



CITY OF OAKLAND

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 JAN 16 AM 10:01

# AGENDA REPORT

**TO:** DEANNA J SANTANA  
CITY ADMINISTRATOR

**FROM:** Anil Comelo

**SUBJECT: SUPPLEMENTAL REPORT -  
ORDINANCES FOR APPROVAL OF  
AMENDMENTS TO DEFERRED  
COMPENSATION PLANS**

**DATE:** January 15, 2014

City Administrator  
Approval

Date

1/15/14

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

Staff recommends that the City Council

(1) Adopt an Ordinance approving amendments to the Deferred Compensation Plan for Full-time and Permanent Part-time employees, established by Resolution No 68563 as amended by Resolution 75111, incorporated herein, updating the Deferred Compensation Plan to comply with State and Federal laws, establishing participant establishing participant loan and other procedures, to reflect the approved composition of the Deferred Compensation Committee and affirming the authority of the Deferred Compensation Committee to take any and all actions, and to negotiate, execute and deliver, any and all agreements and other documents that the committee may deem necessary or advisable to administer the plan

(2) Adopt an Ordinance approving amendments to the Deferred Compensation Plan for Part-time Seasonal and Temporary employees, established by Resolution No 68722 as amended by Resolution 75111, incorporated herein, updating the Deferred Compensation Plan to comply with State and Federal laws, estabhshing participant establishing participant loan and other procedures, to reflect the approved composition of the Deferred Compensation Committee and affirming the authority of the Deferred Compensation Committee to take any and all actions, and to negotiate, execute and deliver, any and all agreements and other documents that the committee may deem necessary or advisable to administer the plan

Item \_\_\_\_\_  
City Council  
January 21, 2014

**REASON FOR SUPPLEMENTAL REPORT**

During Finance and Management Committee on January 14, 2014, the Committee requested modifications to the Plan Documents to ensure the language related to the composition of the Deferred Compensation Committee was consistent throughout all documents. Attached to this report are the modified Plan Document for Part-Time, Season and Temporary Employees and updated Ordinance. Modification to the attached document was made on Page 7, Section 9.1 – Composition, which aligns it to the Plan Document for Full-Time and Permanent Part-Time Employees that was included in the original staff report.

For questions regarding this report, please contact Deborah Grant, Risk Manager, at (510) 238-7165.

Respectfully submitted,



---

Aml Comelo  
Director, Human Resources Management

*Prepared by  
Deborah Grant, Risk Manager  
Risk and Benefits Division*

**Attachment (2)**

***Attachment A – Plan Document – Mandatory Plan***

***Attachment B – Ordinance – Mandatory Plan***

**CITY OF OAKLAND  
DEFERRED COMPENSATION PLAN  
FOR PART-TIME, SEASONAL, AND TEMPORARY EMPLOYEES**

As Restated Effective January 1, 2014

## TABLE OF CONTENTS

	<b>Page</b>
SECTION 1 INTRODUCTION	1
SECTION 2 DEFINITIONS	1
SECTION 3 PLAN PARTICIPATION	3
SECTION 4 PLAN CONTRIBUTIONS AND LIMITATIONS	3
SECTION 5 VESTING	4
SECTION 6 INVESTMENT OF CONTRIBUTIONS	4
SECTION 7 DISTRIBUTIONS	5
SECTION 8 BENEFICIARY	7
SECTION 9 COMMITTEE	7
SECTION 10 AMENDMENT AND TERMINATION	8
SECTION 11 PLAN ASSETS	8
SECTION 12 USERRA	8
SECTION 13 GENERAL PROVISIONS	9
SECTION 14 EXECUTION	9
APPENDIX A MINIMUM DISTRIBUTION REQUIREMENTS	A-1

**CITY OF OAKLAND  
DEFERRED COMPENSATION PLAN  
FOR PART-TIME, SEASONAL, AND TEMPORARY EMPLOYEES**

As Restated Effective January 1, 2014

**SECTION 1. INTRODUCTION**

Pursuant to Resolution No 68722, dated March 3, 1992, the City of Oakland ("Employer") established the City of Oakland Deferred Compensation Plan for Part-Time, Seasonal and Temporary Employees (the "Plan") effective July 1, 1991

Since then, the Plan has been amended and restated on various occasions. The Employer wishes to restate the Plan to conform with recent changes to the tax laws, and to further clarify the Plan's intended operation. Accordingly, the Employer hereby adopts this restatement of the Plan, effective January 1, 2014, except as indicated in specific provisions below.

