

Office of Audit Services



CalPERS

Public Agency Review

Rancho Cucamonga Fire Protection District

**Employer Code: 1041
CalPERS ID: 5357330985
Job Number: P12-006**

August 2013



California Public Employees' Retirement System
Office of Audit Services
P.O. Box 942701
Sacramento, CA 94229-2701
TTY: (877) 249-7442
(916) 795-0802 phone, (916) 795-7836 fax
www.calpers.ca.gov

August 7, 2013

Employer Code: 1041
CalPERS ID: 5357330985
Job Number: P12-006

Rancho Cucamonga Fire Protection District
Tamara Layne, Finance Director, City of Rancho Cucamonga
P.O. Box 807
Rancho Cucamonga, CA 91729-0807

Dear Ms. Layne:

Enclosed is our final report on the results of the public agency review completed for the Rancho Cucamonga Fire Protection District. Your written response, included as an appendix to the report, indicates agreement with the issues noted in the report. However, after review of your agency's response pertaining to Findings 3 and 5, we expanded the Condition for Finding 3 and the Recommendation to Finding 5 to further clarify the issues.

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 District, 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: Council, City of Rancho Cucamonga
Chris Paxton, Human Resources Director, City of Rancho Cucamonga
Risk and Audit Committee Members, CalPERS
Peter Mixon, General Counsel, CalPERS
Karen DeFrank, Chief, CASD, CalPERS
Anthony Suine, Chief, BNSD, CalPERS

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
Results in Brief.....	1
District Background.....	1
Scope.....	2
Office of Audit Services Review Results	3
Finding 1: Pay schedule did not identify the position title and payrate for each position.....	3
Finding 2: Non-reportable compensation was erroneously reported	4
Finding 3: Value of uniforms was not reported	5
Finding 4: Reported compensation did not meet the definition of special compensation	6
Finding 5: Employee of an affiliated entity was erroneously enrolled and reported	8
Finding 6: Part-time employee was not enrolled into membership	10
Conclusion	11
CalPERS Background.....	Appendix A
Objectives	Appendix B
District's Written Response	Appendix C

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

RESULTS IN BRIEF

The California Public Employees' Retirement System (CalPERS) Office of Audit Services (OAS) reviewed the Rancho Cucamonga Fire Protection District's (District) 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:

- Pay schedule did not identify the position title and payrate for each position.
- Non-reportable special compensation in the form of holiday pay was erroneously reported.
- Value of uniforms was not reported.
- Reported compensation did not meet the definition of special compensation.
- Employee of an affiliated entity was erroneously enrolled and reported.
- Part-time employee was not enrolled into membership.

DISTRICT BACKGROUND

The District was formed for the purpose of providing fire protection services. The District is a subsidiary of the City of Rancho Cucamonga and the City Council is the governing body of the District. Memoranda of Understanding (MOU) and Personnel Rules and Regulations outline District employees' salaries and benefits and state the terms of employment agreed upon between the District and its employees. The District contracted with CalPERS effective February 15, 1975 to provide retirement benefits for local miscellaneous and fire safety employees. The District contracted with CalPERS effective May 1, 1979 to provide health benefits to all eligible employees.

All contracting public agencies, including the District, are responsible for compliance with the Public Employees' Retirement Law (PERL). The PERL requires a contracting agency to:

- Determine CalPERS membership eligibility for its employees.
- Enroll employees into CalPERS upon meeting membership eligibility criteria.
- Enroll employees in the appropriate membership category.
- Establish the payrates for its employees.
- Approve and adopt all compensation through its governing body in accordance with requirements of applicable public meeting laws.
- Publish all employees' payrates in a publicly available pay schedule.

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

- Ensure all payrate and compensation schedules are public records available for public scrutiny.
- Identify and report compensation during the period it was earned.
- Ensure special compensation is properly identified and reported.
- Report payroll accurately.
- Notify CalPERS when employees meet Internal Revenue Code annual compensation limits.
- Ensure the employment of a retired annuitant is lawful and reinstate 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 District's payroll reporting and member enrollment processes as these processes relate to the District's retirement contract with CalPERS. The review period was limited to the examination of sampled records and processes from July 1, 2009 through June 30, 2012. The on-site fieldwork for this review was conducted on November 5, 2012 through November 8, 2012. The review objectives and a summary of the procedures performed are listed in Appendix B.

