

FINANCE MEMORANDUM
#09-03

February 26, 2009

TO: Honorable Mayor Kathleen M. Novak and City Council Members

FROM: Shawn Cordsen, Finance Director *SC*
Tammy Guenther, Pension Administrator *TG*

SUBJECT: Third Amendment to the City of Northglenn General Employees' Pension Plan

RECOMMENDATION:

Approve CB-1680, effective as of November 10, 2008, an Ordinance amending the amended and restated City of Northglenn General Employees' Pension Plan and Trust Agreement (the "Pension Plan").

BACKGROUND:

- The amendment incorporates changes required for all qualified defined contribution plans by recently published Final Treasury Regulations under Internal Revenue Code Section 415. The changes affect annual contribution limitations.
- The amendment clarifies that general leave payout is included in compensation for the purposes of employer and employee contributions to the Pension Plan, in keeping with the City's long-standing treatment of general leave payout.
- The amendment removes the 10 years of service requirement for former employees to remain as account holders in the Pension Plan. This amendment removes that requirement, thus permitting all former employees to keep their accounts in the Pension Plan.
- This amendment removes the City Manager from eligibility to participate in the Pension Plan. The City has established a separate qualified retirement plan for the City Manager.
- The amendment also provides the City will amend the Plan by and through a City Council resolution. The full Plan document is available for review in the City Clerk's Office,

BUDGET/TIME IMPLICATIONS:

None.

STAFF REFERENCE:

If Council Members have any comments or questions, they may contact Shawn Cordsen, scordsen@northglenn.org

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1680
Series of 2009

Series of 2009

A BILL FOR A SPECIAL ORDINANCE ADOPTING THE THIRD AMENDMENT TO THE AMENDED AND RESTATED CITY OF NORTHGLENN GENERAL EMPLOYEES' PENSION PLAN AND TRUST AGREEMENT

WHEREAS, the City Council of the City of Northglenn originally adopted the Amended and Restated City of Northglenn General Employees' Pension Plan and Trust Agreement (the "Plan") by the passage of Ordinance No. 1379, Series of 2004, as subsequently amended by the First Amendment thereto by Ordinance No. 1504, Series of 2007, and the Second Amendment thereto by Ordinance No. 1533, Series of 2008; and

WHEREAS, changes in federal laws and regulations and other minor changes necessitate the changes set forth herein.

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

Section 1. The Plan is hereby amended, effective November 10, 2008, as more particularly set forth in the Third Amendment, attached hereto as **Exhibit A**, and incorporated herein by this reference.

INTRODUCED, READ AND ORDERED POSTED this 26th day of February, 2009.


KATHLEEN M. NOVAK
Mayor

ATTEST:


JOHANNA SMALL, CMC
City Clerk

PASSED ON SECOND AND FINAL READING this ____ day of _____,
2009.

KATHLEEN M. NOVAK
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:



COREY Y. HOFFMANN
City Attorney

Exhibit A

**THIRD AMENDMENT
TO THE
CITY OF NORTHGLENN GENERAL EMPLOYEES' PENSION PLAN
AND TRUST AGREEMENT**

WHEREAS, the City Council of the City of Northglenn by Ordinance No. 1379, Series of 2004, adopted the amended and restated City of Northglenn General Employees' Pension Plan and Trust Agreement (the "Plan"), effective January 1, 2007, as amended by the First Amendment thereto by Ordinance No. 1504, Series of 2007, effective January 1, 2008, and the Second Amendment thereto by Ordinance No. 1533, effective November 10, 2008; and

WHEREAS, the City of Northglenn deems it desirable to further amend the Plan to:

- (i) clarify that vacation and sick leave pay is included in compensation for the purposes of contributions under the Plan, in accordance with long-standing practice by the City;
- (ii) incorporate provisions of the Final Treasury Regulations under Code Section 415;
- (iii) provide that the new City Manager will not be eligible to participate in the Plan, in order to reflect contractual provisions of the City's Employment Agreement with its new City Manager, and
- (iv) to eliminate the Plan's requirement that Participants with less than 10 years of service with the City must commence distribution as soon as practicable after termination of employment AND (V) TO PROVIDE THAT IN THE FUTURE THE CITY WILL AMEND THE PLAN BY AND THROUGH CITY COUNCIL RESOLUTIONS.