Generally, under the federal tax laws, an employee of the Employer is subject to federal Social Security tax, unless the employee is a member of a retirement system (as defined by section 3121(b)(7)(F) of the Internal Revenue Code) sponsored by the Employer. It is intended that the Plan constitute a retirement system for this purpose, and that, accordingly, compensation paid by the Employer to employees covered by the Plan be exempt from federal Social Security taxes.

The Plan is intended to be an eligible deferred compensation plan under section 457(b) of the Internal Revenue Code. It is further intended that the Plan, and the trust established to hold Plan assets, will meet the requirements of a pension trust under sections 53212 - 53214 of the California Government Code, or their successor sections. In accordance with section 457(g)(1) of the Internal Revenue Code, trust assets will be held for the exclusive benefit of Plan participants and their beneficiaries.

**SECTION 2. DEFINITIONS**

Unless context indicates otherwise, capitalized terms used in the Plan have the following meanings:

- 2.1 **Account** means the account maintained under the Plan for each Participant or Beneficiary to reflect each such person's interest in the Plan.
- 2.2 **Beneficiary** means the person, persons, trust, or other entity entitled to receive the Participant's Account upon the Participant's death. See Section 8.
- 2.3 **Code** means the Internal Revenue Code of 1986, as amended.
- 2.4 **Committee** means the person or persons designated by the Employer to administer the Plan. See Section 9.

- 2.5 Compensation means all amounts which are paid to, or for the benefit of, a Participant for services performed for the Employer, subject to the requirements of section 1.415(c)-2(e)(3)(i) of the Treasury Regulations
- 2.6 Eligible Employee means any Employee who is either part-time (i.e., works less than half-time annually), seasonal, or temporary. Eligible Employee does not, however, include any Employee who (a) is covered by a Retirement System (other than this Plan) maintained by the Employer, or (b) is exempt from coverage under Social Security by federal law or regulation
- 2.7 Employee means any common-law employee of the Employer. Employee does not include independent contractors
- 2.8 Employer means the City of Oakland
- 2.9 Includible Compensation means an Employee's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$250,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased by amounts contributed by the Employer under a salary reduction agreement that are not includible in the Employee's gross income under sections 125, 132(f), 402(b), 402(e)(3), 403(b) or 457(b) of the Code (including an election to defer Compensation under this Plan). "Includible Compensation" also includes amounts paid after an Employee's Severance from Employment that are described in section 1.415(c)-2(e)(i) of the Treasury Regulations. To the extent permitted by, and subject to the provisions of the Heroes Earnings Assistance and Relief Tax Act of 2008 and section 3401(h) of the Code, "Includible Compensation" includes any differential wage payments, as defined in section 3401(h)(2) of the Code
- 2.10 Participant means any Eligible Employee who has met the requirements of Section 3.1 to participate in the Plan, and whose participation has not terminated in accordance with Section 3.2
- 2.11 Required Beginning Date means April 1 of the calendar year following the later of (1) the calendar year in which a Participant attains age 70½, or (2) the calendar year in which the Participant has a Termination of Employment
- 2.12 Retirement System means any plan that meets the requirements for a retirement system under section 3121(b)(7)(F) of the Code and the regulations under the Code. This Plan is intended to constitute a Retirement System
- 2.13 Social Security means the Social Security program as set forth in Title 42 of the United States Code, section 301 et seq
- 2.14 Termination of Employment means the complete cessation of an Employee's employment with the Employer for any reason, including but not limited to death, disability, resignation, or retirement
- 2.15 Treasury Regulations means the regulations adopted under the Code

- 2.16 Trust means the trust or custodial account established, under a written agreement between the Employer and the trustee or custodian selected by the Employer, to hold assets under the Plan in accordance with section 457(g)(1) of the Code. For this purpose, a custodial account means an instrument that is treated as a trust under section 457(g)(3) of the Code. See Section 11.

### **SECTION 3. PLAN PARTICIPATION**

- 3.1 **Commencement of Participation.** Each person who is a Participant immediately before July 1, 2010, will remain a Participant. Thereafter, each person will become a Participant on the date he or she first becomes an Eligible Employee.
- 3.2 **Termination of Participation.** A Participant's participation in the Plan will cease upon the earlier of the Participant's death, or the complete disbursement of the Participant's Account.
- 3.3 **Reemployment/Reclassification.** A person whose participation in the Plan ceases under Section 3.2 will subsequently become a Participant upon meeting Section 3.1 again.