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

OFFICE OF AUDIT SERVICES REVIEW RESULTS

Finding 1: Pay schedule did not identify the position title and payrate for each position.

Recommendation:

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

The District should work with CalPERS Customer Account Services Division (CASD) to ensure that the District develop publicly available pay schedules that meet the criteria of California Code of Regulations Section 570.5.

The District should work with CASD to determine the impact of this nondisclosure and make the necessary adjustments to active and retired member accounts, if any, pursuant to Government Code Section 20160.

Condition:

The District's pay schedule did not identify the position title and payrate for each position, and therefore was not in compliance with the requirements for publicly available pay schedules. OAS examined the January 2012 pay schedule, which was in effect for the sampled earned service period ending June 22, 2012. The pay schedule did not list the position of Management Aide.

Criteria:

Government Code: § 20160, § 20636(b)(1), § 20636(d)

California Code of Regulations: § 570.5

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

Finding 2: Non-reportable compensation was erroneously reported.

Recommendation:

The District should discontinue reporting non-reportable holiday pay as compensation to CalPERS.

The District should work with CASD to determine the impact of this erroneous reporting and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

Condition:

Non-reportable special compensation in the form of holiday pay was erroneously reported in the June 9, 2012 through June 22, 2012 earned period. The District reported \$3,093.12 for one sampled Fire Engineer shift employee, which represented 108 hours of holiday buy back. According to the provisions of the Fire Union Local MOU, holiday time is accrued annually beginning with the first pay period of each calendar year. For shift employees, the holiday time is accrued at the rate of 12 hours per holiday. OAS obtained holiday accrual sheets and identified that the Fire Engineer accrued 84 hours of holiday time from the first pay period in January 2012 through June 2012 and used 24 hours, which would leave a balance of 60 hours in accordance with the MOU provisions. OAS determined the holiday buy back of 108 hours included 48 (108 - 60) hours accrued from a prior year. California Code of Regulations Section 571 states, in part, if a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for retirement purposes. Therefore, the holiday pay was not reportable as special compensation.

Criteria:

Government Code: § 20636(a), § 20636(c)(6)

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

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

Finding 3: Value of uniforms was not reported.

Recommendation:

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

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

Condition:

The District did not report the value of the initial uniforms provided to eligible employees upon hire. Each of the District's MOUs included a provision that employees required to wear a uniform would be provided with three sets of work uniforms prior to his or her starting date. OAS reviewed invoices for uniforms purchased on behalf of two newly hired employees and verified that the District did not report the initial value of the purchased uniforms. The monetary value for the purchase, rental and/or maintenance of required clothing is a statutory item of compensation which should be reported to CalPERS as special compensation. It is noted that the District properly reported the value for all subsequent uniforms provided to employees.

Criteria:

Government Code: § 20160, § 20636(c)(6)

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

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

Finding 4: Reported compensation did not meet the definition of special compensation.

Recommendation:

The District should comply with the requirements for reporting special compensation and include the required language for statutory items of special compensation in a written labor policy or agreement pursuant to Government Code Section 20636 and California Code of Regulations Section 571.

The District should work with CASD to determine the impact of this noncompliance issue and make the necessary adjustments to active and retired member accounts pursuant to Government Code Section 20160.

The District should work with CASD to ensure the required language is contained in the District's labor policy or agreement pursuant to Government Code Section 20636 and California Code of Regulations Section 571.

Condition:

Uniform Allowance

The provisions for uniform allowance were not fully specified in one of the District's labor agreements. The District's MOUs contained uniform allowance provisions for employees required to wear a uniform. OAS noted that the uniform allowance language in the Fire Support Services MOU did not contain language identifying the conditions for payment. The MOU language stated, "The District will provide for the purchase of uniform articles as specified in the District's rules and regulations, to a maximum of \$500.00 per eligible employee per year." The language did not identify the condition of payment, such as, paid annually in July, which would identify when the special compensation was earned. A review of the Districts' rules and regulations did not contain additional language that would clarify the issue.

Value of EPMC

The provisions for reporting the value of EPMC were not fully specified in the District's labor agreements. The District had a resolution to pay and report the full value of EPMC for employees hired prior to July 9, 2011. For employees hired on or after July 9, 2011 safety and miscellaneous employees will each pay one percent of the member contribution. OAS noted the Firefighters Local 2274 and the Fire Management Employees Bargaining Group MOUs contained language that the

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

District would pay the EPMC; however, the MOUs did not state the District would also report the value of EPMC. In addition, the Firefighters Local 2274 and the Fire Support Services MOUs contained language for converting EPMC to payrate during the final compensation period which is a different provision of the law under Government Code Section 20692 and requires a CalPERS contract amendment.

