

Office of Audit Services



CalPERS

Public Agency Review

City of La Palma

**Employer Code: 0633
CalPERS ID: 3770853942
Job Number: P13-079**

August 2014



California Public Employees' Retirement System
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August 29, 2014

Employer Code: 0633
CalPERS ID: 3770853942
Job Number: P13-079

Laurie A. Murray, Administrative Services Manager
City of La Palma
7822 Walker Street
La Palma, CA 90623-1771

Dear Ms. Murray:

Enclosed is our final report on the results of the public agency review completed for the City of La Palma (Agency). Your written response, included as an appendix to the report, indicates disagreement with Finding 1. We appreciate the additional information that you provided in your response. However, after consideration of this information, our recommendation remains as stated 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 Phyllis Miller
PHYLLIS MILLER, Acting Chief
Office of Audit Services

Enclosure

cc: Council, City of La Palma
Ellen Volmert, City Manager, City of La Palma
Risk and Audit Committee Members, CalPERS
Matthew G. Jacobs, General Counsel, CalPERS
Anthony Suine, Chief, BNSD, CalPERS
Renee Ostrander, Assistant Chief, CASD, CalPERS

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RESULTS IN BRIEF

The primary objective of our review was to determine whether the City of La Palma (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' employment did not comply with all Government Code requirements.
- Eligible temporary/part-time employees were not enrolled into membership.
- Special compensation was not reported as required by CCR Section 571.
- Optional members were not offered membership.

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.

SCOPE

The Agency contracted with CalPERS effective July 1, 1966, to provide retirement benefits for local safety 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 2013-14, 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 limited to the examination of sampled employees, records, and pay periods from January 1, 2011 through December 31, 2013. The on-site fieldwork for this review was conducted from January 27-29, 2014. The review objectives and a summary of the procedures performed are listed in Appendix A.

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OFFICE OF AUDIT SERVICES REVIEW RESULTS

1: Retired annuitants' employment did not comply with all Government Code requirements.

Condition:

- A. The Agency unlawfully employed a retired annuitant. The retired annuitant was hired as an independent contractor performing duties of Interim Finance Director and worked for the Agency from October 18, 2011 to March 15, 2012. The retired annuitant was compensated a salary rate of \$80.00 an hour. The public pay schedule effective July 1, 2011, listed a maximum payrate of \$74.43 an hour for the Finance Director position. Government Code Section 21221(h), effective January 1, 2012, stipulated that the compensation for an interim appointment shall not exceed the maximum public pay schedule for the vacant position. The retired annuitant payrate exceeded the amount listed on the public pay schedule from January 1, 2012 through March 15, 2012.

Using the common law control test, OAS determined the retired annuitant was not an independent contractor and instead was an employee of the Agency. OAS determined that this individual was in an employee/employer relationship with the Agency based in part on the following factors:

- Position was established and identified on the Agency's organization chart
- Individual provided services that were formerly provided by Agency employees
- Interim Finance Director reported to and received instructions from the City Manager
- Agency provided office space and office equipment for the individual
- Services performed were part of the Agency's normal operations
- Agency was actively recruiting for this position

Pursuant to Government Code Section 21220, a person who has been retired under this System may not be employed in any capacity, thereafter, by a contracting agency, unless he has first been reinstated from retirement or unless the employment without reinstatement is authorized under Article 8, "Employment After 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.

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- B. The Agency hired two retired annuitants as independent contractors. Because these individuals were retired annuitants, the Agency stipulated in the individuals' service agreements that those hours worked would not exceed 960. Although the individuals did not exceed 960 hours in a fiscal year, the Agency did not report the hours and compensation of the retired annuitants in my|CalPERS. Retirees working directly for a CalPERS employer through an independent contractor, consultant or any other contract agreement are subject to the retirement law restrictions for retired annuitant employment.

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.

Recommendation:

The Agency should ensure that compensation paid to retired annuitants who perform services as interim employees, does not exceed the compensation limits listed in Government Code Section 21221(h). In addition, the Agency should report the hours worked by retired annuitants.

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

Criteria:

Government Codes: § 21202, § 20160, § 20221, § 21220, § 21221

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2: The Agency did not enroll part-time employees into membership when eligibility requirements were met.

