

# **Office of Audit Services**



## **Public Agency Review City of Huntington Park**

**Employer Code: 0059  
CalPERS ID: 1915736911  
Job Number: P11-031**

**November 2013**



California Public Employees' Retirement System  
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November 5, 2013

Employer Code: 0059  
CalPERS ID: 1915736911  
Job Number: P11-031

City of Huntington Park  
Julio Morales, Director of Finance  
6550 Miles Avenue  
Huntington Park, CA 90255

Dear Mr. Morales:

Enclosed is our final report on the results of the public agency review completed for the City of Huntington Park. Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report except for Finding 2, Finding 5 and Finding 9. Based on the information contained in your agency's response pertaining to Finding 2, Finding 5 and Finding 9, our findings remain as stated in the report; however, we have added clarifying language to the recommendation and condition for Finding 5. In accordance with our resolution policy, we have referred the issues identified in the report to the appropriate divisions at CalPERS. Please work with these divisions to address the recommendations specified in our report. It was our pleasure to work with your City and we appreciate the time and assistance of you and your staff during this review.

Sincerely,

Original Signed By Margaret Junker  
MARGARET JUNKER, Chief  
Office of Audit Services

Enclosure

cc: City Council, Huntington Park  
Martha Castillo, Personnel Supervisor, City of Huntington Park  
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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# CITY OF HUNTINGTON PARK

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## RESULTS IN BRIEF

The Office of Audit Services (OAS) reviewed the City of Huntington Park's (City) enrolled individuals, member compensation, retirement information and other documentation for individuals included in test samples. A detail of the findings is noted in the Results section beginning on page three of this report. Specifically, the following findings were noted during the review:

- Retired annuitants' rates of pay exceeded amounts paid to other employees performing comparable duties.
- Temporary/part-time employees with prior or concurrent membership were not enrolled.
- Temporary/part-time employees who met membership eligibility requirements were not enrolled.
- Pay schedules did not meet requirements for a publicly available pay schedule.
- Acting Pay was over-reported.
- Overtime pay was erroneously reported.
- Value of uniforms and the maintenance of uniforms were not reported.
- Special compensation was incorrectly reported with payrate and earnings.
- Value of Employer Paid Member Contributions (EPMC) was over-reported.
- Value of EPMC was incorrectly reported.
- Value of EPMC was erroneously reported.

## CITY BACKGROUND

The City was formed in 1906 under the general laws of the State of California. The City is governed by a five member City Council elected on a non-partisan basis, consisting of the Mayor and four other council members. Memoranda of Understanding (MOU), a Compensation Plan and Personnel Rules for Non-Represented Employees and employment agreements outline City employees' salaries and benefits, and state the terms of employment agreed upon between the City and its employees. The City contracted with CalPERS effective January 1, 1945 to provide retirement benefits for safety and miscellaneous employees. The City subsequently contracted with CalPERS for health benefits effective September 1, 1978.

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

- Determining CalPERS membership eligibility for its employees.
- Enrolling employees into CalPERS upon meeting membership eligibility criteria.
- Enrolling employees in the appropriate membership category.
- Establishing the payrates for its employees.

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# CITY OF HUNTINGTON PARK

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- Approving and adopting all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publishing all employees' payrates in a publicly available pay schedule.
- Identifying and reporting compensation during the period it was earned.
- Ensuring special compensation is properly identified and reported.
- Reporting payroll accurately.
- Notifying CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensuring the employment of a retired annuitant is lawful and reinstating retired annuitants that work more than 960 hours in a fiscal year.

## SCOPE

As part of the Board approved plan for fiscal year 2012/2013, the OAS reviewed the City's payroll reporting and member enrollment processes as these processes relate to the City's retirement contract with CalPERS. The review period was initially limited to the examination of sampled records and processes from January 1, 2009, through December 31, 2011. OAS expanded the review period to May 31, 2012 for additional testing of five individuals identified by the City as retired annuitants or independent contractors. The on-site fieldwork for this review was conducted on June 19, 2012 through July 12, 2012 and July 31, 2012 through August 2, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

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## OFFICE OF AUDIT SERVICES REVIEW RESULTS

**Finding 1:** Retired annuitants' rates of pay exceeded amounts paid to other employees performing comparable duties.

***Recommendation:***

The City should ensure that compensation paid to retired annuitants does not exceed the amount paid to other employees performing comparable duties.

The City should work with CalPERS Benefit Services Division (BNSD) to assess the impact of these retired annuitants' unlawful payrates and determine what adjustments are needed pursuant to Government Code Section 20160.

The City should also ensure that retired annuitants who work under the direction and control of the City are correctly classified as employees pursuant to Government Code section 21211.