OAS also noted that the language in the Firefighters Local 2274 MOU addressing the provisional effective date for the value of EPMC incorrectly listed the date as July 1, 2011 instead of July 9, 2011.

Criteria:

Government Code: § 20049, § 20160, § 20636(c)(4), § 20636(c)(6), § 20691, §20692

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

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

Finding 5: Employee of an affiliated entity was erroneously enrolled and reported.

Recommendation:

The District should not enroll and report employees who are working for an affiliated entity.

The District should continue to work with CASD to determine the impact of this membership issue and make the necessary adjustments to member's account, if any. In addition, the District should work with CASD to determine if it is owed any refund of contributions.

Condition:

An employee of an affiliated entity was erroneously enrolled and reported under the District. On December 10, 2007 the District enrolled and reported the City Manager of the City of Rancho Cucamonga as an employee of the District. However, the City Manager was not an employee of the District.

By enrolling the City Manager under the District, the City Manager received CalPERS Health Benefits under the health contract between the District and CalPERS. The City of Rancho Cucamonga had not contracted with CalPERS for Health Benefits. When the City Manager retired on September 1, 2011 he retired with 3.547 years of service credit he erroneously received with the District.

In September 2011 CalPERS cancelled the Health Benefits for the City Manager. However, the payroll reporting must be corrected to reflect an accurate reporting of his membership as an employee of the City of Rancho Cucamonga and not an employee of the District.

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 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 Decision No. 05-01, effective April 22, 2005.

Applying the California common law, the most important factor in determining whether an individual performs services for another as employee is the right of the

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

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.

Criteria:

Government Code: § 20022, § 20028, § 20030, § 20125

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

Finding 6: Part-time employee was not enrolled into CalPERS membership.

Recommendation:

The District should implement procedures to review and monitor the number of hours worked in a fiscal year by all temporary/part-time employees in order to enroll and report eligible employees when membership eligibility requirements are met.

The District should work with CASD to assess the impact of this membership eligibility issue and determine what adjustments are needed to all eligible employee accounts pursuant to Government Code 20160.

Condition:

The District did not enroll one sampled part-time employee when membership eligibility requirements were met. The employee worked 1,006 hours in fiscal year 2010/2011 and should have been enrolled into CalPERS membership once the 1,000-hour membership eligibility requirement was met in the period of June 25 to June 30, 2011.

Criteria:

Government Code: § 20160, §20305(a)

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

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 District'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 District 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: August 2013

Staff: Cheryl Dietz, CPA, Assistant Division Chief

Michael Dutil, CIA, CRMA, Manager

Diana Thomas, CIA, CIDA, Manager

Alan Feblowitz, CFE, Manager

Kelly Dotters-Rodriguez, Auditor

Noah Schreier, Auditor

Jodi Brunner, Auditor

APPENDIX A

BACKGROUND

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

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. CalPERS Benefit Services Division (BNSD) sets up retirees' accounts, processes applications, calculates retirement allowances, prepares monthly retirement benefit payment rolls, and makes adjustments to retirement benefits.

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

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

APPENDIX B

OBJECTIVES

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

OBJECTIVES

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

- Whether the District 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 District's retirement contract with CalPERS were followed.

This review covers the period of July 1, 2009 through June 30, 2012.

SUMMARY

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

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

RANCHO CUCAMONGA FIRE PROTECTION DISTRICT

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

APPENDIX C

District's Written Response



THE CITY OF RANCHO CUCAMONGA

July 22, 2013

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

Re: Employer Code: 1041; CalPERS ID: 5357330985; Job Number: P12-006

Dear Ms. Junker:

Please accept this letter as the Rancho Cucamonga Fire Protection District's (District) written response to your June 28, 2013 draft report on your review of the District in relation to its contract with the California Public Employees' Retirement System (CalPERS). Our responses are listed below by finding number:

Finding 1: Pay schedule did not identify the position title and payrate for each position.

District's Response: *Agree, with regard to only one part-time employee.* This finding relates to a single individual who was hired on a part-time basis. While the District has a number of positions listed on the part-time salary schedule, the position in question was not on the schedule because it was a new position. The City, however, did have the same position on its full-time salary schedule. In this case, staff converted the City's full-time salary from the publicly posted pay schedule to an hourly rate and used that rate as the District employee's part-time pay rate. When developing part-time salaries for the salary schedule a similar method is commonly used.