Condition:

The Agency did not enroll two part-time employees with active CalPERS membership. Employees who have active CalPERS membership are required to be immediately enrolled upon the first day of rendering services to the Agency. As a result, the Agency should have enrolled the employees at the beginning of their initial hire date.

Recommendation:

The Agency should ensure that part-time employees with active CalPERS membership are immediately enrolled upon hire.

The Agency should work with CalPERS Customer Account Services Division (CASD) to make any necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20305

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3: The Agency did not report special compensation as required by the CCR.

Condition:

- A. The Agency incorrectly reported special compensation of Holiday Pay for an employee. The Agency paid an employee \$2,934.04 as payment for 72 hours in Holiday Pay which was paid in advance in January 2013. The amount was calculated at the rate of pay of \$40.75 an hour. The Agency reported an hourly base payrate of \$44.00 when the employee worked on the November 11, 2013 holiday. As a result, the Holiday Pay was over reported.
- B. The Agency did not report Holiday Pay as special compensation for three employees during the pay period ending November 22, 2013. These employees worked in positions that required staffing without regard for holidays and received the Holiday Pay in advance in January 2013. The Agency did not report the Holiday Pay in the pay period earned. Pursuant to CCR Section 571, Holiday Pay is a statutory item and should have been reported as special compensation in the period earned.
- C. The Agency reported annual Uniform Allowance, a statutory item of special compensation, on a quarterly basis for two employees. The Agency's written labor policy for these employees provides for a yearly Uniform Allowance of \$900.00. The Agency reported the Uniform Allowance of \$225.00 per quarter instead of when earned. Pursuant to Government Code Section 20636(c)(3), the Agency shall identify the pay period(s) in which compensation was earned.

Recommendation:

The Agency should ensure Holiday Pay is correctly calculated and reported.

The Agency should also report the Holiday Pay and Uniform Allowance as special compensation in the period earned.

The Agency should work with CASD to determine the impact of this incorrect reporting to make any necessary adjustments to member accounts, pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20160, § 20630(b), § 20636
CCR: § 571

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4: The Agency did not offer optional membership to City Council Members.

Condition:

The Agency did not advise its Council Members of their optional CalPERS membership rights. Government Code Section 20322 states that an elective officer is excluded from membership in the CalPERS retirement system unless the officer files an election in writing with CalPERS to become a member. Optional members must be advised of their optional CalPERS membership rights when first eligible for membership. An elective officer includes persons elected to a City Council.

Recommendation:

The Agency should work with CASD to ensure elected officials are advised of their CalPERS optional membership rights when first elected and file the appropriate election in writing with CalPERS for those who elect to be members.

The Agency should work with CASD to determine the impact of the membership requirement issue and determine what adjustments, if any, are needed, pursuant to Government Code Section 20160.

Criteria:

Government Codes: § 20120, § 20121, § 20160, § 20221, § 20322

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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 Phyllis Miller
PHYLLIS MILLER, CPA, CIA
Acting Chief, Office of Audit Services

Staff: Cheryl Dietz, CPA, Assistant Division Chief
Alan Feblowitz, CFE, Manager
Jodi Brunner, CGAP, Auditor
Janice Ang, Auditor

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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 (sections 20000 et seq.) and Title 2 of the CCR.
- Whether prescribed reporting and enrollment procedures as they relate to the Agency's retirement contract with CalPERS were followed.

This review covers the period of January 1, 2011 through December 31, 2013.

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
 - Agency Board minutes and Agency Board 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 including Contribution Detail Transaction History reports
 - Other documents used to specify payrate, special compensation, and benefits for employees
 - 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.
- ✓ Reviewed CalPERS reports to determine whether the payroll reporting elements were reported correctly.

