California Public Employees' Retirement System
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May 25, 2012

Ref. No. 2012-0346

Dear Mr. Fresch:

The California Public Employees' Retirement System (CalPERS) undertook a Public Agency review of the City of Vernon (City) and the final report was released April 2012. CalPERS audit staff reviewed payroll reporting and membership enrollment processes of the City for individuals included in a test sample, over service periods of July 1, 2002, through June 30, 2010. You were one of the test sample individuals.

As a result of CalPERS Public Agency review, CalPERS has reviewed all information available from 1986 through the present in regards to your eligibility for membership in CalPERS for services performed simultaneously in multiple positions as the Administrative/Finance, Finance Administrator, Acting City Attorney, City Attorney, Acting City Administrator, City Administrator, Assistant City Attorney I and Special Counsel for the City and the compensation that the City reported to CalPERS on your behalf.

The purpose of this letter is to inform you of the results of CalPERS investigation and review and to specifically address your CalPERS membership eligibility, your classification as a safety member, your arrears service credit, and the purchase of Additional Retirement Service Credit (ARSC).

CalPERS has concluded you were not eligible for membership for your services rendered with the City; you were improperly enrolled as a safety member; and your arrears service credit and purchase of ARSC were improperly granted.

Formal Determination

The City first entered you into membership on July 28, 2002 with the title of Finance Administrator. Thereafter, the City requested that you be granted prior service for the period of May 20, 1986 through July 2002. On December 29, 2002 you were credited with 16.100 years of arrears service and your membership date was changed to June 1, 1986. Your title for this period was noted as Administrative/Finance. CalPERS has determined that you did not serve as an employee, but that you were providing

professional legal services during the period of May 1986 to July 2002. Therefore the service request was erroneously approved.

Additionally, CalPERS has evaluated the information provided by you and the City and has determined that the balance of your 28.746 years of service reported by the City also is not eligible for inclusion in this system. CalPERS has concluded that pursuant to Government Code sections 20300(b) and 20300(h)[1], you were an independent contractor and not an employee of the City and/or you provided professional legal services. Therefore, you are not eligible for CalPERS membership or benefits for any of your service with the City. Moreover, only members may receive service credit for any arrears period or purchase ARSC. Since you were neither an employee of the City, nor a member of CalPERS, from June 1, 1986 to January 4, 2010, the arrears service from May 1986 through July 2002 was granted in error, and the ARSC purchase on December 12, 2005 was improper. As such, reimbursement and/or credit for these payments will be effectuated in accordance with State and Federal law.

I. CalPERS Has Determined You Were An Independent Contractor Or Providing Professional Legal Services And Not An Employee Of the City from June 1, 1986 to January 4, 2010.

Section 20125 provides: "The Board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system." CalPERS applies the California common law employment test to determine whether your status at the City was as an employee or independent contractor.

Section 20028 defines who may be an employee for purposes of membership in the retirement system. Section 20028(b) states that an employee is, "Any person in the employ of any contracting agency."

The common law employment test is used by the courts and the CalPERS Board of Administration to determine "employee" or "independent contractor" status under the Public Employees' Retirement Law (PERL.)[2] In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the desired result. If an employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists. Other factors to be taken into consideration are (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular

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1 All further references are the California Government Code unless otherwise specified.

2 See *Metropolitan Water Dist. v. Superior Court (Cargill)* (2004) 32 Cal.4th 491 which held the terms "independent contractor" and "employee" of a contracting agency must be defined with reference to California common law.

occupation; (d) whether the principal or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be performed; (f) the method of payment, whether by the time or by the job; (g) whether or not the parties believe they are creating the relationship of employer-employee[3].

