



# AGENDA REPORT

**TO:** FRED BLACKWELL  
CITY ADMINISTRATOR

**FROM:** Donna Hom, Interim  
Assistant City Administrator

**SUBJECT:** Supplemental Report to Amend the  
Salary Rate for Henry Gardner's  
Employment Agreement

**DATE:** May 22, 2014

City Administrator  
Approval

Date

5/22/14

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

Staff recommends that the City Council approve the agenda report and two resolutions: 1) A Resolution Confirming the Mayor's Appointment of Henry Gardner as Interim City Administrator for the period June 16, 2014 through January 20, 2015; and, 2) A Resolution Authorizing the Mayor to Execute an Employment Agreement on Behalf of the City with Henry Gardner, Interim City Administrator, effective June 16, with the monthly salary rate of \$23,205.00 plus in lieu of medical, dental, and vision plans in the amount of \$1,619.45 and a monthly auto allowance of \$750.00, for a total annual compensation of \$306,893.40. Effective July 1, 2014 through January 20, 2014, a 1% COLA will apply to the salary rate, which provides a revised annual compensation of \$309,678.00.

## REASON FOR SUPPLEMENTAL

The salary rate of \$23,437.05 stated in the original agenda report, dated May 16, 2014 and the resolution authorizing the Mayor to execute an employment agreement on behalf of the City with Henry Gardner, Interim City Administrator, must be changed given that the rate in which the total annual compensation of \$23,437.05 is based on includes a 1% COLA, which does not become effective until July 1, 2014. Given that Mr. Gardner's employment agreement will take effect on June 16, 2014, the rate must be changed to subtract the 1% COLA for the period between June 16, 2014 – June 30, 2014.

## OUTCOME/COST SUMMARY/IMPLICATIONS

Approval of the revised resolution amends the salary rate for Mr. Henry Gardner's employment agreement to reflect the deletion of the 1% COLA for the period from June 16, 2014 through June 30, 2014, changing the rate from \$23,437.05 to \$23,205.00. Effective July 1, 2014, a 1%

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COLA will be applied to the monthly rate of \$23,205.00 only. With the above stated, a 1% COLA applied to the monthly rate of \$23,205.00 will set the monthly rate at \$23,437.05. It should be noted that the 1% COLA is not applied to the in lieu amounts of medical, dental, and vision plans set at \$1,619.45 or monthly \$750.00 auto allowance.

As such, inclusive of the in lieu amounts as well as the auto allowance referenced above, the annual compensation for the period between June 16, 2014 through June 30, 2014 will be set at \$306,893.40 (\$25,574.45 monthly). The annual compensation for the period between July 1, 2014 through January 20, 2015 will be set at \$309,446.00 (\$25,806.50 monthly). Please refer to the table below for additional detail:

	<b>June 16, 2014 – June 30, 2014</b>	<b>July 1, 2014 – January 20, 2015 (1% COLA)</b>
<b>Salary Rate</b>	\$23,205.00	\$23,437.05
<b>In Lieu Amounts</b>	\$1,619.45	\$1,619.45
<b>Auto Allowance</b>	\$750.00	\$750.00
<b>Total Monthly Compensation</b>	<b>\$25,574.45</b>	<b>\$25,806.50</b>
<b>Total Yearly Compensation</b>	<b>\$306,893.40</b>	<b>\$309,678.00</b>

This compensation is projected to achieve a savings of approximately \$154,669 per year for the budgeted City Administrator's position due to the fact that there are no payments to pension and no accrued leaves. Funding for this position will come from the budgeted City Administrator's position.

For questions regarding this report, please contact Deborah Barnes, Manager, Contracts and Compliance Division at (510) 238-6270.

Respectfully submitted,



\_\_\_\_\_  
DONNA HOM  
Interim Assistant City Administrator

Reviewed by:  
Deborah Barnes, Manager  
Contracts and Compliance

Prepared by:  
Mary Mayberry, ASM I  
Contracts and Compliance

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## Employment Agreement

This Employment Agreement ("Agreement") is made and entered into on June 16, 2014 by the City of Oakland ("City") and Henry Gardner ("Gardner"). The City and Gardner are sometimes referred to in the Agreement individually as the "party" and collectively as the "parties".