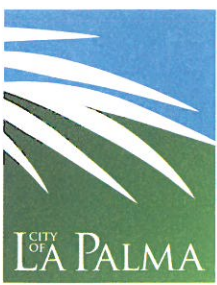
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- ✓ Reviewed the Agency's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the Agency's employment practices for retired annuitants to determine if retirees 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 WRITTEN RESPONSE



July 16, 2014

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

Dear Ms. Junker:

The City is in receipt of the California Public Employees' Retirement System (CalPERS) draft Public Agency Review Report. Pursuant to my conversation and correspondence with Alan Febowitz of July 2, 2014, the response date was extended from July 9 to July 16, 2014. The City's responses to the Audit Findings follow:

Finding 1: Retired annuitants' employment did not comply with all Government Code requirements.

Response 1A: Section 1, Condition A ("Finding 1A"): "The Agency unlawfully employed a retired annuitant."

A. Consultant A was an Independent Contractor.

The City of La Palma (the "Agency") signed an Agreement for Consultant Services with Consultant A¹ as of October 18, 2011, (the "Agreement"). The Consultant agreed to perform services as an Interim Finance Director.

CalPERS asserts that Consultant A "was not an independent contractor and instead was an employee of the Agency." **The Agency disputes this assertion** and contends that Consultant A was a legally hired independent contractor. According to the Employment Development Department of the State:

The basic test for determining whether a worker is an independent contractor or an employee is whether the principal has the right to direct and control the manner and means by which the work is performed. When the principal has the 'right to control,' the worker will be an employee . . . If the principal does not have the right of direction and

¹ The name of Consultant A is withheld. See Draft Public Agency Review Appendix B, Confidential List, Finding 1A for identifying information

control, the worker will generally by an independent contractor.²

Here, according to Section 3.2 of the Agreement, Consultant A was retained as an independent contractor only, and not as an employee of the Agency. Specifically, it is clear from the face of the Agreement that Consultant A had the sole right to control the manner and means by which the work was performed under the Agreement; the Agency had no right to control. As such, the list of secondary factors, some of which are listed by CalPERS, is irrelevant to this situation.³ Consultant A was an independent contractor.

B. The Agreement Complied with the Terms of Government Code Section 21221(h).

CalPERS asserts that Consultant A did not meet the statutory requirements of Government Code section 21221(h) for employment as a retired annuitant. As an initial matter, retirees engaged as independent contractors or consultants are not subject to the retirement law requirements.⁴ As stated above, Consultant A was an independent contractor.

Even though Consultant A was an independent contractor, the hiring of Consultant A also met the statutory requirements for employment as a retired annuitant. CalPERS asserts that Consultant A did not meet the statutory requirements of Government Code section 21221(h) because the Agency compensated Consultant A at a rate that exceeded the maximum pay rate for the position. CalPERS further asserts that Consultant A was hired at a rate of \$80.00 per hour, while the pay schedule listed a maximum pay rate of \$74.43 per hour for the position. The Agency disputes these finding on the basis that the statutory language relied upon by CalPERS was not in effect at the time the parties entered into the Agreement. CalPERS impliedly admits as much by referring to "Government Code Section 21221(h), effective January 1, 2012" instead of referring to the version of that statute in effect when the Agreement was entered.

In October of 2011, when the Agreement was entered, Government Code section 21221(h) provided:

Upon appointment by the governing body of a contracting agency to a position deemed by the governing body to be of a limited duration and requiring specialized skills or during an emergency to prevent stoppage of public business. These appointments, in addition to any made pursuant to Section 21224, shall not exceed a total for all employers of 960 hours in any fiscal year. When an appointment is expected to, or will, exceed 960 hours in any fiscal year, the governing body shall request approval from the board to extend the temporary employment. The governing body shall present a resolution to the board requesting action to allow or disallow the employment extension. The resolution shall be presented prior to the expiration of the 960 hour maximum for the fiscal year. The appointment shall continue until notification of the board's decision is received by the

² See Employment Determination Guide, Employment Development Department of the State of California.

³ *Ibid.*

⁴ CalPERS Circular Letter No. 200-002-14, dated January 14, 2014, re: Post Service Retirement Employment Requirements.

*governing body. The appointment shall be deemed approved if the board fails to take action within 60 days of receiving the request. Appointments under this subdivision may not exceed a total of 12 months.*⁵

The plain language of the then-existing statute includes no reference to compensation, pay rate, or rate schedules. Accordingly, the Agency was under no obligation to compensate Consultant A at a rate that did not exceed the maximum pay schedule for the vacant position.

