The Agency incorrectly reported special compensation as base payrate and regular earnings for seven employees in varying pay periods from July 1, 2006 through August 13, 2011. Specifically, the Agency did not report the value of EPMC, bilingual pay, and education incentive pay in accordance with CCR section 571. Special compensation must be reported separately from base payrate and regular earnings.

***Recommendation:***

The Agency should ensure holiday pay, a statutory item for all eligible employees, is reported as special compensation to CalPERS. The Agency should also immediately report special compensation items separately from payrate.

The Agency should work with CASD regarding the incorrect reporting and make the appropriate adjustments to active and retired members' accounts and other areas needing adjustment pursuant to Government Code section 20160.

***Criteria:***

Government Codes: § 20160, § 20630, § 20636(a), §20636(b)(1), § 20636(c)(1), § 20636(c)(2), § 20636(c)(6)

CCR: § 571(a)(5)

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**Finding 6:** The Agency incorrectly reported payroll adjustments.

**Condition:**

- A. The Agency incorrectly reported compensation on behalf of a member subsequent to their separation date of April 15, 2007 through the date of rehire on January 16, 2008. On August 23, 2011, the Agency submitted a retroactive adjustment to reverse compensation incorrectly reported during the member's separation period of April 15, 2007 through November 10, 2007. However, the Agency did not adjust the compensation reported for the member's entire separation period. Specifically, the Agency did not reverse the compensation incorrectly reported for the period of time the member was separated from service that included the pay period ending November 24, 2007 through pay period ending January 19, 2008. Pursuant to CCR 570, final settlement pay means any pay or cash conversions of employee benefits in excess of compensation earnable and is excluded from payroll reporting in either payrate or compensation earnable.
- B. The Agency incorrectly reported retroactive earnings for industrial disability pay for one employee. The Agency reported two lump sum amounts for both regular earnings and special compensation and incorrectly identified the period earned as February 14, 2010 through February 27, 2010. In addition, when reporting the earnings the Agency reported an incorrect payrate of \$93,554.27. The Agency should have reported the employee's correct payrate and identified the periods in which the compensation was earned regardless of when paid as required under Government Code section 20630.
- C. The Agency reported retroactive salary adjustments using an incorrect payrate of \$61,129.29 in pay periods ending May 8, 2010, May 22, 2010, and June 5, 2010 for one employee. The Agency should have reported the correct base payrate of \$4,975 for pay period ending May 8, 2010 and \$5,563 for pay periods ending May 22, 2010 and June 5, 2010.
- D. The Agency reported two retroactive salary adjustments using incorrect pay periods. The employee received a salary increase effective July 1, 2007. The Agency incorrectly reported the salary increase effective July 8, 2007, retroactively adjusting the salary in the pay period ending July 21, 2007. The Agency should have reported the retroactive salary adjustment using the pay period ending July 7, 2007. The employee received another salary increase effective February 27, 2011. The Agency incorrectly reported the increase effective January 30, 2011, retroactively adjusting the salary in the pay period

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ending February 12, 2011. The Agency should have reported the retroactive salary adjustment using pay period ending March 12, 2011.

***Recommendation:***

The Agency should report payroll adjustments in the correct pay periods and with the correct payrates.

The Agency should work with CASD to determine the impact of the incorrect reporting and make the necessary adjustments to the members' accounts pursuant to Government Code section 20160.

***Criteria:***

Government Codes: § 20160, § 20630, 20636(b)(1),

CCR: § 570

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7: The Agency incorrectly reported the value of EPMC.

***Condition:***

EPMC is defined and exclusively listed as special compensation. A resolution or ordinance of the governing body must be provided to CalPERS indicating the group or class, effective date, and the percent or amount of EPMC being paid and reported as an item of special compensation. The resolution or ordinance must be formally adopted by the employer's governing body, and submitted to CalPERS for review and approval. The resolution or ordinance must specify that the value of EPMC will be reported as an item of special compensation consistently, for all members in the affected group or class of employment. The full term of the resolution or ordinance by which the employer's governing body elects to pay and report the value of EPMC as an item of special compensation must be incorporated into the written labor agreement that pertains to the affected group or class of employment.

- A. The Agency incorrectly calculated the value of EPMC for two miscellaneous employees by including employer contributions in its calculation. As a result, special compensation was over-reported during six pay periods in fiscal year 2009/2010. The value of EPMC reported should be calculated on all compensation earnable and should not include employer contributions.
  
- B. The Agency incorrectly reported the value of EPMC for one mid-management employee during the pay period ending June 18, 2011. Although the July 1, 2007 Board Resolution No. 07-68 provided mid-management eight percent EPMC, it did not state the value of EPMC would be reported as special compensation. Therefore, the value of EPMC should not be reported as special compensation.

***Recommendation:***

The Agency should ensure the correct value of EPMC is reported for applicable employee groups.

The Agency should only report the value of EPMC if the governing body has approved a resolution to report the value of EPMC as an item of special compensation.

The Agency should work with CASD to determine the impact of the incorrect reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code section 20160.