### **Section 1. Position**

The City agrees to employ Gardner as City Administrator effective June 16, 2014. Pursuant to City Charter section 902(a), the City Administrator position is not a civil service classification and is not subject to the Oakland Civil Service Rules. In accord with City Charter section 504(m), Gardner shall devote his entire time and attention to rendering services to the City required by the position of City Administrator. It is expressly understood and agreed that during the term of this Agreement, as defined below, Gardner shall not be employed by, retained by, consult with, provide services to, or represent any other person or public or private entity.

### **Section 2. Compensation**

A. Gardner shall be paid on a monthly basis (1) salary in the amount of twenty-three thousand, two-hundred five dollars (\$23,205.00), (2) the cash equivalent of the amount the City pays for each employee's medical, dental and vision benefits in the amount of one thousand six-hundred nineteen dollars and forty-five cents (\$1,619.45), and (3) an auto allowance of seven hundred fifty dollars (\$750.00). The annual total compensation is three hundred six thousand, eight-hundred ninety-three dollars and forty cents (\$306,893.40). The total monthly compensation amount of twenty-five thousand five hundred seventy four dollars and forty-five cents (\$25,574.45) shall be payable in accordance with the City's payroll policies less all required withholdings and deductions. As an at-will employee with a negotiated Agreement, the City Administrator shall receive the one percent (1%) cost of living salary adjustment effective July 1, 2014 under the existing or successor Memorandum of Understanding between the City and Local 21, IFPTE ("MOU") and any subsequent cost of living increases provided under the MOU.

B. Except to the extent Gardner is receiving the cash equivalent as described in Section A. above, Gardner will not receive any employee benefits, including but not limited to medical, dental, vision and executive employee level benefits provided by the City.

C. Gardner will not accrue or receive compensation for any leave for which the City Administrator position would be eligible in accordance with the provisions of the MOU, which may be modified by a successor MOU, or City policies, including but not limited to vacation, management, executive and sick leave.

D. The parties acknowledge and agree that Gardner's employment as City Administrator is considered an emergency to prevent stoppage of public business under California Government Code section 7522.56(c). Gardner understands and acknowledges that if his employment exceeds a total of 960 hours, he may, *inter alia*, be subject to reinstatement from retirement by the California Public Employees' Retirement System (CalPERS). Gardner expressly assumes any and all risks and liability arising out of his employment pursuant to this Agreement, in the event it exceeds a total of 960 hours, including but not limited to (1) reimbursing CalPERS for any retirement allowance that he received during the period or periods of his employment that are in violation of law; (2) paying CalPERS an amount of money equal to his employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon; and (3) contributing toward reimbursement of CalPERS for administrative expenses incurred in responding to the situation, to the extent Gardner is determined by CalPERS to be at fault.

The City agrees to be responsible for contributing towards reimbursement to CalPERS for any administrative expenses CalPERS incurred in responding to the situation of Gardner's employment exceeding 960 hours, only to the extent the City is determined by CalPERS to be at fault.

### **Section 3. Deferred Compensation**

The City shall not provide any matching of deferred compensation.

### **Section 4. Term and Termination of Employment**

A. This Employment Agreement shall be for the term commencing on June 16, 2014 and ending at midnight on January 20, 2015 ("Term").

B. Pursuant to the Oakland City Charter, the City Administrator serves at the Mayor's pleasure; however, the City Administrator may be hired by contract for a term not exceeding four years, provided that no such contract shall prevent the Mayor from removing the City Administrator at any time. Accordingly, the Mayor may terminate Gardner at any time with or without good cause and without prior notice. If the Mayor terminates with or without good cause, this Agreement shall terminate and Gardner will be entitled solely to any accrued unpaid compensation provided under this Agreement up to the effective date of termination, less all required withholdings and deductions. Gardner will not be entitled to any severance or any other payments of any kind.

C. If Gardner decides to voluntarily terminate his employment and this Agreement with the City, he shall provide the City with ninety (90) days advance written notice unless the Mayor in her sole judgment and discretion waives this notice requirement. Upon the

effective date of termination, Gardner shall receive only the unpaid accrued compensation to which he is entitled under this Agreement.

D. In the event Gardner dies during the Term of this Agreement, Gardner's beneficiaries or those entitled to his estate, shall be entitled to Gardner's accrued unpaid compensation up to the effective date of his death, less all required withholdings and deductions.