***Condition:***

The City employed two sampled retired annuitants, Interim City Manager and Interim Community Development Director, compensated at rates that exceeded amounts reflected on the pay schedule and paid to other employees performing comparable duties. Specifically,

- The retired annuitant hired as the current Interim City Manager effective May 7, 2012 received a payrate that exceeded the maximum monthly base salary for the City Manager position listed on the pay schedule. Specifically, the Council approved a payrate of \$18,500 per month effective May 7, 2012; however, the pay schedule effective July 1, 2011 listed a maximum payrate of \$16,366 for the City Manager position.
- A second retired annuitant was hired as the Interim Community Development Director. The retired annuitant's payrate exceeded the maximum monthly base salary for the Community Development Director position listed on the pay schedule. Specifically, the individual was paid \$140 per hour, effective April 3, 2012; however, the pay schedule, effective July 1, 2011 listed a maximum payrate of \$70.47 per hour (derived from \$12,215 per month).

Prior to our review, BNSD determined the former Interim City Manager, effective October 3, 2011, exceeded the 960-hour threshold per fiscal year and was incorrectly classified as an independent contractor (see observation at page 18).

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During the course of this review, OAS found the City also misclassified the current Interim City Manager and Interim Community Development Director as independent contractors.

OAS reviewed the following factors in determining the current Interim City Manager was a retired annuitant working in an employee/employer relationship with the City:

- The City Manager position was an established position shown on the City's organization chart.
- The individual provided services that were formerly held by a city employee.
- The individual reports directly to the City Council.
- The services performed were part of the City's normal operations.
- The individual had the authority to sign documents on behalf of the City with the title Interim City Manager.
- The individual had the authority to accept/approve contracts/permits for City on Council approved projects.
- The City provided the individual with office space, a desk, and the use of City equipment such as computers, copier, fax machine and a telephone.

OAS also reviewed the following factors in determining the Interim Community Development Director was a retired annuitant working in an employee/employer relationship with the City:

- The Community Development Director position was an established position shown on the City's organizational chart.
- The individual performed services that were formerly performed by a city employee.
- The City's job description for the Community Development Director stated, in part that the position is "under the direction of the City Manager...reports directly to the City Manager..."
- The City provided the individual with office space, a desk, and the use of City equipment such as computers, copier, fax machines and telephones.
- The individual has the authority to sign documents on behalf of the City as Interim Community Development Director.

For the purposes of the PERL and for programs administered by the Board of Administration of CalPERS (the Board) the standard used for determining whether an individual is the employee of another person or entity is the California common law employment test as set forth in the California Supreme Court case entitled *Tieberg v. Unemployment Ins. App. Bd.*, (1970) 2 Cal. 3d 943, which was cited with approval in *Metropolitan Water Dist. v. Superior Court (Cargill)* (2004) 32 Cal. 4th 491, and which was adopted by the Board in a precedential decision, *In the Matter of Lee Neidengard*, Precedential Dec. No. 05-01, effective April 22, 2005.

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Applying the California common law, the most important factor in determining whether an individual performs services for another as an employee is the right of the principal to control the manner and means of job performance and the desired result, whether or not this right is exercised. Where there is independent evidence that the principal has the right to control the manner and means of performing the service in question, CalPERS will determine that an employer-employee relationship exists between the employee and the principal.

Where there is no clear independent evidence that the principal has the right to control the manner and means of an individual's performance of the services in question, CalPERS, applying the California common law, will consider the following additional factors in determining whether an individual is an employee:

- (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 a principal or by a specialist without supervision;
- (c) the skill required in the particular occupation;
- (d) whether the principal or the individual performing the services 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 work is a part of the regular business of the principal; and
- (h) whether or not the parties believe they are creating the relationship of employer-employee.

***Criteria:***

Government Code: § 20160, § 21221, § 21224(a)



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**Finding 2:** Temporary/Part-time employees with prior or concurrent membership were not enrolled.

***Recommendation:***

The City should review the membership status of all temporary/part-time employees and enroll those that have prior non-refunded membership with CalPERS and those that are concurrently working part-time at another CalPERS covered agency while employed with the City.

The City should work with CalPERS Customer Account Services Division (CASD) to assess the impact of this issue and make all necessary adjustments to active and retired member accounts' pursuant to Government Code Section 20160.

***Condition:***

The City failed to enroll and report the earnings for two eligible temporary/part-time employees into CalPERS membership. Specifically, we noted the following:

The City did not enroll an eligible part-time employee who concurrently worked less than full-time for another employer, the Los Angeles County Schools. The employee was an active member who was enrolled into membership effective May 1, 2004 with the Los Angeles County Schools. The employee began working for the City, effective June 27, 2005, while concurrently working on a part-time basis with the Los Angeles County Schools. As a result, the City should have submitted a membership application and contributions for all hours worked beginning with the initial hire date of June 27, 2005.