### **SECTION 4. PLAN CONTRIBUTIONS AND LIMITATIONS**

- 4.1 **Contributions.** Contributions made under the Plan will be transferred to the Trust within a reasonable period of time. Transfers will not take longer than is reasonable for the proper administration of the Accounts.
- 4.2 **Employee Contributions.** Each Eligible Employee must contribute 3.75% of his or her Compensation to the Eligible Employee's Account. The Employer will automatically deduct the contributions from the Eligible Employee's paychecks. The Eligible Employee may not change his or her contribution percentage.
- 4.3 **Employer Contributions.** The Employer will contribute an amount equal to 3.75% of each Eligible Employee's Compensation to his or her Account. The contributions will be made at the time determined by the Employer, but not less frequently than annually. The Employer, in its sole discretion, may modify its contribution percentage. At no time, however, will employer contributions fall below the percentage required for the Plan to be a Retirement System.
- 4.4 **Annual Contribution Limit.** The maximum amount that may be contributed to an Eligible Employee's Account for any calendar year may not exceed the lesser of
- (a) 100% of the Participant's Includible Compensation, or
  - (b) the applicable dollar limit in effect for the year under section 457(b)(2)(A) of the Code. The applicable dollar limit for 2012 is \$17,000. After 2012, the dollar limit will be adjusted for the cost-of-living in accordance with section 457(e)(15)(B) of the Code.

- 4.5 Excess Contributions.** Any amount contributed to a Participant's Account in excess of the maximum contribution limit described in Section 4.4 is taxable income to the Participant, and will be distributed to the Participant, including allocable net income, as soon as administratively practicable after the Plan determines that the amount is an excess contribution.
- 4.6 Individual Limit under Multiple Plans.** If a Participant participates in more than one eligible deferred compensation plan (as defined in section 457(b) of the Code) for a calendar year, contributions under all plans may not exceed the maximum dollar limit described in Section 4.4(b) above for any year.
- 4.7 Cessation of Contributions.** Contributions under the Plan will be made only by or for Eligible Employees. If a Participant ceases to be an Eligible Employee for any reason, including transfer to a full-time or permanent part-time position, no further contributions will be made under this Plan for or by the Participant unless and until he or she again becomes an Eligible Employee.
- 4.8 No Other Contributions.** No contributions other than as provided in Sections 4.2 and 4.3 may be made to the Plan. The Plan will not accept rollover contributions or transfers from other plans.

## **SECTION 5. VESTING**

Each Participant is fully vested in his or her Account balance at all times.

## **SECTION 6. INVESTMENT OF CONTRIBUTIONS**

- 6.1 Directed Investments.** The Committee shall invest assets in each Participant's Account in investment funds selected by the Committee. All investment options will be selected in accordance with section 17 of article XVI of the California Constitution.
- 6.2 Disclaimer.** Any action by the Committee in investing funds, or approving any such investment of funds, will not be considered an endorsement or guarantee of any investment. The Committee does not in any way guarantee the Plan assets from loss or depreciation. Liability to make any payment under the Plan will be limited to the assets held in the Trust for that purpose.
- 6.3 Valuation.** The value of Plan assets will be determined periodically in a manner selected by the Committee in its discretion (but not less frequently than annually). Gains and losses on investments in which Plan assets are invested will be allocated to each Account in the same proportion as the total balance in the Account bears to the aggregate balance of all Accounts under the Plan.
- 6.4 Statements.** Statements will periodically be issued to Participants or Beneficiaries to reflect the balance in each Account and certain transactions and adjustments affecting the balance, including investment earnings or losses, contributions, and distributions.

## **SECTION 7. DISTRIBUTIONS**

**7.1 Distribution Events.** A Participant's Account may be distributed upon the earlier of the Participant's

- (a) Termination of Employment, or
- (b) attainment of age 70 ½

**7.2 Timing of Distribution.**

- (a) The Participant (or, after the Participant's death, his or her Beneficiary) may elect, at the time and in the manner determined by the Committee, to receive distribution of all or any portion of the Participant's Account, commencing on or after a distribution event under Section 7.1. Distribution will begin as soon as administratively practicable after such election.
- (b) Effective January 1, 2006, if within one year after a Participant's Termination of Employment, the Participant has not been rehired as an Employee, the Participant's entire Account will be automatically distributed within 90 days after the one-year anniversary of Termination of Employment, but only if the Participant's Account balance is \$1,000 or less.