#### **Section 6. Auto Allowance and Parking**

During the Term of this Agreement, (1) the City shall provide and pay for an assigned parking space at an adjacent garage; and (2) Gardner shall receive an auto allowance of seven hundred fifty dollars (\$750.00) per month as previously provided under Section 2.A. of this Agreement and no mileage reimbursement shall be permissible.

#### **Section 7. Telecommunication**

Gardner represents and warrants that he will purchase at his own expense a smart phone. Notwithstanding the foregoing representation, during the Term of this Agreement, Gardner will be eligible to receive at City expense a smart phone with email and cell service, internet service, and a laptop computer with the capacity for remote access.

#### **Section 8. Professional Membership/Conference Attendance**

A. The City will not pay for professional dues and/or subscriptions

B. The City agrees to pay for Gardner's travel and subsistence expenses for legitimate City business purposes, provided that Gardner provides documentation to support such expenses.

#### **Section 9. Performance Evaluations**

The City may periodically review Gardner's performance subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Mayor and Gardner. At a minimum, the process shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Gardner within 30 days of the evaluation meeting.

#### **Section 10. Non-Disclosure of Confidential Information.**

The Parties acknowledge that as City Administrator, Gardner is the highest appointed official and an officer of the City. In that capacity he is responsible for, among other

things, executing and enforcing all laws and City policies and administering the City's affairs, controlling and administering the City's financial affairs, and supervising, purchasing, and contracting for the City. Gardner acknowledges that, solely by reason of entering into this Agreement and his employment with the City, City Confidential Information, as defined below, may be discovered by or disclosed to him. Gardner agrees that he shall not at any time or in any manner, either directly or indirectly, whether or not for compensation, use, divulge, disclose or communicate to any person, firm, corporation or any other entity in any manner whatsoever any Confidential Information concerning any matters affecting or relating to the business of City except for the benefit of the City and only with the express written permission of City after the termination of his employment with the City. Such Confidential Information includes but is not limited to, attorney-client privileged communications, confidential and privileged closed session communications/records, the identification of any of City's licensees, sub-licensees, or any of the information concerning the business of the City, its manner of operation, its plans, and/or other proprietary data where such information is not publicly known and is not otherwise subject to public inspection or disclosure.

#### **Section 11. Conflict of Interest.**

Gardner agrees that during or after the Term of this Agreement, he will not, directly or indirectly, participate in or in any way represent, provide advice or input or any other information or assistance/advice to any party who is negotiating with the City any agreement, seeking award of any contract or seeking any grant, permit or any other benefits or who is in an adversarial posture with the City if Gardner was privy to and/or was involved in any manner in such matter or if his administration was responsible for evaluating, drafting, negotiating, making recommendations regarding such matter on behalf of the City during his employment with the City.

#### **Section 12. Non-Disparagement.**

Gardner agrees that during and after the Term of this Agreement, he will not make disparaging remarks, nor take any action that is intended, or would reasonably be expected, to harm the City or its reputation or that would reasonably be expected to lead to unwanted or unfavorable publicity to the City, its officers, employees and officials. "Disparaging remarks, comments or statements" are those that impugn the character, honesty, integrity, morality or business acumen or abilities in connection with any aspect of the operation of the City.

#### **Section 13. Interpretation of Agreement**

This Agreement shall be governed by, construed, and enforced pursuant to the laws of the State of California. Any dispute regarding the interpretation or application of this

Agreement and any action to enforce or interpret this Agreement shall be resolved by binding arbitration. In the event of a dispute between Gardner and the City with respect to the interpretation of this Agreement or any alleged breach of this Agreement which cannot be settled amicably by agreement of the parties, the dispute shall be submitted to arbitration by a single arbitrator mutually agreed to by Gardner and the City. The award shall be final, binding and conclusive and may be entered in the highest court having jurisdiction. The prevailing party in any arbitration pursuant to this paragraph shall be entitled to recover its reasonable attorney's fees and costs. Any arbitration shall take place in the City of Oakland, County of Alameda. The Parties expressly consent to the jurisdiction and venue identified in this section and waives any defenses to lack of jurisdiction or venue.

#### **Section 14. Entire Agreement**

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services to the City by Gardner. It contains all of the representations, covenants and agreements between the parties with respect to Gardner's services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party that are not contained in this Agreement. No agreement, statement or promise not contained in this Agreement shall be valid or binding.