Administrative/Finance

The documentation provided for the Administrative/Finance position is City Resolution No. 5279 dated May 26, 1986, two Consultant Agreements dated May 20,1986 and May 7, 1987, an Agreement for Legal, Financial and Administrative Consulting Services dated July 1, 2000, and an Amendment to Agreement for Legal, Financial and Administrative Consulting Services dated March 1, 2002. The City was unable to provide any personnel documents or job duty statements for the position of Administrative/Finance. Relevant facts in the documents the City did produce included:

- Both the resolution and the agreements state that they are for "consulting services".
- The consulting agreements further note that the included duties are "advisory services".
- Neither the documents, nor the subsequent amendments, provide a scope of work, or any duties that may be identified as a City function or classification.
- The consulting agreement indicates that you are to be paid by the hour for time billed and to be submitted by you to the City.
- Neither document provides for any benefits that are received by City employees.
- There is no documentation in your personnel file until August 6, 2002.
- Neither document, nor the subsequent amendments, provides any indication of direction or control by the City sufficient to meet the common law control test for an employer/employee relationship.

Without evidence of an established City position of "Administrative/Finance" or of common law control by the City, CalPERS finds that services provided under the various agreements between you and the City were that of an independent contractor, not a common law employee.

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[3] The factors to consider are enunciated in *Tieberg v. Unemployment Ins. Bd.* (1970) 2 Cal.3d 943, 949 and *Empire Star Mines v. California Employment Com.* (1946) 28 Cal.2d 33, 43-44. See also CalPERS Precedential Decisions *In the Matter of the Statement of Issues of Lee Neidengard, Respondent and Tri-Counties Regional Center, Respondent,* Precedential Case No. 05-01 (2005) and *In the Matter of the Application to Contract with CalPERS by Galt Services Authority, Respondent, and City of Galt, Respondent,* Precedential Case No. 08-01 (2008).

Section 20300 provides exclusions to compulsory membership. Section 20300(b) specifically excludes from membership in CalPERS "(b) Independent contractors who are not employees." It is our determination, therefore, that your service from 1986 to 2002 as Administrative/Finance is excluded from membership by Section 20300(b), and that the arrears service credit was granted in error.

Finance Administrator

On July 28, 2002, you were brought into CalPERS membership with the title of Finance Administrator. The documentation provided for the Finance Administrator position was City Resolution No. 8049, and a Second Amendment to Agreement for Legal, Financial and Administrative Consulting Services. The City was unable to provide any personnel documents or job duty statements for the position of Finance Administrator. Some of the pertinent facts from the documents the City did produce included:

- The agreement is for "Legal, Financial and Administrative Consulting Services".
- The stated intent of Resolution No. 8049 is to provide you with retirement benefits, and to make you an employee of the City "...for purposes of such benefits in the Public Employees Retirement System".
- The resolution provides no information regarding duties or scope of services.
- Although the amended agreement provides a specific title of Finance Administrator and specifies that 2,080 hours shall be worked in that title, section 5 of the agreement, "Scope of Services", provides no further information, merely noting a job category of Finance Administrator.
- Section 6, "Compensation", of the agreement provides compensation solely for consulting services, and no pay is noted for the Finance Administrator.
- Neither document, nor the subsequent amendments, provides any indication of direction or control by the City sufficient to meet the common law control test for an employer/employee relationship.

Section 20300(h) specifically excludes "...persons rendering professional legal services to a city, other than the person holding the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney." As noted above, Section 20300(b) also specifically excludes from membership in CalPERS "Independent contractors who are not employees."

The submitted documentation is insufficient to show the necessary common law control by the City in order to conclude that an employer/employee relationship existed. As such, CalPERS finds that services provided under the various agreements was as a person rendering professional legal services and/or as an independent contractor, not

an employee, and excluded from membership in CalPERS by Sections 20300(b) and 20300(h).

Acting City Attorney

On December 16, 2003, the City appointed you as Acting City Attorney. The documentation supporting this appointment is heavily redacted. The minutes of an October 15, 2003 meeting of the Vernon City Council provide little detail. There were no resolutions, contracts or personnel forms to document this appointment or compensation for the position.