**7.3 Form of Distribution.** A Participant's Account may be distributed, less any required federal- or state-tax withholdings, in any one of the following forms, as elected by the Participant or Beneficiary

- (a) lump sum payment, or
- (b) any other distribution form permitted by the Committee in its discretion, which form may include partial payments, installments, or any other form

A Participant or Beneficiary may elect to change the form of distribution for any amounts not yet distributed. Any such change must be made in the time and in the manner determined by the Committee.

**7.4 Required Minimum Distributions.** The Plan is subject to the minimum distribution requirements under sections 457(d)(2) and 401(a)(9) of the Code. These requirements are set out in Appendix A of the Plan.

**7.5 Direct Rollovers.** Effective for distributions after December 31, 2001, upon distribution from an Account, if the recipient is an Eligible Distributee, he or she may elect to have any portion of the distribution that is an Eligible Rollover Distribution paid in the form of a direct rollover (as described in section 401(a)(31) of the Code) to the trustee or custodian of an Eligible Retirement Plan that accepts direct rollovers. For this purpose

- (a) **Eligible Distributee** means a Participant, a Participant's surviving spouse, or a Participant's spouse or former spouse who is an alternate

payee under a domestic relations order which is treated as a qualified domestic relations order to the extent provided in Code section 414(p)(11), and such other persons as come within the definition of the term as used in Code section 401(a)(31)(A) Effective January 1, 2010, the term "Eligible Distributee" also includes the Participant's nonspouse designated beneficiary In the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in section 408(a), 408(b) or (effective January 1, 2012) 408A of the Code (each, an "IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Code Also, in this case, the determination of any required minimum distribution under Section 401(a)(9) of the Code that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I R B 395

- (b) **Eligible Rollover Distribution** means any distribution of all or any portion of the Participant's Account other than a distribution that is one of a series of substantially equal periodic payments made annually or more frequently either over the life (or life expectancy) of the Participant or the joint lives (or life expectancies) of the Participant and the Participant's designated Beneficiary or over a specified period of 10 years or more, a distribution required to meet the minimum distribution requirements of section 401(a)(9) of the Code, or any other amount excluded from the definition of "Eligible Rollover Distribution" under the Code or other applicable law
- (c) **Eligible Retirement Plan** means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code (other than an endowment contract), an annuity plan described in section 403(a) of the Code, a plan qualified under section 401(a) of the Code that by its terms permits the acceptance of rollover contributions, a governmental 457(b) plan, or, an annuity contract described in section 403(b) of the Code Effective for distributions after December 31, 2007, the term "Eligible Retirement Plan" also includes a Roth IRA as defined in section 408A of the Code

**7.6 Employment Transition.** If a Participant becomes eligible to participate in the Employer's Full-Time and Permanent Part-Time Plan, an Employer-sponsored plan that constitutes an "eligible deferred compensation plan" under section 457(b) of the Code, the Participant's Account under this Plan may be transferred to the Full-Time and Permanent Part-Time Plan in accordance with section 1.457-10(b)(4) of the Treasury Regulations Any such transfer will be made at the time and in the manner determined by the Committee

**7.7 Qualified Domestic Relations Order (QDRO).** Subject to procedures established by the Employer, benefits may be paid from the balance of a Participant's Account in accordance with a QDRO

## SECTION 8. BENEFICIARY

- 8.1 Designating a Beneficiary.** Each Participant will designate in writing the Beneficiary or Beneficiaries whom such Participant desires to receive the benefits (if any) that are payable under the Plan upon the Participant's death. Such designation must be evidenced by a written instrument filed with the Employer, on a form prescribed by the Employer, and signed by the Participant.
- 8.2 Changing Beneficiaries.** Submitting a new beneficiary designation form will cancel all designation forms previously on file with the Employer. The Employer must receive the Beneficiary designation before the Participant's death to be effective.
- 8.3 No Beneficiary Designation.** If no designation is in effect upon the Participant's death or all Beneficiaries predecease the Participant, the Beneficiary will be the Beneficiary named in the Participant's will. If the Participant does not have a will, benefits will be distributed to the Participant's heirs as determined under the state law for intestate estates.