#### **Section 15. Modification**

Any modification of this Agreement shall be effective only if it is in writing and signed by all parties to this Agreement.

#### **Section 16. Severability**

If any part of this Agreement is determined to be invalid, unlawful or unenforceable, that part shall not be deemed to be part of this Agreement.

**Section 17. Survival of Certain Provisions.** The provisions of Sections 10, 11, and 12 shall survive the expiration or other termination of this Agreement.

#### **Section 18. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall constitute an original document, and all of which, when taken together, shall constitute a single document. Fax signatures and electronically transmitted signatures (for example: pdf files) shall constitute original signatures for the purpose of this Agreement.

**Section 19. Voluntary Execution**

Gardner acknowledges that he has read and understands this Agreement, is fully aware of its legal effect, has had an opportunity to consult legal counsel and has entered into it freely and based on his own judgment.

CITY OF OAKLAND

\_\_\_\_\_  
Jean Quan                      Date  
Mayor

\_\_\_\_\_  
Henry Gardner                      Date

Approved as to Form and Legality:

\_\_\_\_\_  
Barbara J. Parker  
City Attorney

Resolution No. \_\_\_\_\_ C.M.S. – passed [date] \_\_\_ ayes, \_\_\_ noes, \_\_\_ abstentions,  
\_\_\_ absent



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

*[Signature]*  
City Attorney's Office

2014 MAY 22 PM 5:21 OAKLAND CITY COUNCIL

**RESOLUTION NO. \_\_\_\_\_ C.M.S.**

INTRODUCED BY COUNCILMEMBER HONORABLE MAYOR JEAN QUAN

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT ON BEHALF OF THE CITY WITH HENRY GARDNER, INTERIM CITY ADMINISTRATOR, EFFECTIVE JUNE 16, 2014 THROUGH JANUARY 20, 2015**

**WHEREAS**, pursuant to Article III Section 305(e ) of the Oakland City Charter, Mayor Quan appointed Mr. Henry Gardner as the Interim City Administrator for the period of June 16, 2014 through January 20, 2015, subject to confirmation by the City Council, and the City Council has approved a resolution confirming the appointment; and

**WHEREAS**, the City desires to compensate Mr. Gardner at a level commensurate with his expertise, education and qualifications; and

**WHEREAS**, pursuant to Article IV, Section 400 of the Charter of the City of Oakland, the Council desires to enter into a contract setting forth the terms and conditions, of the employment of Mr. Gardner as Interim City Administrator of the City of Oakland; and

**WHEREAS**, Mr. Gardner's monthly compensation equal to \$23,205.00 plus pay in lieu of medical, dental and vision plans in the amount of \$1,619.45 and monthly auto allowance of \$750.00, which will provide for annual compensation equal to \$306,893.40 or a monthly payment of \$25,574.45 effective June 16, 2014; and

**WHEREAS**, Mr. Gardner will be entitled to receive the one percent cost of living increase effective July 1, 2014, which will provide for annual compensation equal to \$309,678 or a payment of \$25,806.50 on a monthly basis; and

**WHEREAS**, the annual compensation for Mr. Gardner, \$309,678 will yield a saving of \$154,669 for a budgeted City Administrator position due to no payments to pension and no accrued leaves; now, therefore be it

**RESOLVED**: That the Mayor is hereby authorized to execute an employment agreement with Mr. Henry Gardner that has an annual cost of \$306,893.40, which includes a monthly salary of \$23,205.00 plus pay in lieu of medical, dental and vision plans in the amount of \$1,619.45 and a monthly auto allowance of \$750.00; and be it

**FURTHER RESOLVED:** Mr. Gardner will be entitled to receive the one percent cost of living increase effective July 1, 2014, which will provide for annual compensation equal to \$309,678 or a payment of \$25,806.50 on a monthly basis; and be it

**FURTHER RESOLVED:** That the term of the employment agreement is from June 16, 2014 through January 20, 2015; and be it

**FURTHER RESOLVED:** That funding for contract will be drawn from the vacant budgeted City Administrator position and a projected annual saving is \$154,669; and be it

**FURTHER RESOLVED:** That the agreement(s) and other actions authorized hereunder shall be reviewed and approved by the Office of the City Attorney for form and legality prior to execution and filed with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City  
of Oakland, California