The City Attorney is an officer of the City, as defined by the Vernon City Charter Article VII, Chapter 7.3. City officers are required by statute to take an oath prescribed by the California Constitution before entering office.[4] Failure to take and file the constitutional oath will result in a vacancy of the office.[5]

In October 2010, CalPERS sent a questionnaire to the City regarding your employment. Question 3 of the questionnaire asked if you had taken an oath of office, and requested any documents to validate such an oath. The City's reply in February 2011, states that all Vernon employees are required to take an oath of office. The City referred CalPERS to the City's Policies and Procedures for more information. The Policies and Procedures submitted by the City include a form; "Oath or Affirmation of Allegiance for Public Officers and Employees" that all employees are required to sign. However, the City was unable to provide a signed form or statement indicating you ever took the oath of office for Acting City Attorney.

Absent an oath of office[6], CalPERS must conclude the office is vacant[7].

During this time, the City continued to contract with you for Financial and Administrative Consulting Services. As noted above, service under this agreement for Financial and Administrative Consulting Services is excluded from membership in CalPERS by Sections 20300(b) and 20300(h).

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[4] See Government Code Sections 1360 and 36507; *People ex rel. Chapman v. Rapsey* (1940) 16 Cal. 2d 636.

[5] See Government Code 1770, subdivision (i).

[6] See Section 3 of Article XX of the California Constitution requires all public officers and employees, except such inferior officers and employees as may be by law exempt, to take an oath of office before they enter upon the duties of their offices or employment. The term "public officer and employee" is defined to include every officer and employee of the state "... every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing." Government Code section 1360 requires all officers to take and subscribe the constitutional oath prior to entry on the duties of office. This has been held to apply to county as well as state officers, but not employees. (*Hirschman v. County of Los Angeles* (1952) 39 Cal. 2d 698, 703.) The court in *People ex rel. Chapman v. Rapsey* (1940) 16 Cal. 2d 636, held that the positions of city judge and city attorney were both offices.

[7] See Government Code 1770, subdivision (i).

City Attorney

On February 5, 2004, the City appointed you to the position of City Attorney. Documentation supporting this appointment includes City Resolution No. 8386, and a Third Amendment to Agreement for Legal, Financial and Administrative Services. The City was unable to provide any personnel documents or job duty statements for the position of City Attorney.

As noted above for the position of Acting City Attorney, City officers are required by statute to take an oath prescribed by the California Constitution before entering office. Failure to take and file an oath of office will result in a vacancy of the office. However, the City was unable to provide a signed form or statement indicating you ever took the oath of office for City Attorney.

Because the City cannot verify that you took an oath of office, CalPERS has concluded the office of vacant[8] during the relevant periods. In addition, during this time, the City continued to contract with you for Financial and Administrative Consulting Services. As noted above, service under this agreement for Financial and Administrative Consulting Services is excluded from membership in CalPERS by Sections 20300(b) and 20300(h).

Acting City Administrator and City Administrator

On December 13, 2006, the City appointed you as Acting City Administrator. Documentation for this appointment includes City Resolution No. 9177. No personnel documents or job duty statements were provided for this position.

On May 7, 2007, the City appointed you as City Administrator. Documentation for this appointment includes City Resolution No. 9313. No personnel documents or job duty statements were provided for this position.

Officers of the City of Vernon are defined by Articles VI and VII of the Vernon City Charter. Article VI defines the Office of City Administrator. As previously noted, City officers are required by statute to take an oath prescribed by the California Constitution before entering office. Failure to take and file an oath of office will result in a vacancy of the office. However, the City was unable to provide a signed form or statement indicating you ever took the oath of office for Acting City Administrator.

Because the City cannot verify that you took an oath of office, CalPERS has concluded the office of City Administrator was is vacant[9] during the relevant periods. In addition, during this time, the City continued to contract with you for Financial and Administrative Consulting Services. As noted above, service under this agreement for Financial and

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[8] See Government Code 1770, subdivision (i).
[9] See Government Code 1770, subdivision (i).

