



May 23, 2013



Certified Mail, Return Receipt Requested
#7009 3410 0001 [REDACTED]

Re: Ineligible TMRS Membership and Retirement Cancellation
TMRS # [REDACTED]

Dear Ms. [REDACTED]

The Smithville Housing Authority (SHA) recently informed the Texas Municipal Retirement System (TMRS) that the City of Smithville had notified SHA that the employees of SHA were no longer allowed to participate in TMRS because they did not qualify as employees of the city. Since prior city payroll reports submitted to TMRS did not distinguish any of the people listed as SHA employees, this notification prompted a comprehensive legal review to determine if SHA employees were and are eligible to participate in TMRS.

After reviewing the city's participation ordinance with TMRS, the Cooperation Agreement between the city and SHA, and several other legal documents, TMRS has concluded that the SHA is not a department of the City of Smithville and that its employees are not eligible to participate in TMRS. Based on information provided to us by the city, you have been identified as a person who was an employee of SHA and not an employee of the city. Consequently, since you were not an eligible city employee, you were not eligible to participate in or receive retirement benefits from TMRS and your retirement annuity must be cancelled. If you disagree with this characterization as an SHA employee and have any documentation to show that you were a City of Smithville employee (rather than an SHA employee) at any time, you will need to provide us with copies of that documentation by the response deadline noted below.

Our records indicate that you retired from the City of Smithville on January 31, 2013 and have received 3 monthly annuity payments from TMRS totaling \$1,895.55 as of April 30, 2013. Our records also indicate that, as of January 31, 2013, the city had submitted employee deposits in your name totaling \$31,209.47. Since you were not entitled to receive any TMRS retirement benefits, we have overpaid you by \$1,895.55 as of the date of this letter.

Please be advised that, to correct the errors described above, TMRS will cancel your retirement annuity and is taking the following actions: (i) effective with the June 2013 annuity payment date, TMRS will no longer make any future annuity payments to you, and (ii) effective immediately, TMRS requests that you promptly return to TMRS all annuity payments received by you (including any payment received for May 2013), plus interest on such amounts through the date of repayment. Please contact TMRS for the appropriate interest calculation after you receive this letter. As an example, if you repaid the amount of \$1,895.55 on May 23, 2013, the interest payment on such amount would be \$8.34.

May 23, 2013

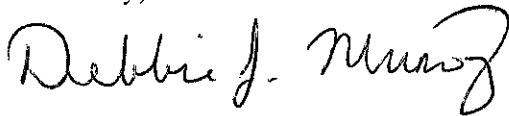
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Further, please also be advised that, under correction procedures applicable to TMRS, we are not allowed to refund any employee deposits submitted in your name by the city directly to you. You will need to contact the city and/or SHA with respect to (i) your ability to recover such amounts, and (ii) to discuss any questions you might have regarding any potential tax consequences relating to a return of such amounts or any incorrect characterizations of such amounts as pre-tax retirement plan contributions for the prior years of payroll withholdings. The City of Smithville and SHA have been notified accordingly.

Section 802.1024 of the Texas Government Code requires TMRS to notify you of this overpayment error and correction and to advise you of your right to file a written complaint with TMRS within 20 days from the date this letter is received (the "response deadline") if you do not agree with the correction. If you choose to file a written complaint, your letter must include a detailed description of your complaint along with any available documentation supporting your complaint. The letter should be addressed to the Director of Member Services and mailed to TMRS at the address provided at the bottom of this letter. In addition, we are enclosing a copy of Section 802.1025 of the Texas Government Code, which provides you with detailed information regarding complaint procedures related to this correction.

Please let us know if you have any questions.

Sincerely,



Debbie J. Muñoz
Director of Member Services

Enclosure

cc: City of Smithville
Smithville Housing Authority

GOVERNMENT CODE

TITLE 8. PUBLIC RETIREMENT SYSTEMS

SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS

CHAPTER 802. ADMINISTRATIVE REQUIREMENTS

Sec. 802.1025. COMPLAINT PROCEDURE. (a) Not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

- (1) how the modified correction was calculated;
- (2) a brief explanation of the reason for the modification; and
- (3) a payment plan option if no future payments are due.