## SECTION 9. COMMITTEE

- 9.1 Composition.** ~~The Committee is composed of individuals who are designated by the Employer from time to time. If at any time no members have been appointed, the Employer will serve as the Committee.~~ The Committee will consist of individuals who are designated by the City Council, pursuant to Resolution No 68722, dated March 3, 1992, as amended from time to time.
- 9.2 Responsibilities.** The Committee is authorized to conduct all negotiations and to submit and execute all documents, agreements, and amendments, subject as to approval of form and legality by the City Attorney's office, and to perform related actions that may be necessary for the administration of the Plan.
- 9.3 Delegation of Responsibilities.** The Committee may appoint such agents, advisors, counsel, and other delegates as it deems necessary and appropriate for the administration and operation of this Plan. Further, the Committee may delegate to such appointees any of its duties, or any of its discretionary and ministerial powers, in accordance with this Section to the extent doing so is consistent with the Committee's fiduciary duty.
- 9.4 Authority.** The Committee will have all powers and authority necessary to perform its functions, including, but not limited to
- (a) recommending procedures and regulations for the administration of the Plan,
  - (b) construing and interpreting the Plan and making factual determinations concerning the Plan's terms, including the following: eligibility to participate, amount of benefits payable under the Plan, remedy ambiguities, inconsistencies or omissions, and making adjustments or corrections as may be necessary to correct errors in Accounts,

- (c) establishing and maintaining written records of Accounts,
- (d) directing the disbursement of benefits,
- (e) furnishing the Employer with the information required to perform its duties as the Employer and plan sponsor,
- (f) selecting and contracting with a Third Party Administrator to invest funds and perform overall administration, including marketing, education, enrollment, participant account record keeping services and other operational services for the Plan,
- (g) selecting and reviewing investment options, and
- (h) such other powers as may be provided elsewhere in the Plan

## **SECTION 10. AMENDMENT AND TERMINATION**

**10.1 Amendment.** The Employer may amend the Plan at any time and for any reason

**10.2 Plan Termination.** While the Employer expects and intends to continue the Plan, the Employer reserves the right to terminate the Plan at any time and for any reason

**10.3 Effect of Amendment or Termination**

- (a) Regardless of any amendment or termination of the Plan, the Employer will at no time be liable for the payment of any benefits under the Plan. All benefits under the Plan will be payable solely from the assets of the Trust
- (b) No amendment or termination of the Plan may change the trustee's duties or liabilities without its consent, result in the return of any part of the Trust assets to the Employer, or, result in the distribution of the Trust assets for the benefit of anyone other than Participants or any other person entitled to benefits under the Plan

## **SECTION 11. PLAN ASSETS**

All amounts contributed to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights will be held in trust for the exclusive benefit of Participants and Beneficiaries. It will be impossible, before the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets under the Trust to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and Beneficiaries. The Trust is intended to comply with section 457(g) of the Code, and is established under a written agreement that constitutes a valid trust under California law. The Trust implements and forms a part of the Plan. The provisions and benefits of the Plan are subject to the terms and provisions of the Trust.

## **SECTION 12. USERRA**

To the extent applicable, service credit, contributions, accrual, and benefits with respect to qualified military service will be provided in accordance with section 414(u) of the Code

## **SECTION 13. GENERAL PROVISIONS**

- 13.1 Assignment.** Except as otherwise provided in the Plan, the interests of Participants and Beneficiaries under the Plan are not subject to their debts or other obligations and, except as may be required by law, may not be voluntarily or involuntarily sold, transferred, alienated, or assigned. Notwithstanding the foregoing, the Plan shall comply with any domestic relations order that, in accordance with procedures established by the Committee, is determined to be a QDRO
- 13.2 Controlling Law.** To the extent not superseded by federal law, California law controls all matters related to the Plan
- 13.3 No Employment or Service Rights.** The Plan does not constitute a contract of employment or service, and participation in the Plan does not give any person the right to be retained in the Employer's employment or service
- 13.4 Severability.** If any provision of this Plan is held illegal or invalid for any reason, such illegality, or invalidity shall not affect the remaining provisions of the Plan, and the Plan shall be construed and enforced as if such illegal and invalid provision had never been set forth in the Plan
- 13.5 No Reversion.** The Employer will not at any time have any right, title, or interest in the assets of the Trust
- 13.6 Plan Expenses.** The reasonable cost of administering the Plan will be paid with assets under the Trust unless paid by the Employer
- 13.7 Plan Information.** For additional information contact