In addition, the City did not enroll, report compensation earnable, and submit contributions for an employee who worked for the City as Interim Public Works Director. This employee established prior CalPERS membership with the City of Commerce. The employee separated from the City of Commerce on March 31, 2002 without refunding contributions and should have been immediately enrolled into membership with the City. Furthermore, as stated in Finding 1, OAS found the City incorrectly classified the Interim Public Works Director as an independent contractor, rather than enrolling the Director into CalPERS due to prior membership. OAS performed the California Common Law Employment test and found this individual to be an employee of the City working in an employee/employer relationship.

***Criteria:***

Government Code: § 20160, § 20305(a)

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# CITY OF HUNTINGTON PARK

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**Finding 3:** Temporary/part-time employees who met membership eligibility requirements were not enrolled.

***Recommendation:***

The City should monitor the hours worked by temporary/part-time employees to ensure employees are enrolled when membership eligibility requirements are met.

The City should work with CASD to assess the impact of this membership enrollment issue and make any necessary adjustments pursuant to Government Code Section 20160.

***Condition:***

The City did not enroll three sampled employees who completed 1,000 hours worked in fiscal year 2009/2010. Specifically,

- One part-time employee was compensated for 1,001.25 hours in fiscal year 2009/2010 and met the 1,000-hour membership eligibility requirement on June 30, 2010.
- A second part-time employee was compensated for 1,005.5 hours in fiscal year 2009/2010 and met the 1,000-hour membership eligibility requirement on June 29, 2010.
- A third part-time employee was compensated for 1,000 hours in fiscal year 2009/2010 and met the 1,000-hour membership eligibility requirement on June 29, 2010.

For employees who complete 1,000 hours within a fiscal year, membership shall be effective not later than the first day of the first pay period of the month following the month in which 1,000 hours of service were completed.

***Criteria:***

Government Code: § 20044, § 20160, § 20305(a)

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**Finding 4:** Pay schedules did not meet all requirements for a publicly available pay schedule.

***Recommendation:***

The City must ensure that reported payrates are set forth in a publicly available pay schedule and meet the definition of payrate under the PERL. Additionally, the City must ensure that all employees' salaries are properly reviewed, authorized, and approved by the City Council in accordance with public meeting laws.

The City should work with CASD to determine the impact of this incorrect reporting and determine what adjustments are needed. To the extent that amounts of pay were improperly included in the retirement allowance afforded individuals who have already retired, a correction must be made pursuant to Government Code Section 20160.

***Condition:***

The City's pay schedules were not duly approved and adopted by its City Council. In addition, the pay schedules did not contain the position title for every employee position. Specifically, a City Council member was not listed on the pay schedule.

Pay schedules must be duly approved and adopted by the employer's governing body in accordance with the requirements of applicable public meeting laws and identify the positions title for every employee position pursuant to California Code of Regulations Sections 570.5(a)(1).

***Criteria:***

Government Code: § 20160, § 20636(d)

California Code of Regulations: § 570.5(a)(1)

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**Finding 5:** Special compensation (Acting Pay) was over-reported.

***Recommendation:***

The City should report Acting Pay as special compensation in accordance with the requirements of Government Code section 20636 and CCR section 571.

The City should work with CASD to determine the impact of this over-reporting and make the necessary adjustments to active members' accounts pursuant to Government Code Section 20160.

***Condition:***

The City over-reported Acting Pay for the Chief of Police (Chief) by \$350.31 in the service period June 27, 2011 to July 10, 2011. The Chief was a contracted employee who was temporarily upgraded to serve simultaneously as the Acting City Manager.

Specifically, the Chief was contracted to perform additional duties as Acting City Manager on December 6, 2010, and was compensated an additional \$1,500 per month as acting pay. However, the Chief's Acting Pay is limited to the pay received by employees in the closest related group or class. In this case, the closest related group or class was the Police Management Association (PMA).

The PMA MOU limited Acting Pay to five percent above the current base salary of the employee's permanent position, or Step "1" of the acting classification, whichever is greater. The Chief's base salary was \$15,500 per month. Five percent of \$15,500 was \$775 per month. The difference between the payrates for the permanent positions of Chief of Police (\$15,500) and City Manager (\$16,366) is \$866. In this case the greater amount is the acting classification, which is \$866 per month (or \$399.69 per bi-weekly pay period) greater than the pay for the Police Chief.

In addition, the City made a mathematical error by paying and reporting an incorrect bi-weekly amount of \$750 ( $\$1,500 \times 12/24$ ), the amount for a semi-monthly work schedule. As a result of reporting Acting Pay that exceeds amounts available to the closest related group or class and the mathematical error, the City over-reported Acting Pay by \$350.31 ( $\$750 - \$399.69 = \$350.31$ ) per bi-weekly pay period.