Administrative Consulting Services is excluded from membership in CalPERS by Sections 20300(b) and 20300(h).

Section 20322(a) states that elective officers are excluded from membership in CalPERS unless the officer files an election in writing to become a member. Section 20322(b) further defines elective officer to include appointive officers of a city or county. Per the City Charter, Chapter 6, Article 6.1, the City Administrator is the Chief Administrative Officer of the City, appointed by the City Council. The City Administrator is therefore an elective officer within the meaning of Section 20322(b). The City has not provided, and CalPERS has no record of, an election of optional membership for this position. Absent such an election in writing, CalPERS has determined that this position is excluded from membership in CalPERS.

Assistant City Attorney I

On May 7, 2007, the City also appointed you as Assistant City Attorney I. Documentation for this appointment included City Resolution No. 9313. No personnel documents or job duty statements were provided for this position.

Officers of the City of Vernon are defined by Articles VI and VII of the Vernon City Charter. Article VI defines the Office of City Administrator. Article VII creates and defines other city officers, including a City Clerk, a City Treasurer, and a City Attorney. Additionally, Article VII, Chapter 7.4 permits the City Council to provide for other City Officers as needed, and states that the City Council "...shall fix the duties, tenure and compensation of such officers by ordinance."

Additionally, Section 20300(h) specifically excludes "...persons rendering professional legal services to a city, other than the person holding the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney."

The City has identified multiple titles connected to the Assistant City Attorney, including Assistant City Attorney, Chief Assistant City Attorney, Assistant City Attorney I, Assistant City Attorney II, Assistant City Attorney III and Special Assistant to the City Attorney. Pursuant to Section 20300(h), only the person holding the office of Assistant City Attorney is eligible for membership in CalPERS.

- The Assistant City Attorney I position is not the person holding the office of Assistant City Attorney.
- The City has produced no ordinance creating the Office of Assistant City Attorney.

We have no evidence of a City ordinance establishing the Office of Assistant City Attorney, and even if the City could validate the office, it does not appear you ever held

the office. Therefore, we conclude that your position of Assistant City Attorney I was also excluded by Section 20300(h).

Special Counsel

On March 16, 2009, the City also appointed you as Special Counsel. Documentation for this appointment includes City Resolution No. 9887. No personnel documents or job duty statements were provided for this position. Section 20300(h) specifically excludes "...persons rendering professional legal services to a city, other than the person holding the office of city attorney, the office of assistant city attorney, or an established position of deputy city attorney."

We have determined that your position of Special Counsel with the City is excluded under Section 20300(h), because it constitutes providing professional legal services to the City, and is not one of the positions listed in Section 20300(h).

II. You Are Not Eligible to Receive Classification as a Safety Member

The City contracted to provide safety coverage for its City Attorneys, Assistant City Attorneys and Deputy City Attorneys under Section 20423.6(b)(3). The City has not provided adequate documentation to demonstrate that these positions meet all of the criteria necessary to qualify as safety positions under this section.

Section 20423.6 in pertinent part states:

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

(b) For purposes of this part, "local prosecutor" means any one of the following:

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

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

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

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

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

The City admitted in its January 31, 2012 response to the draft Public Agency review that it misclassified its attorneys. CalPERS cannot grant safety coverage for a position that does not qualify under the law. Therefore, even if you were eligible for CalPERS membership, you would not be eligible for the safety classification for your service performed as Acting City Attorney, City Attorney and Assistant City Attorney I.

III. You Were Improperly Granted Arrears Service Credit And Allowed To Purchase Additional Retirement Service Credit.

Section 20163 allows a member who was not brought into CalPERS membership timely to receive service credit for the period in arrears. Also, Government Code Section 20909 allows a member to purchase ARSC. As indicated above, CalPERS has determined you are not eligible for membership effective with your membership date of June 1, 1986. Since you were not an employee of the City, nor a member of CalPERS, you were granted the arrears service credited in error and you are also not eligible to purchase ARSC.