The language in a statutory amendment operates prospectively unless the Legislature expressly stated the contrary, or there is clear indication of legislative intent that the statute operate retrospectively.⁶ The Legislature knows how to express retroactive intent, but nothing in the plain language of the relevant amendment to Government Code section 21221 or elsewhere indicates such an intent. The fact that the Legislature did not express retroactive intent and did not make the relevant amendment effective immediately “is a significant indication it did not intend to apply the amendment retroactively.”⁷ Additionally, retroactive application of the amendment would run afoul of Article I § 9 of the California Constitution.⁸ The Agreement was already entered into when the relevant amendment became effective. Applying the relevant amendment to the Agreement would require a modification of the terms of the Agreement, thereby unconstitutionally impairing the Agency’s payment obligation under the Agreement.⁹

Agency’s adherence to “Government Code Section 21221(h), effective January 1, 2012” is demonstrated in two subsequent agreements with retired annuitants that took effect after the January 1, 2012, effective date.

Response 1B: Section 1, Condition B (“Finding 1B”): “The Agency did not report the hours and compensation of the retired annuitants in my | CalPERS.”

CalPERS asserts that the Agency hired two retired annuitants as independent contractors and did not report the hours and compensation of those retired annuitants in my | CalPERS. **The Agency acknowledges that it hired the two referenced retired annuitants¹⁰ as independent contractors and that the hours and compensation of the two referenced retired annuitants were not reported in my | CalPERS**, but disputes that this amounts to a violation of any reporting

⁵ This version of Government Code section 21221(h) was in effect from January 1, 2006 until January 1, 2012. Among other changes, Stats 2011 ch 440 § 8 (AB 1028) amended Government Code section 21221(h) to include the following: “The compensation for the interim appointment shall not exceed the maximum published pay schedule for the vacant position.” It is this language upon which CalPERS erroneously relies.

⁶ See *Weinholz v. Kaiser Found. Hosps.* (1989) 217 Cal. App. 3d 1501, 1505.

⁷ *Ibid.* (internal quotation marks omitted; quoting *Perry v. Heavenly Valley* (1985) 163 Cal. App. 3d. 495, 500.)

⁸ Article I § 9 of the Constitution of the State of California provides: “A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed.”

⁹ *Ibid.*

¹⁰ The names of the two referenced retired annuitants are withheld. See Draft Public Agency Review Appendix B, Confidential List, Finding 1B for identifying information.

requirements. As CalPERS' recent circulation letter states independent contractors "are not subject to the retirement law requirements."¹¹ Thus, the reporting requirements did not apply to the retired annuitants at issue.

In addition, while the Agency acknowledges that it did not report the hours of the retired annuitants, it is important to note that the Agency received no communication that it was required to report the hours of retired annuitants, whether independent contractors or otherwise. When the CalPERS auditors informed the Agency of this requirement during the audit process, the Agency stated that it would immediately comply. However, Agency staff was told by the lead auditor to wait until the audit was complete and that CalPERS staff would work with Agency staff to bring any findings into compliance. In the meantime, Agency staff made multiple attempts to work with CalPERS staff to enroll the retired annuitants at issue in my| CalPERS and to report the hours, including attending local CalPERS training to try to get answers as to procedures. It was at one of those trainings that Agency staff was informed that CalPERS does not always send notification regarding software changes or reporting requirements, and that such information was only given at trainings. The City finds this unbelievable that it is a conscientious decision of CalPERS to not communicate changes to software or reporting requirements and methods to members in writing with instructions on how to navigate the software and/or meet the reporting requirements. It is not feasible that any agency can send its employees to every training opportunity, be it CalPERS or otherwise.

After multiple failed attempts, Agency staff worked with a CalPERS representative in Payroll Services in July 2014 to find a method to report the hours of retired annuitants and is in the process of uploading the hours of all three annuitants. The Agency has also changed its procedures to insure that retired annuitants are properly enrolled as retired annuitants and that hours are properly reported. As noted above, however, it is still unclear whether, and on what basis, the reporting requirements apply to independent contractors who fall outside the scope of the retirement laws.