In the City's response to the draft report, it stated the MOU provides the compensation be limited to either 5 percent of the current base salary of the employee's position, or Step "1" of the acting classification, whichever is greater.

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OAS agrees with the City's observation that the Chief of Police should be allowed the benefit of the greater amount. In this case, the amount reportable as acting pay is the difference between the payrate of the Chief of Police (\$15,500) and the City Manager (\$16,366), which is \$866, not \$1,500 per month as the City reported.

***Criteria:***

Government Code: § 20160, § 20630(a) § 20636(a), § 20636(c)(1), § 20636(c)(2)

California Code of Regulations: § 571(a)

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**Finding 6:** Overtime pay was erroneously reported.

***Recommendation:***

The City should immediately discontinue reporting overtime.

The City should work with CASD to determine the impact of this erroneous reporting and make the necessary adjustments to the member's account pursuant to Government Code Section 20160.

***Condition:***

The City erroneously reported overtime pay as special compensation for a sampled employee's part-time position as City Treasurer. Specifically, in earned period ending December 13, 2011, the City reported regular earnings of \$5,685.38 for the employee's full-time duties as Finance Director and reported overtime pay of \$69.23 as special compensation for the employee's part-time duties as City Treasurer.

When 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 and should not be reported to CalPERS.

***Criteria:***

Government Code: § 20160, § 20635

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**Finding 7:** Value of uniforms and maintenance of uniforms were not reported.

***Recommendation:***

The City should ensure that the monetary value for the purchase and maintenance of uniforms is reported to CalPERS.

The City should work with CASD to determine the impact of this non-reporting and make the necessary adjustments to active and retired members' accounts pursuant to Government Code Section 20160.

***Condition:***

The City did not report the value and maintenance of uniforms for employees of the General Employee Association (GEA) who were in the Field Services Department labor and trade classes.

The City also did not report the initial one-time uniform allowance provided upon hire, to all sworn and certain non-sworn employees in the Police Office Association (POA) and new employees of the GEA required to wear uniforms.

The monetary value for the purchase, rental, and/or maintenance of required clothing must be reported to CalPERS as special compensation.

***Criteria:***

Government Code: § 20049, § 20160, § 20636(a), § 20636(c)(1), § 20636(c)(2), § 20636(c)(6), § 20636(d)

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

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**Finding 8:** Special compensation was incorrectly reported.

***Recommendation:***

The City should ensure that special compensation (bilingual and temporary upgrade pay) is reported separately from payrate and earnings.

The City should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired members' accounts pursuant to Government Code Section 20160.

***Condition:***

The City incorrectly reported bilingual pay, an item of special compensation, in payrate and earnings for three sampled employees. Specifically,

- The City reported \$80.77 in bilingual pay for a Police Lieutenant in earned period ending June 26, 2011.
- The City reported \$80.77 in bilingual pay for a Police Sergeant in earned period ending June 26, 2011.
- The City reported \$175.00 in bilingual pay for the Chief of Police beginning with the employee's date of hire through the earned period ending June 26, 2011.
- The City reported \$1,625.00 in temporary upgrade pay for the Chief of Police in the earned periods December 10, 2010 through June 26, 2011.

Bilingual and temporary upgrade pay must be reported separately as special compensation.

***Criteria:***

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

California Code of Regulations: §571



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**Finding 9:** Value of EPMC was over-reported.

***Recommendation:***

The City should limit the amount of EPMC reported to the amount received by similarly situated members of a group or class.

The City should work with CASD to determine the impact of this over-reporting and make the necessary adjustments to active and retired members' accounts pursuant to Government Code Section 20160.

***Condition:***

The City did not accurately report two time-in-grade exceptions for EPMC specified in the PMA MOU, when reporting EPMC for the Chief of Police. As a result, EPMC was over-reported. Specifically,

The MOU for the PMA contained two separate time-in-grade exceptions for employees hired after July 1, 2005. Based on the MOU and the Chief of Police's hire date of July 5, 2010, EPMC should have been reported as follows:

- The City incorrectly reported EPMC at nine percent rather than one-half of nine percent as specified in the MOU resulting in over-reporting. The MOU specified that during employees' initial year of employment the City would pay and report a time-in-grade exception equal to one half of the nine percent for all sworn employees hired after July 1, 1984.
- The City also incorrectly reported EPMC at nine percent rather than two percent as specified in the MOU resulting in over-reporting. The MOU specified that subsequent to the first year of employment through the end of the tenth year, the City would pay and report a time-in-grade exception of two percent for PMA employees hired after July 2, 2005.