Since being apprised of this finding, the District has adopted a new salary schedule with a number of added part-time salary ranges including this position.

Finding 2: Non reportable compensation was erroneously reported.

District's Response: *Agree.* Staff understands the "technical" reasoning behind this finding based on current wording of the applicable MOU; however, the District has a past practice of using *fiscal* year-to-date holiday buy back reportable earnings, not calendar year. We acknowledge that the District's past practice is not in line with the current MOU; however, it is anticipated that this wording conflict will be resolved through future labor negotiations.

The employee who was tested by the OAS earned 168 holiday hours from July 1, 2011 through June 30, 2012 (fiscal year). The employee used 24 holiday hours in May 2012 and cashed out 108 holiday hours in June 2012 as holiday buy back. These hours were part of what was earned during the fiscal year and, thus, were considered to be reportable compensation. The OAS determined, from a calendar year perspective, that there was only a 60 hour balance

remaining from what was earned calendar year to date (net of 84 hours earned from January 2012 to June 2012 less 24 hours used in May 2012) that should have been reported to CalPERS, and not the 108 hours.

We note that the applicable state law does not specify whether or not a calendar or fiscal year should be used. California Code of Regulations (CCR) 571 (a) stipulates the following:

“For those employees with written labor agreements providing holiday credit and allowing employees to cash out accumulated holiday credit, the cash out must be done at least annually and reported in the period earned. If a written labor agreement allows an employee to accumulate holiday credit beyond the year in which it is earned and an employee later elects to cash out accumulated holiday credit, it is not compensation for CalPERS purposes.”

As noted above, the District interprets the CCR 571(a) period earned as its fiscal year-to-date July 1st through June 30th. The District believes it has correctly reported these hours as reportable compensation.

The Memorandum of Understanding (MOU) between the Rancho Cucamonga Fire Protection District and Rancho Cucamonga Firefighters Local 2274 for 2011-2014 Article III Section 1.D indicates that holiday time is accrued annually beginning with the first pay period of the calendar year (which normally occurs mid to late December of each year). The OAS interprets the first pay period of the calendar year per the MOU as the start of the accrual of the holiday pay. In order, however, for the District to be consistent in reporting other earnings to CalPERS using fiscal year-to-date, the District consistently uses the fiscal period beginning July 1st through June 30th. This practice has been consistently followed and is understood and accepted by the relevant employee group(s).

To avoid future conflict between the MOU and current practice, the Human Resources Department will work in conjunction with the appropriate bargaining group to adjust the MOU language accordingly, as requested by CalPERS, so that if the MOU language specifies that holiday time is accrued annually beginning with the first pay period of the fiscal year, not the calendar year, and therefore the MOU is compatible with the District's past and current practice as well as the labor groups expectations.

Finding 3: Value of uniforms was not reported.

District's Response: *Agree, but only with regard to the value of uniforms provided upon hire.* The District recognizes its error in not reporting the value of initially provided uniforms for eligible employees. The value of all other uniforms was and always has been properly reported. The District will work with CalPERS to correct this “initial” payroll reporting issue. In the future, the District will closely monitor payments for uniforms provided to new employees and report the value as special compensation to CalPERS in accordance with applicable laws and regulations.

Finding 4: Reported compensation did not meet the definition of special compensation.

District's Response:

Uniform Allowance. *Agree.* As noted previously, additional language will be added to the applicable MOU during upcoming labor negotiations to identify the condition of payment, which would identify when the special compensation was earned.

Value of EPMC. *Agree.* The District is aware of the fact that the Firefighters Local 2274 and Fire Management MOUs have language that provides for the payment of EPMC but does not state that the value of EPMC will be reported. That appears to have been an oversight when the documents were prepared and will be corrected when new MOUs are negotiated. Importantly, the audit does confirm that the resolution on file correctly states the treatment of EPMC for all groups. In addition, the benefit is described correctly in the Fire Support MOU.

