

2009-55

A RESOLUTION

THIRD AMENDMENT TO THE CITY OF LAKEWOOD AMENDED AND RESTATED DEFERRED COMPENSATION PLAN AND TRUST AGREEMENT

WHEREAS, the City of Lakewood adopted the City of Lakewood Deferred Compensation Plan and Trust Agreement, ("Plan") December 14, 1998; and

WHEREAS the City of Lakewood amended and restated the Plan, effective January 1, 2006; and

WHEREAS the City of Lakewood adopted the First Amendment to the Plan effective January 1, 2008, and the Second Amendment to the Plan effective December 14, 2008; and

WHEREAS, the City of Lakewood desires to amend the Plan to incorporate tax law changes from the Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART Act") and the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA").

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. The Plan, at ARTICLE II., DEFINITIONS, Section 2.8, ("Includible Compensation"), shall be amended in its entirety, effective January 1, 2009, to read as follows:

2.8 Includible Compensation: The amount of an Employee's compensation from the Employer for a taxable year that is attributable to services performed for the Employer and that is includible in the Employee's gross income for the taxable year for federal income tax purposes; such term does not include any amount excludable from gross income under this Plan or any other plan described in Section 457(b) of the Code or any other amount excludable from gross income for federal income tax purposes. Effective January 1, 2009, Includible Compensation shall include "differential wage payments" made to a Participant with respect to active military service, in accordance with Code Section 414(u)(12).

Includible Compensation shall be determined without regard to any community property laws. However, solely for the purpose of determining the Normal and Catch-Up Limitations in Section 5.1 and 5.2 herein, Includible Compensation shall include any amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Section 4.2).

SECTION 2. The Plan, at ARTICLE IV., PARTICIPATION IN THE PLAN, Section 4.4 ("Suspension of Deferrals"), shall be amended in its entirety, effective January 1, 2009, to read as follows:

4.4 Suspension of Deferrals: A Joinder Agreement shall be automatically suspended for any pay period in which there are insufficient monies available to make the entire deduction agreed upon, and automatically reinstated in the next pay period that compensation is sufficient to make the agreed-upon Deferral. In addition, if a Participant receives a Qualified Reservist Distribution pursuant to Section 7.8 hereunder, the Participant's deferrals under his or her Joinder Agreement shall be suspended for a period of six (6) months after the date on which the Qualified Reservist Distribution is made.

SECTION 3. The Plan, at ARTICLE VII, BENEFITS, Section 7.4 ("Minimum Distribution Requirements"), shall be amended, effective January 1, 2009, by the addition of new paragraph (d) ("Special Rule for 2009 RMDs"), to read as follows:

(d) Special Rule for 2009 RMDs. Notwithstanding the provisions of this Section, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Section 401(a)(9)(H) of the Code ("2009 RMDs"), and who would have satisfied that requirement by receiving

distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to stop receiving the distributions described in the preceding sentence. In addition, notwithstanding the provisions of Section 6.8, and solely for purposes of applying the direct rollover provisions of the Plan, 2009 RMDs and Extended 2009 RMDs will be treated as eligible rollover distributions.

SECTION 4. The Plan, at ARTICLE VII, BENEFITS, shall be amended, effective January 1, 2009, by the addition of new Section 7.8 ("Qualified Reservist Distributions") to read as follows:

7.8 Qualified Reservist Distributions ("QRDs").

(a) QRD Eligibility and Amount.

1. Notwithstanding the restrictions set forth in this Article VII, Participants may receive a distribution of all or a portion of their Account if the distribution fulfills the requirements for a QRD under Code Section 72(t).

2. A Participant is entitled to a QRD equal to all or a portion of his or her Account if: (1) the Participant is a member of a reserve component, as defined in 37 U.S.C. § 101, and is ordered or called to active duty for a period of 180 days or more or for an indefinite period, and (2) the request for distribution is made during

the period beginning with the order or call to active duty and ending on the last day of the active duty period.

(b) Rules and Procedures.

1. A Participant requesting a QRD must provide the Employer with a copy of the order or call to active duty before the QRD may be made. The order or call to active duty must specify that the Participant's period of active duty is for 180 days or more or is indefinite.

2. If the period specified in an order or call to active duty is less than 180 days, subsequent calls or orders that increase the total period of active duty to 180 days or more will qualify the Participant for a QRD.

3. Participants are limited to a maximum of one (1) QRD in each Plan Year.

4. The Plan shall process and pay QRDs no more than sixty days (60) after a Participant's request for a QRD has been made.

5. After a Participant receives a QRD, the Participant's deferrals under his or her Joinder Agreement shall be suspended for a period of six (6) months after the date on which the QRD is made.

SECTION 5. The Plan, at ARTICLE XII., AMENDMENT OR TERMINATION OF PLAN shall be amended in its entirety, effective January 1, 2009, to read as follows:

12.1 Amendment or Termination of the Plan. The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least 30 days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation

to continue acting as Administrator hereunder if it disapproves of such amendment. The Employer may at any time terminate this Plan.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer at least 30 days before the effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457 of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

12.2 Action by Employer to Amend Plan. Any action by the Employer to amend the Plan under this Article XII of the Plan shall be by resolution of the Trustees of the Plan.

INTRODUCED, READ AND ADOPTED by a vote of 11 For and 0 Against at a regular meeting of the City Council on October 26, 2009 at 7 o'clock p.m. at the Lakewood Civic Center, 480 South Allison Parkway, Lakewood, Colorado.

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Bob Murphy, Mayor

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Margy Greer, City Clerk