The City indicates that resolution number 2006-92 passed on December 4, 2006 repealed the time-in-grade exception. OAS re-examined various records and documentation including the contract for the Chief of Police, the MOU for the PMA group, and the non-represented compensation plan. However, the written labor policy or agreement was effective July 1 2008, which was subsequent to resolution number 2006-92. As noted in finding 11, the City must submit a resolution to CalPERS that reflects the current amount of EPMC as stated in a board approved written labor policy or agreement.

Additionally, while trying to determine the correct amount to report for EPMC, OAS noted several issues in the contract for the Chief of Police. The contract did not

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specify that the City would report the value of EPMC for this employee. Second, the contract states, "Employee shall receive annual increases in benefits and salary to the same rate/amount as received by other department heads (or as stated in the Non-Represented Employees Compensation and Benefit Plan)." The MOU for non-represented employees was specific to miscellaneous employees and stated the EPMC amount was seven percent. Finally, the contract for the Chief of Police specifically aligned the employee with other sworn police personnel for determining EPMC. As such, based on the information provided by the City our finding remains that the PMA group is the closest related group or class to determine the value of EPMC.

***Criteria:***

Government Code: § 20160, § 20636(c)(2)

California Code of Regulations: § 571

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**Finding 10:** Value of EPMC was incorrectly reported.

**Recommendation:**

The City should ensure EPMC is reported on all items of special compensation.

The City should work with CASD to determine the impact of this incorrect reporting and make the necessary adjustments to active and retired members' accounts pursuant to Government Code Section 20160.

**Condition:**

The City did not report the value of EPMC on several items of special compensation including longevity pay, post management pay, holiday payout and uniform allowance. As a result, EPMC for one sampled employee was under-reported by \$617.58 in earned period ending June 26, 2011.

**Criteria:**

Government Code § 20160, § 20636(c)(4)

California Code of Regulations: § 571(a)(1)

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**Finding 11:** EPMC resolutions for time-in-grade exceptions were not on file.

***Recommendation:***

The City should adopt a resolution for paying and reporting the value of EPMC which corresponds to the amounts specified in the written labor policy or agreements.

The City should work with CalPERS to assess the impact of this erroneous reporting and determine what adjustments, if any, are needed to active and retired members' accounts pursuant to Government Code 20160.

***Condition:***

The City did not have the correct resolutions on file to pay and report EPMC on behalf of the non-represented employees and Police Management Association (PMA). Specifically,

- The resolution for Non-Represented Employees specified the City would pay and report seven percent EPMC for all Non-Represented Employees; however, it did not include the EPMC time-in-grade exception for first year employees. The Non-Represented Employees' Compensation Plan identified that for employees hired after July 1, 1984, during a non-represented employee's initial year, the City shall contribute to CalPERS an amount equivalent to one-half (1/2) of seven percent.
- The resolution for PMA employees specified the City would pay and report nine percent EPMC for employees of the PMA; however, it did not include the two EPMC time-in-grade exceptions (see Finding 9).

***Criteria:***

Government Code: § 20160

California Code of Regulations: § 571

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**Observation 1:** Retired annuitant exceeded the 960-hour threshold and opted to resign from employment.

BNSD performed a review of the hours worked for all CalPERS covered agencies by the retired annuitant who was employed by the City as the former Interim City Manager effective October 3, 2011. BNSD concluded the former Interim City Manager exceeded the 960-hour threshold per fiscal year for 2011/2012 and notified the retired annuitant of the option to either reinstate from retirement or resign from the position of Interim City Manager. The retired annuitant elected to resign on April 30, 2012.

Prior to the on-site fieldwork, CalPERS BNSD also determined the prior Interim City Manager, who held this position from October 03, 2011 and resigned on April 30, 2012, was a retired annuitant, who was incorrectly classified as an independent contractor. The individual retired from the City of Commerce effective October 27, 2002 and was, therefore, subject to retired annuitant laws and restrictions pursuant to Government Code Section 21221.

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## CONCLUSION

OAS limited this review to the areas specified in the scope section of this report and in the objectives as outlined in Appendix B. OAS limited the test of transactions to employee samples selected from the City's payroll records. Sample testing procedures provide reasonable, but not absolute, assurance that these transactions complied with the California Government Code except as noted.

The findings and conclusions outlined in this report are based on information made available or otherwise obtained at the time this report was prepared. This report does not constitute a final determination in regard to the findings noted within the report. The appropriate CalPERS divisions will notify the City of the final determinations on the report findings and provide appeal rights, if applicable, at that time. All appeals must be made to the appropriate CalPERS division by filing a written appeal with CalPERS, in Sacramento, within 30 days of the date of the mailing of the determination letter, in accordance with Government Code Section 20134 and Sections 555-555.4, Title 2, California Code of Regulations.