IV. Final Compensation Cannot Be Determined

If in the event documentation is provided to verify your eligibility to participate as a member in CalPERS as a result of your services performed for the City, CalPERS is unable to confirm that the amounts paid to you constitute "compensation earnable". Under the PERL, the amount of compensation earnable that an employer reports to CalPERS is used to determine member contributions, final compensation and to calculate retirement benefit allowances. Compensation earnable consists of "payrate" and "special compensation". If CalPERS determines that compensation is or has been reported in error, and that amount does not constitute compensation earnable as defined in the PERL, then CalPERS has a duty to correct the error pursuant to Section 20160.

<u>Payrate</u>

All payrates or base pay reported must comply with Section 20636(b)(1) which provides in relevant part as follows:

> "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment **for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules**. 'Payrate,' for a member who is not in a group or class, means the monthly rate of pay or base pay of the

> member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e)." (Emphasis added)

Additionally, Section 20636(d) provides, "[N]otwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny."

A "payrate" must also be listed in a publicly available pay schedule which meets all criteria listed in California Code of Regulations (CCR) Section 570.5. The publicly available pay schedules provided by the City fail to comply with CCR Section 570.5 subdivision (a)(3)(4)(6) because:

- They fail to show the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
- They fail to indicated the time base, including but not limited to, whether the time base is hourly, daily, bi-weekly, monthly bi-monthly, or annually; and
- They fail to indicate an effective date and date of any revisions.

CCR Section 570.5 (b) states:

> "Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including but not limited to, the following:
>
> (1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
> (2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
> (3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
> (4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms to the requirements of subdivision (a) of a former CalPERS employer.

Additionally, in order to constitute payrate as defined, pay must be for services rendered on a full-time basis during normal working hours and cannot be for additional duties or services related to other positions.[10] Pay related to services performed that constitute

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[10] Section 20636(b) and (c)(7)(B) also provides that special compensation does not include payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise. See also *In re*

"overtime", as that term is defined under the PERL are not reportable for retirement purposes. Section 20635 provides in pertinent part:

> "When the compensation of a member is a factor in any computation to be made under this part, there shall be excluded from those computations any compensation based on overtime put in by a member whose service retirement allowance is a fixed percentage of final compensation for each year of credited service.
>
> ...
>
> If a member concurrently renders service in two or more positions, one or more of which is full-time, service in the part-time position shall constitute overtime. If two or more positions are permanent and full-time, the position with the highest payrate or base pay shall be reported this system."

Payrates cannot be determined or verified by CalPERS for several areas of your employment due to the lack of relevant information received from the City. Not all pay schedules presented by the City appear to have included amounts solely attributable to one position and conflicting information regarding the time base for which your positions were paid, increases CalPERS inability to determine payrates.

As indicated above, Section 20636 and California Code of Regulations section 570.5 defines the requirements for a publicly available pay schedule, including, but not limited to; identifying the position title for every employee position, shows the payrate for each identified position, provides a time base, and indicates an effective date and the date of any revisions. The pay schedules provided by the City have several positions where the salary has been omitted or indicated the salary as $0.00.

The City has indicated in its questionnaire responses to OAS that it recognizes full time employment as 173.3333 hours per month and has stated all pay schedules provided are intended for full time employment, unless noted otherwise. However, in contrast, at times in your employment, the contract agreements between you and the City only require services for 120 hours, which is below the City's established full time.
Due to the conflicting and lack of information, CalPERS cannot determine the time base for which your payrate was reported, nor can CalPERS determine for which of the multiple positions services were being rendered and reported as compensation

The City must provide documentation to substantiate services were being rendered on a full-time basis and the payrate associated with each position you attained before a determination of payrate can be made. Therefore, in the event you are able to demonstrate eligibility for CalPERS membership, the City must provide accurate and sufficient information for CalPERS to determine that amount paid to you would

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the Matter of the Appeal of the Calculation of Benefits Pursuant to Employer's Report of Final Compensation Related to Roy T. Ramirez, and City of Indio, (2000) CalPERS Precedential Board Decision No. 00-06, and *Prentice v. Board of Administration* (2007) 157 Cal.App. 4th 983.

constitute compensation earnable before such compensation can be used to calculate a retirement allowance.