Separately, it is unclear if the asserted financial consequences listed in the "Recommendation" section, which derive from Government Code section 21220, relate to the alleged violations set forth in Finding 1A or in Finding 1B. To the extent that CalPERS is stating that they flow from the alleged reporting requirement violations, the Agency disputes that consequences under Government Code section 21220 apply to violation of a reporting requirement. Government Code section 21220(b) states that the consequences provided in that section apply to "[a]ny retired member employed in violation of this article" and to "[a]ny public employer that employs a retired member in violation of this article". The "article" referenced is Article 8 of Title 2, Division 5, Part 3, Chapter 13 of the Government Code. The alleged reporting requirement violation appears to stem from Government Code section 20221, which is not only in a different Article, but it is also in a different Chapter of the Government Code. Accordingly, the consequences imposed by Government Code section 21220 do not apply to the alleged reporting requirement violations.

Finding 2: The Agency did not enroll part-time employees into membership when eligibility requirements were met.

Response 2:

¹¹ CalPERS Circular Letter No. 200-002-14, *supra*, p. 5.

The Agency concurs that it did not enroll two part-time employees into membership and has taken steps to correct the current error and prevent future reporting errors.¹² This was not done intentionally. The Agency has a long standing history of tracking and enrolling part-time employees that exceed the 1,000 hours worked in a fiscal year immediately when they reach that threshold. This was not the case with these two individuals because they were already enrolled in CalPERS.

The employee identified as a Per Diem Dispatcher was working full-time for another CalPERS agency and on an on-call basis for the Agency. The Agency was under the belief that additional hours worked by the employee were not eligible for CalPERS and paid the employee under its alternative retirement plan for part-time employees.

The employee identified as a Recreation Specialist was hired and the Agency was unaware that the employee was enrolled in CalPERS — in fact, when first hired, the employee stated that she was not enrolled in CalPERS. It was sometime later that it was discovered that the employee was indeed enrolled in CalPERS at the employee's other employment. At that time, Agency staff contacted CalPERS to find out how to rectify the situation. Unfortunately, while waiting for an answer, the matter was forgotten until just before the audit. At that time, Agency staff again attempted to get answers as to how to rectify the situation, but to no avail. Agency staff even asked the CalPERS auditors how to fix the problem. Again, the Agency was told by the lead auditor to wait until the audit was complete and that CalPERS staff would work with it to bring any findings into compliance.

Because the Recreation Specialist was an active employee and the Agency wanted to rectify this matter prior to receiving audit results, Agency staff persisted and learned how to enroll the employee. Unfortunately, due to a communication error, at the time of this response, the back hours have not been reported. Agency, however, will ensure they are reported prior to the end of July 2014.

After learning about the need to report part-time employees who work full time for other agencies, Agency staff reviewed and modified its procedures to insure that all part-time employees are enrolled in CalPERS, if eligible. As part of those procedures, Agency staff cross-checked every current part-time employee with the CalPERS system and found no employees who were not already enrolled. This is troubling because the employee identified as a Per Diem Dispatcher is not currently enrolled nor did they come up as needing to be enrolled. It is difficult for the Agency to ensure accuracy and proper enrollments when the CalPERS system is not reliable and does not allow said enrollments.

Finding 3: The Agency did not report special compensation as required by the CCR.

Response 3A: Section 3, Condition A ("Finding 3A"): "The Agency incorrectly reported special compensation of Holiday Pay for an employee."

¹² The names of the two referenced part-time employees are withheld. See Draft Public Agency Review Appendix B, Confidential List, Finding 2 for identifying information.

CalPERS asserts that the Agency over reported Holiday Pay for hours worked on November 11, 2013 by an employee.¹³ **The Agency can neither concur nor disagree with this Finding without further clarification.** The Agency has an existing Memorandum of Understanding (MOU) with the La Palma Police Association (LPPA), of which this employee is a safety member. The MOU provides that employees working in Patrol and Dispatch receive Advanced Holiday Pay, a cash out of their Holiday credit for the following year in January of each year in lieu of having time off. Therefore it was the Agency's understanding that when an employee was scheduled to work the holiday, the pay they received for the time worked and 8 hours of holiday pay were to be reported. It was logical that those hours would be paid at the same rate (the rate would be higher if the employee had received any increase in salary between January and the actual holiday worked). To respond to this finding, the Agency will review holiday hours paid since this provision of the MOU went into effect and make corrections as appropriate. The Agency will also change the manner in which it reports Holiday Pay for this unit on a go forward basis.