Respectfully submitted,

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

Date: November 2013

Staff: Cheryl Dietz, CPA, Assistant Division Chief

Diana Thomas, CIA, CIDA, Manager

Aileen Wong, Auditor

Chris Wall, Auditor

Noah Schreier, Auditor

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**CITY OF HUNTINGTON PARK**

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# **APPENDIX A**

## **BACKGROUND**

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# CITY OF HUNTINGTON PARK

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## BACKGROUND

### California Public Employees' Retirement System

CalPERS provides a variety of programs serving members employed by more than 2,500 local public agencies as well as state agencies and state universities. The agencies contract with CalPERS for retirement benefits, with CalPERS providing actuarial services necessary for the agencies to fund their benefit structure. In addition, CalPERS provides services which facilitate the retirement process.

CASD manages contract coverage for public agencies and receives, processes, and posts payroll information. In addition, CASD provides eligibility and enrollment services to the members and employers that participate in the CalPERS Health Benefits Program, including state agencies, public agencies, and school districts. BNSD sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

Retirement allowances are computed using three factors: years of service, age at retirement and final compensation. Final compensation is defined as the highest average annual compensation earnable by a member during the last one or three consecutive years of employment, unless the member elects a different period with a higher average. State and school members use the one-year period. Local public agency members' final compensation period is three years unless the agency contracts with CalPERS for a one-year period.

The employer's knowledge of the laws relating to membership and payroll reporting facilitates the employer in providing CalPERS with appropriate employee information. Appropriately enrolling eligible employees and correctly reporting payroll information is necessary to accurately compute a member's retirement allowance.



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# **APPENDIX B**

## **OBJECTIVES**

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## OBJECTIVES

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

- Whether the City complied with applicable sections of the California Government Code (Sections 20000 et seq.) and Title 2 of the California Code of Regulations.
- Whether prescribed reporting and enrollment procedures as they relate to the City's retirement contract with CalPERS were followed.

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 through May 31, 2012 to test membership eligibility for five individuals identified by the City as independent contractors during the entrance conference.

## SUMMARY

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

- ✓ Reviewed:
  - Provisions of the Contract and contract amendments between the City and CalPERS
  - Correspondence files maintained at CalPERS
  - City Council minutes and City Council resolutions
  - City written labor policies and agreements
  - City salary, wage and benefit agreements including applicable resolutions
  - City personnel records and employee hours worked records
  - City payroll information including Summary Reports and CalPERS listings
  - Other documents used to specify payrate, special compensation, and benefits for all employees
  - City ordinances as necessary
  - Various other documents as necessary
- ✓ Reviewed City payroll records and compared the records to data reported to CalPERS to determine whether the City correctly reported compensation.
- ✓ Reviewed payrates reported to CalPERS and reconciled the payrates to City public salary records to determine whether base payrates reported were accurate, pursuant to publicly available pay schedules that identify the position title, payrate and time base for each position, and duly approved by the City's governing body in accordance with requirements of applicable public meeting laws.

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## CITY OF HUNTINGTON PARK

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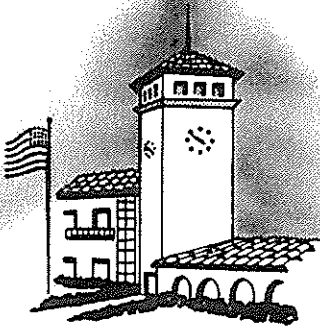
- ✓ Reviewed CalPERS listing reports to determine whether the payroll reporting elements were reported correctly.
- ✓ Reviewed the City's enrollment practices for temporary and part-time employees to determine whether individuals met CalPERS membership requirements.
- ✓ Reviewed the City's enrollment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

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**CITY OF HUNTINGTON PARK**

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# APPENDIX C



City of  
**HUNTINGTON PARK** **california**  
CIVIC CENTER HUNTINGTON PARK 90255 • (323) 584-6201

FINANCE DEPARTMENT

July 25, 2013

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

RE: Employer Code: 0059  
CalPERS ID 1915736911  
Job Number: P11-031

Dear Ms. Junker:

The City of Huntington Park responds as follows to the California Public Employees' Retirement System's ("CalPERS") draft report dated June 28, 2013.

**Finding 1: Retired annuitants' rates of pay exceeded amounts paid to other employees performing comparable duties.**

**Response to Finding 1:**

With regard to the Interim City Manager position reviewed during the course of the CalPERS audit, the City acknowledges that it committed an error in connection with the payrate paid to an annuitant hired to perform those duties. Said error was the result of an error in the interpretation of the limitation relating to the permissible compensation for an interim appointment, as contained in Government Code sections 21221, subd. (h), and 21224, subd. (a) relating to the permissible compensation for an interim appointment.