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***Criteria:***

Government Codes: § 20160, § 20636(c)(2), § 20636(c)(4)

CCR: § 571(a)(1)



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**Observation 1:** The Agency's hourly payrate listed on its pay schedule were not consistent with the monthly payrates for employees working 2,912 hours annually.

OAS noted a variance between the hourly and monthly payrates in the pay schedule for fire shift employees. Specifically, the hourly rates on the pay schedule did not correspond with the monthly payrates. The Agency used an incorrect factor of 2,990 hours worked in a year to convert the annual and monthly payrates to hourly payrates for fire shift employees. OAS' examination of payroll records indicated that the fire shift employees work a regular schedule of 56 hours per week; therefore, the hourly and monthly payrates listed on the pay schedule should be based on 2,912 (56 hours X 52 weeks) annual hours.

The Agency did not clarify whether the monthly or hourly payrate identified in its pay schedule is the approved full-time payrate. Documentation reviewed by OAS supports that the monthly amount listed on the pay schedule is the accurate payrate. OAS reviewed two fire shift employees and found that the Agency correctly reported the rate of pay and earnings. In addition, the payrates reported were within the pay schedule ranges.

The methodology used by the Agency for determining hourly payrates does not impact the employees' service credit. However, while employee's pay and reporting are consistent, we noted the hourly rate paid and reported to CalPERS calculates out to less than the monthly payrate per the pay schedule due to the City's use of the 2,990 factor for annual hours instead of the correct 2,912 annual hours. These reported amounts will be used in a member's final compensation in the event of a member's retirement. Reporting an incorrect hourly payrate impacts CalPERS final compensation calculations for retirement and as a result reduces retirement allowance.

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**Observation 2:** Information included in employment agreements is not compliant with the Public Employees' Retirement Law.

OAS identified language in an employment agreement which conflicts with Government Code section 20636. Specifically, OAS noted that the Police Chief's employment agreement provided that the Agency would pay an additional six months' salary and benefits, including CalPERS, if the employee was terminated.

The Agency indicated that two additional employees had this language contained in their employment agreements. With the exception of the incorrect payroll adjustment discussed under Finding 6A, the Agency indicated payroll had not been reported for any terminated/separated employees as a result of the language. OAS advised the Agency that final settlement pay is not reportable under Government Code section 20636 and the language in the employment agreements is in contradiction to the retirement law.

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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 A. OAS limited the test of transactions to employee samples selected from the Agency'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. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the Agency 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

Staff: Cheryl Dietz, CPA, Assistant Division Chief  
Diana Thomas, CIA, CIDA, Manager  
Alan Feblowitz, CFE, Manager  
Terry Heffelfinger  
Carol Northrup  
Karen Harlan  
Edward Fama

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# **APPENDIX A**

## **OBJECTIVES**

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## OBJECTIVES

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

- Whether the Agency complied with applicable sections of the California Government Code and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review period was initially limited to cover the period of January 1, 2009 through December 31, 2011. OAS expanded the review period to encompass April 2006 through June 2012.

## SUMMARY

To accomplish the review objectives, OAS interviewed key staff members to obtain an understanding of the Agency's personnel and payroll procedures, reviewed documents, and performed the following procedures.

- ✓ Reviewed:
  - Provisions of the contract and contract amendments between the Agency and CalPERS
  - Correspondence files maintained at CalPERS
  - Board of Director minutes and Board of Director resolutions
  - Agency written labor policies and agreements
  - Agency salary, wage and benefit agreements including applicable resolutions
  - Agency personnel records and employee hours worked records
  - Agency payroll information
  - Other documents used to specify payrate, special compensation, and benefits for all employees
  - Agency ordinances as necessary
  - Various other documents as necessary
- ✓ Reviewed Agency payroll records and compared the records to data reported to CalPERS to determine whether the Agency correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to Agency 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 Agency's governing body in accordance with requirements of applicable public meeting laws.

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- ✓ Reviewed myCalPERS Contribution Detail report to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency'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 Agency's independent contractors to determine whether the individuals were either eligible or correctly excluded from CalPERS membership.
- ✓ Reviewed the Agency's affiliated entities to determine if the Agency shared employees with an affiliated entity and if the employees were CalPERS members and whether their earnings were reported by the Agency or by the affiliated entity.
- ✓ Reviewed the Agency's calculation and reporting of unused sick leave balances, if contracted to provide for additional service credits for unused sick leave.

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# **APPENDIX B**

**AGENCY'S WRITTEN RESPONSE**



*City of Montebello*

March 11, 2014

Ms. Terry Heffelfinger  
CalPERS Office of Audit Services  
Lincoln Plaza North  
400 Q Street  
Sacramento, CA 95811

Dear Ms. Heffelfinger:

The City of Montebello has received the draft audit report covering review period January 1, 2009 through December 31, 2011 and has conducted its review. Once the final report is received, The City of Montebello will work with CalPERS on the various items noted.

Sincerely,

CITY OF MONTEBELLO

*David Kim*

David Kim  
Finance Director