Authority for Correction for Amounts Erroneously Reported that Do Not Appear to Meet the Definition of Compensation Earnable

CalPERS was established by statute, the PERL, which grants it certain authority. The California Constitution also grants the CalPERS Board of Administration, as the board of a public retirement system, certain powers. CalPERS has no authority other than those granted by the PERL and the Constitution and has the authority to pay benefits to a member only when authorized and only in amounts authorized.[11] CalPERS has no authority to use a final compensation amount that is calculated with amounts of pay that do not meet the definition of compensation earnable.

PERL section 20120 states that the management and control of this system is vested in the board. Section 20125 further provides that the board shall determine who are employees and is the sole judge of the conditions under which a person may be admitted to and continue to receive benefits under this system.

Section 20160 outlines the criteria for correcting errors and omissions and requires the board to correct all actions taken as a result of errors or omissions of any contracting agency or this system. Corrections of errors or omissions made pursuant to section 20160 shall be such that the status, rights, and obligations of all parties are adjusted to be the same that would have been, if the act that would have been taken, but for the error or omission, was taken at the proper time. Once an error is discovered, CalPERS is required to take action to correct it and is permitted to pay only those benefits authorized under the PERL.

Conclusion

Based on the foregoing, CalPERS has determined you are not eligible for membership for your services rendered to the City. As noted above, reimbursement and/or credit for retirement contributions, arrears service credit and ARSC paid into the system on your behalf will be effectuated in accordance with State and Federal law. Due to our determination that you are not a member and not eligible to have purchased service credit or receive arrears service credit, you are not eligible to receive a monthly retirement benefit from CalPERS.

You have the right to appeal the decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within **thirty days of the date**

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[11] See CalPERS Precedential Decision *In re the Matter of the Appeal of Decreased Level of Retirement Allowance of Harvey H. Henderson* (1998) CalPERS Precedential Board Decision No. 98-02 and California Constitution, Art. XVI, Section 17.

of the mailing of this letter, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations.

An appeal, if filed, should set forth the factual basis and legal authorities for such appeal. A copy of the applicable statute and Code of Regulations sections are included for your reference. If you file an appeal, the Legal Office will contact you and handle all requests for information.

This letter highlights some of the major concerns identified by CalPERS in its determination. However, the issues identified in this letter are not exhaustive, nor are they intended to reflect all of the legal, technical and administrative issues that we considered in reaching our determination or that may come to light in the future. In addition, this letter does not repeat all of the issues and facts identified in Public Agency Review. Thus, it should be read in conjunction with the Public Agency Review. CalPERS reserves the right to raise additional issues relating to the determinations listed above. If additional issues are raised, you will be notified and granted additional appeal rights as to any new findings.

Your appeal should be mailed to the following address:

Karen DeFrank, Division Chief
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

Your appeal will be set for hearing with the Office of Administrative Hearings (OAH). The assigned CalPERS attorney will contact you to coordinate a hearing date. Depending on the current caseload of the OAH and the assigned attorney, the hearing date may be set several months after the case is opened. The OAH will typically offer its earliest available hearing date that meets the schedule of both parties. If you choose not to be represented by an attorney, the assigned CalPERS lawyer will be in direct communication with you during the appeal process. If you do hire an attorney, please let CalPERS know immediately so our attorney can work directly with him or her.

Attached is an informational brochure on the General Procedures for Administrative Hearings.

After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then

make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

If you have any questions or concerns regarding this matter, please contact Christina Rollins of my staff at [redacted]

Sincerely,

EMILY PEREZ de FLORES, Manager
Member Reporting Section
Customer Account Services Division

cc: Karen DeFrank
Joaquin Leon, City of Vernon