At the time of appointment, the City believed that it was permitted to compensate the subject annuitant based on the total compensation paid to other employees performing comparable duties. However, the City has subsequently learned that the subject statute requires that "the compensation for the interim appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule for the vacant position divided by 173.333

to equal an hourly rate.” (Emphasis added.) The City inadvertently failed to note the distinction contained in the statute relating to “base salary” versus total compensation. The City assumed that total compensation was a more accurate measure of the benefits received by an employee performing the subject duties; thereby, serving as a more accurate measure of the proper compensation to be paid to an annuitant performing the same duties on an interim basis. However, now that the City is fully cognizant of the proper limitation identified in the statute, the City will ensure that it complies with this limitation in the future.

With regard to the Interim Community Development Director position, the City has terminated its relationship with the subject annuitant. Again, the City will ensure that it complies with the limitations delineated in Government Code sections 21221, subd. (h), and 21224, subd. (a).

**Finding 2: Temporary/Part-time employees with prior or concurrent membership were not enrolled.**

**Response to Finding 2:**

With regard to the first part-time employee identified in this portion of the report, the City has confirmed that he was hired as a part-time Police Cadet on June 27, 2005. At the time of his hire, this individual's status was verified with CalPERS. However, because he was already an active CalPERS member enrolled with another contracting agency, the City was not able to enroll him at the time of hire. At no subsequent point did this individual inform the City that he had stopped working for this other contracting agency.

Additionally, the City did not independently learn that he had ended his other employment. It was not until after the City received the CalPERS auditor's preliminary findings that it accessed myCalPERS to determine this individual's present status. At that time, the City learned that for the first time, that this individual was no longer a member by virtue of having withdrawn his funds from CalPERS. At this point, the City has not enrolled this individual because it has no way of determining when he severed his employment with the other contracting agency and when he withdrew his funds from CalPERS so as to permit a proper determination of when he should have been enrolled by the City, if at all. The City is prepared to take the steps necessary to rectify this particular situation; however, it requires CalPERS guidance in addressing the situation.

With regard to the second part-time employee identified in the draft report as having worked as the Interim Public Works Director, it should be noted that this individual's services were provided through an agreement between the City and a private company. Thus, this individual was not specifically hired by the City. Instead, the City entered into a retainer with a private firm to provide the required services. The City understands that CalPERS has determined that the subject individual is an employee rather than an

independent contractor. However, the City believes that a review of the subject agreement will reveal that the City retained a private company to provide the services at issue and did not have an employer/employee relationship with the individual. Simply put, the City did not have control over the individual actually selected by the company to provide these services. Moreover, the City did not have access to the necessary information to confirm via myCalPERS whether this individual possessed prior CalPERS membership that would have required his enrollment. Therefore, the City maintains that this individual was not an employee and that the City could not verify CalPERS membership status under the applicable circumstances, even if this individual were an employee.

**Finding 3: Temporary/part-time employees who met membership eligibility requirements were not enrolled.**

**Response to Finding 3:**

With regard to the three part-time employees identified in this portion of the draft report, the City acknowledges that it committed an error failing to enroll these individuals as members. Said error was the result of a mistake in the interpretation of Government Code section 20305. Said provision requires that a part-time employee who completes 1,000 hours of service within a fiscal year be enrolled as CalPERS members the first pay period of the month following the month in which 1,000 hours of service were completed. In this case, the three individuals at issue did not complete their respective 1,000 hours of service until the last two days of the 2009-2010 fiscal year. As such, Government Code section 20305 requires that they be enrolled the first pay period of July, 2010.

The City inadvertently assumed that, since July 1, 2010 marked the start of a new fiscal year, that the number of hours of service provided by these three individuals reset and, thereby, eliminated the need to enroll them. However, the City now understands that this interpretation of the statute was inaccurate. The City understands that these individuals should have been enrolled as of July 2010 on a going forward basis. In light of the City's now correct understanding of the statute as it pertains to this unique situation where an individual achieves the 1,000 hours of service in the last month of a fiscal year, the City will ensure that it complies with Government Code section 20305 in the future.

**Finding 4: Pay schedules did not meet all requirements for a publicly available pay schedule.**

**Response to Finding 4:**

The City understand this finding to relate to the apparent failure to have all materials referenced in the existing publicly available pay schedule attached and specifically approved by the City Council. For example, the City's apparent failure to separately and specifically ratify pay raises contained and agreed to in applicable Memorandum of Understanding so as to reflect the specific applicable base salary on the publicly available pay schedule. The City will ensure that the City Council approves a pay schedule and all scheduled raised as part of the budget adoption process in the future.