WHEREAS, pursuant to § 11.1 of the Plan, the City of Northglenn has the authority to amend the Plan; and

NOW THEREFORE, the Plan is hereby amended, effective November 10, 2008, except as specifically provided otherwise, as follows:

1. ARTICLE II. DEFINITIONS AND CONSTRUCTION, § 2.1 Definitions, paragraph (f), Compensation, shall be revised as follows:

(f) Compensation: A Participant's base salary, cash awards, GENERAL LEAVE PAY, and longevity pay received from the Employer for personal services during the Year; but excluding overtime, uniform cleaning and travel allowances, and excluding any benefits paid under this Plan or any other retirement or life insurance program or under any other health or welfare plan. For purposes of allocating the Employer's contribution and tracking Forfeiture amounts for the Year in which a Participant begins or resumes Participation, Compensation shall be determined as of the first day of the year in which the Employee became a Participant and Compensation before his Participation began or resumed shall be disregarded. "Compensation" shall not be reduced by the Participant's Mandatory Contributions which are picked up by the Employer

pursuant to Article IV; nor shall Compensation be reduced by any amounts contributed by the Employer to any profit-sharing plan, simplified employee pension plan, cafeteria plan, qualified transportation fringe benefit plan, tax sheltered annuity or deferred compensation plan pursuant to a salary reduction election which is not includible in the gross income of the Employee under Code Section 125, 132(f)(4) (for Plan Years beginning after December 31, 2000), 402(h), 403(b), 402(e)(3) or 457 and any other elective deferrals as referred to in Code Section 402(g)(3).

Effective January 1, 2002, Compensation in excess of \$200,000 (as adjusted by the Secretary of the Treasury for cost of living increases in accordance with Code Section 401(a)(17)) shall not be taken into account under the Plan.

2. ARTICLE II. DEFINITIONS AND CONSTRUCTION, § 2.1 Definitions, shall be revised as follows:

(l) Employee: Any person now or hereafter in the employ of the Employer who is classified as Regular Full-Time or Regular Part-Time by the Employer, including those persons on an authorized Leave of Absence, but excluding THE CITY MANAGER, all elected officials and independent contractors. Regular Full-Time means an individual who is employed by the Employer and who normally works at least 40 hours per week. Regular Part-Time means an individual who is employed by the Employer and who normally works at least 32 hours per week. Notwithstanding the foregoing provisions of this paragraph, sworn Employees of the City of Northglenn Police Department shall not be eligible to participate in the Plan.

3. ARTICLE IV. CONTRIBUTIONS AND FORFEITURES, § 4.1 Employer Contributions, shall be revised as follows:

4.1 Employer Contributions: The Employer shall contribute the following percentage of a Participant's eligible compensation for each pay period such Participant is eligible to receive a contribution:

Pay periods beginning prior to the date on which the Employee completes five years of continuous employment	8%
Pay periods beginning after the date on which the Employee completes five years of continuous employment but before completing the tenth year of continuous employment	9%
Pay periods beginning after the date on which the Employee completes ten years of continuous	10%

employment

~~Notwithstanding the foregoing provisions of this Section, effective November 1, 2008, the Employer shall contribute 10% of the City Manager's Compensation for each pay period the City Manager is eligible to receive a contribution.~~ Continuous employment, for the purposes of this Section, shall mean a period of employment for which a contribution is required to be made under the terms of this Plan. The amount of continuous employment shall be rounded to the nearest full calendar month. Separate periods of continuous service shall be aggregated to determine the amounts of service for the purpose of establishing the contribution rate.

4. **ARTICLE V. ALLOCATIONS TO PARTICIPANTS' ACCOUNTS, § 5.3 Maximum Additions**, shall be revised, effective as of January 1, 2008, as follows:

5.3 **Maximum Additions.** Notwithstanding anything contained herein to the contrary, the total Additions made to the Employer and Employee Contribution Accounts of a Participant for any Year shall not exceed the "Maximum Permissible Amount," reduced by the sum of any Additions allocated to the Participant's accounts for the same Year under any other defined contribution plan or welfare benefit fund (as defined in Code Section 419(e)) maintained by the Employer. The Maximum Permissible Amount shall be equal to the lesser of \$40,000, as adjusted for increases in the cost-of-living under Code Section 415(c)(3), or 100% of the Participant's Compensation for such Year. Such Maximum Permissible Amount shall be effective for limitation years beginning after December 31, 2001.

(a) The term "Additions" means the total of the Employer contributions and unvested forfeiture amounts allocated to a Participant's Employer Contribution Account, plus the amount of any Employee Contributions to the Plan. Amounts allocated to an individual medical account (as defined in Code Section 415(1)(2)) included as part of a defined benefit plan maintained by the Employer are Additions.