City of Oakland  
Deferred Compensation Benefits Representative  
(510) 238-6769

## APPENDIX A

### MINIMUM DISTRIBUTION REQUIREMENTS

#### A.1 General Rules

- (a) **Effective Date.** This Appendix A will apply for purposes of determining required minimum distributions for calendar years beginning after 2002
- (b) **Precedence.** Appendix A will take precedence over any inconsistent provisions of the Plan, however, Appendix A will not be considered to allow a Participant or Beneficiary to delay a distribution or elect an optional form of benefit not otherwise provided in the Plan
- (c) **Treasury Regulations Incorporated.** All distributions required under Appendix A will be determined and made in accordance with the Treasury Regulations under section 401(a)(9) of the Internal Revenue Code

#### A.2 Time and Manner of Distribution.

- (a) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date
- (b) **Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows
  - (1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, except as provided elsewhere in Appendix A, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later
  - (2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then, except as provided elsewhere in Appendix A, distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died
  - (3) If there is no Designated Beneficiary as of September 30 of the calendar year following the calendar year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death
  - (4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section A 2(b), other than Section A 2(b)(1), will apply as if the surviving spouse were the Participant

For purposes of this Section A 2(b) and Section A 4, unless Section A 2(b)(4) applies, distributions are considered to begin on the Participant's Required Beginning Date. If Section A 2(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section A 2(b)(1).

- (c) **Forms of Distribution.** Unless the Participant's interest is distributed in the form of a single sum on or before the Required Beginning Date, as of the first Distribution Calendar Year distributions will be made in accordance with Sections A 3 and A 4 of Appendix A.

### A.3 Required Minimum Distributions During Participant's Lifetime.

- (a) **Amount of Required Minimum Distribution For Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of
  - (1) the quotient obtained by dividing the Participant's Account balance by the distribution period in the Uniform Lifetime Table set forth in Section 1 401(a)(9)-9 of the Treasury Regulations, using the Participant's age as of the Participant's birthday in the Distribution Calendar Year, or
  - (2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account balance by the number in the Joint and Last Survivor Table set forth in Section 1 401(a)(9)-9 of the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
- (b) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.** Required minimum distributions will be determined under this Section A 3 beginning with the first Distribution Calendar Year and up to and including the Distribution Calendar Year that includes the Participant's date of death.

### A.4 Required Minimum Distributions After Participant's Death.

- (a) **Death On or After Date Distributions Begin**
  - (1) **Participant Survived by Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows
    - (A) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

- (B) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
    - (C) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining Life Expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
  - (2) **No Designated Beneficiary.** If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) **Death Before Date Distributions Begin.**
  - (1) **Participant Survived by Designated Beneficiary.** Except as provided elsewhere in this Appendix A, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section A 4(a).
  - (2) **No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (c) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section A 2(b)(1), this Section A 4(b) will apply as if the surviving spouse were the Participant.

**A.5 Definitions.** For purposes of Appendix A, the following terms have the meanings set forth below

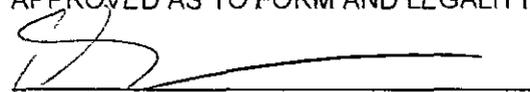
- (a) **Designated Beneficiary.** The individual who is designated as the beneficiary under Section 1 5 of the Plan is the designated beneficiary under Section 401(a)(9) of the Internal Revenue Code and Section 1 401(a)(9)-1, Q&A-4, of the Treasury Regulations
- (b) **Distribution Calendar Year.** A calendar year for which a minimum distribution is required For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section A 2(b) The required minimum distribution for the participant's first distribution calendar year will be made on or before the Participant's Required Beginning Date The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year
- (c) **Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Section 1 401(a)(9)-9 of the Treasury Regulations
- (d) **Participant's Account Balance.** The account balance as of the last valuation date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date The account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year
- (e) **Required Beginning Date.** The Required Beginning Date means April 1 of the calendar year following the later of (a) the calendar year in which the Participant attains age seventy and a half (70 ½), or (b) the calendar year in which the Employee has a Break in Employment

**A.6 Effective Date of Plan Amendment for Section 401(a)(9) Final and Temporary Treasury Regulations.**

Appendix A applies for purposes of determining required minimum distributions for Distribution Calendar Years beginning with the 2003 calendar year