The audit notes that the Firefighters Local 2274 and Fire Support MOUs include language for conversion of EPMC to pay rate in the employee's final year of employment. We are aware that this is not an option for the District under our PERS contract, and, furthermore, the District has never converted EPMC to pay rate. Originally, the Fire Management MOU also included this language, but the District was able to have it removed during the last round of labor negotiations. To date we have been unsuccessful in our attempts to get the other two bargaining groups to agree to remove the language, although both groups have indicated no desire to change from the current practice. We want to note, however, that the current MOU's point out the disagreement between the parties regarding the discrepancy the language of the MOU and the existing PERS contract, and that the parties intend to attempt to resolve the discrepancy. This was noted before the CalPERS audit, however, the parties were unable to agree on a proper resolution at the bargaining table. We will continue to propose that this language be amended; however, the District cannot unilaterally change the language, and we do not intend to arbitrarily change current practice and open the possibility of an unfair labor practice charge either.

Please note that the audit report is incorrect with regard to one item. The third sentence under this item states "For employees hired on or after July 9, 2012 safety employees will pay one percent and miscellaneous will pay two percent of the member contribution." The actual date is July 9, 2011, and the percentage paid by miscellaneous employees is 1 percent.

Finding 5: Employee of an affiliated entity was erroneously enrolled and reported.

District's Response: *Agree, but this matter was already identified and resolved in 2011.* This finding relates to the enrollment of the City Manager of the City of Rancho Cucamonga (City) as a District employee. The Rancho Cucamonga Fire Protection District is a legally separate but subsidiary district of the City of Rancho Cucamonga. As such, many of the functions (Finance, Human Resources, Risk Management, Information Services, etc.) of the District are the responsibility of the City, and City employees. The City Manager is legally the Chief Executive Officer of the District and the City Council also sits as the Governing Board of the District.

The City obtained a legal opinion from the City Attorney that the City Manager was eligible for enrollment in PERS as a District employee and completed that enrollment in December 2007. Upon the City Manager's retirement in August 2011, the City was notified by PERS that the previous District enrollment was not permitted. We were subsequently instructed to reverse the payroll reported under the District's employer code since December 2007 and re-report it under the City's employer code.

The City attempted to comply with these instructions but was unable to do so due to the fact that the CalPERS system was unavailable for any payroll additions or deletions for a number of months. This was due to the conversion to the new MyCALPERS system. Instead, our payroll staff calculated the amount to be credited to the District's plan and the amount to be charged to the City's plan. At the direction of CalPERS staff, the City made a lump sum payment of \$241,678.61 to PERS on or about August 30, 2011. Staff then followed up with a phone call to

PERS to ask how to proceed. It was at that point that PERS advised us not to do anything more. We were told that PERS would make whatever corrections that needed to be made on their end. This was presumably due to the fact that the MyCALPERS system was not yet available.

In addition, we were told that once calculations were verified, the District would receive a refund from PERS in the amount of \$276,612.76. To date, we have not received the refund. As a result, as things currently stand, CalPERS has been paid twice for this employee's contributions – once by the District and once by the City. In the meantime, we have never received any further instruction from CalPERS regarding any additional actions to be taken by the District or the City. As a result, we consider this matter closed, except for the outstanding credit to be paid to the District by CalPERS. In order to completely close this matter the District requests that CalPERS honor its prior statement and in a timely manner credit the District a refund of the \$276,612.76 previously stipulated to.

Finding 6: Part-time employee was not enrolled into CalPERS membership.

District's Response: *Agree.* The District has consistently used pay-period dates to properly track part-time employee hours for a given fiscal year. The part-time employee who was tested by the OAS incurred 992 hours in Fiscal Year 2010/11 from the first pay day of the new fiscal year (hours from pay period June 26, 2010 through July 9, 2010) through the last pay day of the fiscal year (hours from pay period June 11, 2011 through June 24, 2011). This represents 26 pay periods for the full fiscal year pay cycle. Since the part-time employee did not work for more than 1,000 hours within the given fiscal year pay period, the employee was not enrolled into the CalPERS membership.

The OAS finding states that the District did not enroll the sampled part-time employee when membership eligibility requirements were met once the employee worked 1,006 hours. The OAS calculated the number of hours worked based on actual hours worked from June 1, 2010 through June 30, 2011, not based on the pay dates during the fiscal year. We now understand that CalPERS requires us to adhere to the July 1st – June 30th dates to monitor part-time hours worked, regardless of pay dates during the fiscal year, and we have taken steps to comply with this requirement.

Please let me know if you have any questions regarding the District's responses or if you need any additional information. Thank you for your assistance with this matter.

Sincerely,



Tamara L. Layne
Finance Director