**Finding 5: Special compensation (Acting Pay) was over-reported.**

**Response to Finding 5:**

The City disagrees with CalPERS's election to apply the limitation on acting pay contained in the Police Management Association Memorandum of Understanding to this particular situation. The limitation on compensation for an acting classification contained in that MOU contemplates that the impacted individual will no longer be performing the duties of his or her permanent position, but will instead be performing in the acting capacity 100 percent of the time. Thus, the individual remains in a single position. However, with regard to the Chief of Police, he was serving in a dual capacity during the period of time in question. Specifically, the agreement between the City and the Chief of Police specifies that he is accepting employment as Acting City Manager "in addition to his regular employment as Chief of Police." Thus, instead of serving in a single capacity, he was serving in a dual capacity with the expectation that he would fully satisfy his duties and obligations in both roles. This portion of the MOU does not contemplate such a circumstance; therefore, the forced application of its limitations is inappropriate.

Moreover, even if one were to accept, for sake of argument, that the limitation did apply, that portion of the MOU provides that the compensation be limited to either 5 percent of the current base salary of the employee's permanent position, or Step "1" of the acting classification, whichever is greater. In this case, there is no Step "1" position, but the City Manager position paid \$16,366 per month during the applicable period of time. The Chief of Police was only receiving \$1,500 per month to perform these same duties. Thus, he was receiving far less than the normal compensation attributable to the position. It is disingenuous to attempt to hold the Chief of Police to the limitation



contained in the MOU while not allowing him the benefit of the greater amount contemplated by that same provision.

**Finding 6: Overtime pay was erroneously reported.**

**Response to Finding 6:**

The prior Finance Director also served as the City Treasurer for which she received additional compensation. This was part of her day-to-day responsibilities and not a part-time position. Therefore, her compensation for serving as the City Treasurer should have been classified as overtime. The current job description for this position now includes serving as both the Finance Director and City Treasurer for a single monthly salary.

**Finding 7: Value of uniforms and maintenance of uniforms were not reported.**

**Response to Finding 7:**

The City has already taken steps and will continue to take all necessary steps to ensure that it complies with Government Code Section 20636 as it relates to the reporting of special compensation including, but not limited to, a uniform allowance and the monetary value of employer-provided uniforms.

**Finding 8: Special compensation was incorrectly reported.**

**Response to Finding 8:**

The City has already taken steps and will continue to take all necessary steps to ensure that it complies with Government Code section 20636 as it relates to the reporting of special compensation including, but not limited to, bilingual and temporary upgrade pay.

**Finding 9: Value of EPMC was over-reported.**

**Response to Finding 9:**

The City disputes the conclusions reached a part of this finding because they are premised on limitations that were repealed by the City in December 2006 by Resolution No. 2006-92. Pursuant to that Resolution, the City elected to pay the Employer Paid Member Contribution in full for all employees of the Police Management Association. Thus, the limitation relied upon in the subject report was no longer in effect as of this December 2006 Resolution. Moreover, to the extent that CalPERS seeks to compare the Chief of Police's circumstances to similarly situated employees, a more appropriate comparison would be to use other department heads. Such a comparison reveals that the language contained in the Chief of Police's contract regarding EPMC is identical to that appearing in the contracts for the City Manager and the Director of Finance.

**Finding 10: Value of EMPC was incorrectly reported.**

**Response to Finding 10:**

The City has already taken steps and will continue to take all necessary steps to ensure that it complies with Government Code section 20636 as it relates to the reporting of special compensation including, but not limited to, longevity pay, post-management pay, holiday payout and uniform allowance.

**Finding 11: EPMC resolutions for time-in-grade exceptions ere not on file.**

**Response to Finding 11:**


The City has already taken steps and will continue to take all necessary steps to ensure that the correct resolutions are maintained and are on file as it relates to the reporting of EPMC. However, as a practical matter, the City does not believe that there has been any negative impact as a result of this oversight. As it pertains to the non-represented employees, the full amount due to CalPERS was paid despite it having been mischaracterized as a full EPMC for the initial year for employees hired after July 1, 1984. Thus, CalPERS received all monies due in contribution despite the mischaracterization. Moreover, the error in reporting will not result in an unfair advantage for either the City or the impacted individuals. As it pertains to the

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individuals in the PMA, the reality is that all members of the PMA for the past 25 years have been promoted to those positions. Thus, there has not been an individual who would have been completing their initial year with the City while a member of the PMA. As a result, the identified exception would not have been at issue.

Please let me know if you have any questions or need any additional information or clarification on the responses provided.

Respectfully submitted,



Julio F. Morales,  
Director of Finance

cc: Anthony Suine, Chief, BNSD, CalPERS  
Karen DeFrank, Chief, CASD, CalPERS  
Martha Castillo, Human Resources Supervisor