

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-90
Series of 2012

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A RESOLUTION APPROVING THE RETIREMENT AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND WILLIAM A. SIMMONS

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Retirement Agreement between the City and William A. Simmons is hereby approved by the City Council of the City of Northglenn, and the Mayor is authorized to execute same on behalf of the City.

DATED at Northglenn, Colorado, this ____ day of _____, 2012.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

RETIREMENT AGREEMENT

THIS RETIREMENT AGREEMENT is made and entered into this 13th day of August, 2012, by and between William A. Simmons and the City of Northglenn, Colorado (the "City"). Simmons and the City are collectively referred to as "the Parties."

RECITALS

A. Simmons is employed by the City as the City Manager appointed by the City Council pursuant to Section 6.1 of the City of Northglenn Home Rule Charter and in accordance with the terms of an Employment Agreement dated October 30, 2008, effective November 10, 2008 (the "Employment Agreement").

B. Simmons desires to retire and assist in the transition prior to his retirement subject to the terms and conditions contained herein, and the City Council on behalf of the City desires to accept his retirement and set a date therefor, subject to the terms and conditions set forth below.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants as set forth below, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Retirement.** Subject to the terms and conditions set forth below, Simmons agrees to retire from his position as City Manager effective December 31, 2012 (the "Retirement Date").

2. **Severance; Payment.** Simmons and the City agree that Simmons shall be entitled to Severance as defined in this Section 2 consisting of the following:

a. Continued payments of Simmons' current salary on a periodic basis as of the date of this Agreement, and the providing by the City of the benefits provided by subsections a., b., and e. of Section 3 of the Employment Agreement, said Severance payments commencing upon his Retirement Date and continuing through and including May 3, 2013, which shall be paid periodically in the same manner as other employees of the City; and

b. Payment of a lump sum payment equal to the cash amount of any unused and accrued General Leave up to the total maximum accrual allowed by the City's accrual rate schedule accrued as of the Retirement Date (the "General Leave Pay-Out"). The General Leave Pay Out shall be determined as of the Retirement Date but shall not be paid until the date of the final Severance payment made in accordance with subsection a. of this Section 2.

The Parties acknowledge and agree that the Severance contained in this Section 2 is in partial consideration for the mutual promises and covenants contained within this Retirement Agreement.

3. Attorneys' Fees. The parties understand and agree that each party is responsible for their own attorneys' fees and costs related to this Agreement.

4. Simmons Obligations Pursuant to this Retirement Agreement.

a. Nothing in this Agreement shall be deemed to modify Simmons' performance obligations under the Employment Agreement during the time frame from the effective date of this Agreement through the Retirement Date, and it is the parties' intent that this Retirement Agreement supplement rather than supersede the Employment Agreement through and including the Retirement Date.

b. Simmons further agrees during the time frame from his Retirement Date through and including May 3, 2013, to be available to assist the City in any issues related to the transition to a new City Manager following Simmons' retirement. Provided, however, following Simmons' Retirement Date, Simmons' obligations under the Employment Agreement shall cease.

5. Miscellaneous.

a. Successors and Assigns. This Agreement shall be binding in all respects upon the successors and assigns of the Parties.

b. Governing Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Adams, State of Colorado, and the parties waive any right to remove any action to any other court, whether state or federal.

c. Severability. In the event that a court or arbiter of competent jurisdiction enters a final judgment or decision holding invalid any nonmaterial provision of this Agreement, the remainder of this Agreement shall be fully enforceable.

d. Counterparts. This Agreement may be executed in counterparts, all of which shall have full force and effect.

e. Integration. This Agreement and its exhibits constitute the entire agreement of the Parties and a complete merger of all prior negotiations and agreements. This Agreement shall not be modified except in writing signed by the Parties or their authorized representatives.

f. Headings. The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

g. Gender and Number. Whenever applicable, the pronouns designating the feminine, masculine or neuter shall equally apply to the feminine, neuter and masculine genders; the singular shall include the plural and the plural shall include the singular.

h. Appropriation. Through and including the date of the adoption of the 2013 budget, consistent with Article X, section 20 of the Colorado Constitution the financial obligation of the City to be performed during fiscal year 2013 are subject to annual appropriation. Provided, however, the City hereby affirms its current intent to appropriate in 2013 for the financial obligations of the City in this Agreement, and agrees to include the appropriation of the financial obligation in the 2013 budget to be presented to the City for adoption.

IN WITNESS WHEREOF, this Agreement has been executed on the date first above written, to be effective on such date.

CITY OF NORTHGLENN, COLORADO

Joyce Downing, Mayor

ATTEST:

Johanna Small, CMC, City Clerk

WILLIAM A. SIMMONS