Response 3B: Section 3, Condition B ("Finding 3B"): "The Agency did not report Holiday Pay in the pay period earned."

CalPERS asserts that the Agency did not report Holiday Pay in the pay period earned for three LPPA employees (2 safety and 1 miscellaneous) for the service period of November 9 to November 22, 2013.¹⁴ **The Agency can neither concur nor disagree with this Finding without further clarification.** The Agency has an existing Memorandum of Understanding (MOU) with the La Palma Police Association (LPPA), of which these employees are members. The MOU provides that employees working in Patrol and Dispatch receive Advanced Holiday Pay, a cash out of their Holiday credit for the following year in January of each year in lieu of having time off. Therefore it was the Agency's understanding that if an employee was not scheduled to work a holiday, the Holiday Pay received as a cash out was not considered compensation and need not be reported.

To respond to this finding, the Agency will review holiday hours paid since this provision of the MOU went into effect and make corrections as appropriate. The Agency will also change the manner in which it reports Holiday Pay for this unit on a go forward basis.

However, before taking any actions, the Agency seeks clarification from CalPERS as to which manner Holiday Pay should be reported. Is all Holiday Pay reportable, and if so, is it reportable when paid (in this instance January) or is it payable when the employee works a holiday as in Finding 3A?

Response 3C: Section 3, Condition C ("Finding 3C"): "The Agency reported annual Uniform Allowance, a statutory item of special compensation, on a quarterly basis."

CalPERS asserts that the Agency did not report Uniform Allowance in the pay period earned for two Management Safety employees for the service period of November 9 to November 22, 2013.¹⁵

¹³ The name of the referenced employee is withheld. See Draft Public Agency Review Appendix B, Confidential List, Finding 3A for identifying information.

¹⁴ The name of the referenced employee is withheld. See Draft Public Agency Review Appendix B, Confidential List, Finding 3B for identifying information.

¹⁵ The name of the referenced employees are withheld. See Draft Public Agency Review Appendix B, Confidential List, Finding 3C for identifying information.

Again, the Agency neither concurs nor disagrees with the Finding as it is a matter of interpretation as to whether an MOU or Benefit Schedule determines when a benefit is paid and whether CalPERS' interpretation takes precedence over the MOU or Benefit Schedule.

The Agency has an existing Salary Schedule and Comprehensive Listing of Personnel Practices and Benefits for Management Employees adopted by Resolution 2011-39 on May 17, 2011. The Schedule details that Management Safety employees are entitled to a uniform allowance of \$900 annually. This allowance has historically been paid and reported quarterly and CalPERS has never questioned or commented on the manner it was reported in the past. The Agency does not find anywhere in CalPERS documentation that states that Uniform Allowance must be paid and reported in each pay period, except as earned—which can be interpreted in a variety of ways, including by pay period or quarterly, etc.

The Agency seeks clarification from CalPERS as to the manner in which Uniform Allowance should be paid and reported.

Finding 4: The Agency did not offer optional membership to City Council Members.

Response 4:

CalPERS asserts that the Agency did not advise its Council Members of their optional CalPERS membership rights. **The Agency agrees with the Finding.** Current Agency staff members—going back thirty years—were told and believed that elected officers were excluded from membership in the CalPERS retirement system. In reviewing contracts, elected officers were never included; therefore that assumption was never questioned as the Agency believed that a contract amendment was required to include, not exclude, elected officials. The Agency will advise all current and future elected officials of their optional CalPERS membership rights.

In closing, the Agency appreciates CalPERS' diligence in upholding regulations and in bringing these matters to the Agency's attention. We also ask that CalPERS evaluate how it communicates changes and requirements to contract agencies in the future. Please contact the undersigned at (714) 690-3338 should you have any questions regarding this response.

Sincerely,



Laurie A. Murray
Administrative Services Director

cc: City Manager
City Attorney