(c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section 802.1024 until:

- (1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or
- (2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).

(d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section 802.1024(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.

(e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system, a person aggrieved by the decision may appeal the decision to an appropriate district court.



August 6, 2013

[REDACTED]
[REDACTED]
[REDACTED]

Certified Mail, Return Receipt Requested

#7012 3460 0000 [REDACTED]

Re: Ineligible TMRS Membership
TMRS # [REDACTED]

Dear Mr. [REDACTED]:

The City of Smithville (City) recently notified Smithville Housing Authority (SHA) that the City would no longer include the employees of SHA in the City's Texas Municipal Retirement System (TMRS) plan because they did not qualify as employees of the City. SHA then contacted TMRS to notify us of this. Since prior City payroll reports submitted to TMRS did not distinguish any of the people listed as SHA employees, this notification prompted a comprehensive legal review to determine if SHA employees were and are eligible to participate in TMRS.

After reviewing the City's participation ordinance with TMRS, the Cooperation Agreement between the City and SHA, and several other legal documents, TMRS has concluded that the SHA is not a department of the City of Smithville and that its employees are not eligible to participate in TMRS. Based on information provided to us by the City, you have been identified as a person who is an employee of SHA and not an employee of the City. Consequently, since you were not an eligible City employee, you were not eligible to participate in or receive retirement benefits from TMRS. If you disagree with this characterization as an SHA employee and have any documentation to show that you were a City of Smithville employee (rather than an SHA employee) at any time, you will need to provide us with copies of that documentation by the response deadline noted below.

Our records indicate that, as of March 11, 2013, the City had submitted employee deposits in your name totaling \$ [REDACTED]. Since SHA employees were not and are not entitled to participate in TMRS, the City should not have submitted any deposits in your name. Also, since SHA employees are ineligible to participate, you were not entitled to receive interest credits or any other benefits under the TMRS Act (Texas Government Code, Chapters 851 - 855).

Please be advised that, to correct the errors described above, TMRS is taking the following actions: (i) effective with March 2013 City payroll report, the City stopped submitting and TMRS stopped accepting any employee deposits on behalf of those persons who have been

identified to TMRS as SHA employees; and (ii) TMRS is communicating with the City and SHA with regard to what further corrective actions TMRS is and is not able to take with respect to the City (as an eligible TMRS employer) and SHA (which is not an eligible TMRS employer).

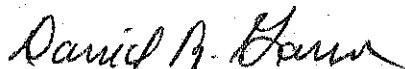
Also, please be advised that, under federal tax correction procedures applicable to TMRS, we are not allowed to refund any employee deposits submitted in your name by the City directly to you. Therefore, we are returning your refund application for cancellation (enclosed).

You may consider contacting the City and/or the SHA with respect to (i) your ability to recover from the City or SHA, and (ii) to discuss any questions you might have regarding any potential tax consequences relating to the possible incorrect characterizations of such amounts as pre-tax retirement plan contributions for the prior years of payroll withholdings and any other arrangements that you make with the City or SHA. The City of Smithville and SHA have been notified accordingly.

In accordance with TMRS Rule 121.14, you have sixty (60) days after the date of this letter to appeal this determination and you must file a written request for appeal with TMRS before the expiration of the 60 day period. If you choose to appeal this determination to the Board of Trustees, the appeal will be referred to the State Office of Administrative Hearings. The case will be heard by an Administrative Law Judge of the State Office of Administrative Hearings in Austin. TMRS may be represented by Christine Sweeney, General Counsel for TMRS. Ms. Sweeney will be able to provide you with more information about the hearing. If you do not timely file a request for appeal within the deadline, then this determination shall become final and unappealable.

If you have any questions, you may contact our General Counsel, Christine Sweeney, at 512-225-3710 or Michelle Mellon-Werch, Associate General Counsel at 512-225-3709.

Sincerely,



David R. Gavia
Executive Director

cc: City of Smithville
Smithville Housing Authority
Christine Sweeney
Michelle Mellon-Werch