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
INTRODUCED BY COUNCILMEMBER  
2014 JAN 16 AM 10:01

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY

# OAKLAND CITY COUNCIL

ORDINANCE NO \_\_\_\_\_ C M S

**ORDINANCE APPROVING AMENDMENTS TO THE DEFERRED COMPENSATION PLAN FOR PART-TIME SEASONAL AND TEMPORARY EMPLOYEES, ESTABLISHED BY RESOLUTION NO. 68722, AS AMENDED BY RESOLUTION 75111, INCORPORATED HEREIN, UPDATING THE DEFERRED COMPENSATION PLAN TO COMPLY WITH STATE AND FEDERAL LAWS, ESTABLISHING PARTICIPANT LOAN AND OTHER PROCEDURES, TO REFLECT THE APPROVED COMPOSITION OF THE DEFERRED COMPENSATION COMMITTEE, AND AFFIRMING THE AUTHORITY OF THE DEFERRED COMPENSATION COMMITTEE TAKE ANY AND ALL ACTIONS, AND TO NEGOTIATE, EXECUTE AND DELIVER, ANY AND ALL AGREEMENTS AND OTHER DOCUMENTS THAT THE COMMITTEE MAY DEEM NECESSARY OR ADVISABLE TO ADMINISTER THE PLAN.**

**WHEREAS**, Section 3121(b)(7)(f) of the Internal Revenue Code mandates that all part-time, temporary and seasonal employees who work less than half time annually be covered by a qualified retirement program, and

**WHEREAS**, pursuant to Resolution No 68722, as amended by Resolution No 75111, which are fully incorporated by reference herein, the City Council authorized the establishment of a deferred compensation program for the benefit of the City's for part-time seasonal and temporary employees and authorized the Deferred Compensation Committee to administer and oversee program implementation, pursuant to Sections 53212-53214 of the Government Code of the State of California and Section 457 and other applicable sections of the Internal Revenue Code, and

**WHEREAS**, also, pursuant to Resolution No 68722, as amended by Resolution No 75111, and the City's labor agreements with its employee unions, the following City employees are designated to serve on the seven member Deferred Compensation Committee and oversee the deferred compensation program the Director of the Office of Personnel Resource Management or designated representative, the Director of the Office of Finance or designated representative, the City Attorney or designated representative, a representative of the Oakland Police Officers' Association, a representative of the International Association of Fire Fighters, Local 55, a representative of United Public Employees, Local 790, and a representative of Professional and Technical Engineers, Local 21, and

**WHEREAS**, that pursuant to the Memoranda of Understanding between the unions and the City, the four employee representatives of labor unions serving on the Deferred Compensation Committee are selected by the unions represented, and

**WHEREAS**, the City is the Employer sponsor of the Deferred Compensation Plan and the assets of the Deferred Compensation Plan are composed exclusively of deferred earned compensation of City employees, which is held in trust for the exclusive benefit of employee participants, and

**WHEREAS**, on March 3, 1992, the Council approved by to Resolution No 68563, the Deferred Compensation Plan for part-time seasonal and temporary employees ("the Plan"), and

**WHEREAS**, since approval in 1992, the Plan has been amended and restated on various occasions, and

**WHEREAS**, the City wishes to amend and restate the Plan to conform with recent changes to the tax laws, establishing participant loan and other procedures, to reflect the approved composition of the deferred compensation committee, and affirming the authority of the Deferred Compensation Committee take any and all actions, and to negotiate, execute and deliver, any and all agreements and other documents that the Deferred Compensation Committee may deem necessary or advisable to administer the plan, now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1: Recitals True and Correct** The City Council finds and determines that the foregoing recitals are true and correct and are hereby incorporated herein

**Section 2: Approval of the Plan** The City Council approves and adopts the attached Deferred Compensation Plan for Part-time Seasonal and Temporary Employees (Amended and Restated January 1, 2014), attached hereto as Exhibit A, to be effective as of January 1, 2014

**Section 3: Effective date** This Ordinance shall be effective immediately, if passed by an affirmative vote of at least six City Council members, if this ordinance is passed by five affirmative votes, the Ordinance it will be effective seven days after final passage

IN COUNCIL, OAKLAND, CALIFORNIA, JANUARY \_\_, 2014

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