

# DEFERRED COMPENSATION PLAN BOARD REPORT 12-56

Date: November 1, 2012

To: Board of Deferred Compensation Administration

From: Staff

Subject: Deferred Compensation Plan Trustee and EIN for Trust Assets

*Board of Deferred  
Compensation Administration*  
Eugene K. Canzano, Chairperson  
John R. Mumma, Vice-Chairperson  
Michael Amerian  
Sangeeta Bhatia  
Cliff Cannon  
Tom Moutes  
William Raggio  
Robert Schoonover  
Margaret Whelan

## Recommendation:

That the Board of Deferred Compensation Administration authorize the application for a federal Employer Identification Number from the Internal Revenue Service for the City's Deferred Compensation 457(b) Plan Trust and authorize the Board Chairperson to execute the application on behalf of the Board.

## Discussion:

At its meeting on **January 18, 2011**, the Board reviewed information from staff and the Board's Consultant, Mercer Investment Consulting, regarding their review of Plan trustee issues. Mercer provided its review/analysis of the Plan's authoritative documents and the degree to which they are consistent with best practices for meeting Internal Revenue Code Section 457 trust requirements for governmental plans.

One outcome of that meeting was the replacement of Great-West's custodian bank Orchard Trust Company with Wells Fargo, the latter of which could provide broader custodial and trustee services and ensure that all Plan assets would at all times be covered under the trustee umbrella (what Mercer identified as a best practice).

Mercer also recommended that the City's Deferred Compensation 457(b) Plan trust apply for a federal Employer Identification Number (EIN) from the Internal Revenue Service. Mercer indicated that having separate EIN's for the trust and the City helps to distinguish the trust as a separate legal entity.

At its meeting on **September 20, 2011**, the Board approved (a) a draft amendment to the current contract with Great-West Retirement Services to include use of its affiliate Wells Fargo to provide passive trustee services, (b) the Wells Fargo Custodial Account Agreement and (c) the January 3, 2012 implementation date. Since the implementation to Wells Fargo has been completed, staff is recommending that the Board authorize application for a federal Employer Identification Number from the

Internal Revenue Service on behalf of the City's Deferred Compensation 457(b) Plan trust.

Staff reviewed this matter with the Board's Counsel and he indicated that, under the guidance provided by the Internal Revenue Service, the Plan is likely not required to obtain an EIN because it does not file tax returns with either the IRS or State Franchise Tax Board. The Plan, however, as a trust established by the City for purposes of Internal Revenue Code Section 415, can obtain an EIN as a separate entity from the City. Given Mercer's advice that this represents a best practice, staff recommends moving forward with the application.

Board Counsel also informed us that IRS guidance provides that the EIN application must be submitted and signed by the owner or principal officer of the entity responsible for the control, management and disbursement of the trust funds. He further indicated that the IRS also allows the entity to designate a fiduciary or the trustee to sign the application on behalf of the responsible entity. Since it is the Board and not a specific individual who controls and manages the Plan, the Board should designate either a fiduciary or the trustee to execute the application. All Board members are Plan fiduciaries and could be designated to sign the application, but staff recommends that the Board Chair be identified as the Board's designee for purposes of obtaining an EIN.

Submitted by: \_\_\_\_\_  
Natasha Gameroz

Reviewed by: \_\_\_\_\_  
Steven Montagna

Approved by: \_\_\_\_\_  
Alejandrina Basquez