(B) ~~"Addition" does not include Rollover Contributions.~~ THE TERM "ADDITIONS" SHALL NOT INCLUDE (I) RESTORATIVE PAYMENTS MADE TO RESTORE LOSSES TO THE PLAN RESULTING FROM ACTIONS BY A FIDUCIARY FOR WHICH THERE IS A REASONABLE RISK OF LIABILITY FOR BREACH OF FIDUCIARY DUTY UNDER APPLICABLE COLORADO LAW, WHERE PARTICIPANTS WHO ARE SIMILARLY SITUATED ARE TREATED SIMILARLY WITH RESPECT TO THE PAYMENTS; (II) THE DIRECT TRANSFER OF A BENEFIT OR EMPLOYEE CONTRIBUTIONS FROM A QUALIFIED PLAN TO THIS PLAN; (III) ROLLOVER CONTRIBUTIONS AS DESCRIBED IN CODE SECTIONS 401(A)(31), 402(C)(1), 403(A)(4), 403(B)(8), 408(D)(3), AND

457(E)(16); OR (IV) REPAYMENTS OF LOANS MADE TO A PARTICIPANT FROM THE PLAN.

(c) If as a result of the allocation of forfeitures, reasonable error in determining compensation or elected deferrals or any other facts or circumstances as permitted by the Code, an addition would otherwise exceed the limitations of the Section, the contributions made by the Participant for the year which causes the excess shall be returned to the Participant.

(D) FOR PURPOSES OF THIS SECTION, THE LIMITATION YEAR SHALL MEAN THE PLAN YEAR.

(e) ~~(d) For purposes of this section, the limitation year shall mean the Plan Year.~~ The term "Compensation" means, for purposes of this Section 5.3 only, a Participant's Compensation as defined in Section 2.1(f), but shall not include Participant Mandatory Contributions which are picked up by the Employer. ~~Compensation shall include only amounts includible in the gross income of the Participant for income tax purposes in Plan Years beginning before January 1, 1998.~~

IN ADDITION, THE FOLLOWING AMOUNTS SHALL BE INCLUDED IN "COMPENSATION" FOR PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 2008:

1. WAGES AND OTHER REGULAR PAY, INCLUDING OVERTIME OR SHIFT DIFFERENTIALS, COMMISSIONS, BONUSES, OR OTHER SIMILAR PAYMENTS, RECEIVED BY A PARTICIPANT WITHIN THE LATER OF 2 ½ MONTHS AFTER THE PARTICIPANT'S SEVERANCE FROM EMPLOYMENT OR THE END OF THE LIMITATION YEAR IN WHICH THE PARTICIPANT'S SEVERANCE FROM EMPLOYMENT OCCURS, BUT ONLY TO THE EXTENT SUCH WAGES AND OTHER REGULAR PAY REPRESENT PAYMENT FOR SERVICES PERFORMED PRIOR TO SEVERANCE FROM EMPLOYMENT AND WOULD HAVE BEEN PAID TO THE PARTICIPANT IF HE OR SHE CONTINUED EMPLOYMENT WITH THE CITY; AND

2. GENERAL LEAVE PAYMENTS RECEIVED BY A PARTICIPANT WITHIN THE LATER OF 2 ½ MONTHS AFTER THE PARTICIPANT'S SEVERANCE FROM EMPLOYMENT OR THE END OF THE LIMITATION YEAR IN WHICH THE PARTICIPANT'S SEVERANCE FROM EMPLOYMENT OCCURS, BUT ONLY TO THE EXTENT SUCH GENERAL LEAVE PAYMENTS ARE FOR UNUSED BONA FIDE GENERAL LEAVE AND THE PARTICIPANT WOULD HAVE BEEN ABLE TO USE THE LEAVE IF HE OR SHE CONTINUED EMPLOYMENT WITH THE CITY; AND

3. AMOUNTS RECEIVED PURSUANT TO A NONQUALIFIED DEFERRED COMPENSATION PLAN, BUT ONLY IF THE PAYMENT WOULD HAVE BEEN MADE AT THE SAME TIME IF THE PARTICIPANT HAD CONTINUED IN EMPLOYMENT WITH THE CITY AND ONLY TO THE EXTENT THE PAYMENT IS INCLUDED IN THE PARTICIPANT'S GROSS INCOME.

FURTHER, FOR THE PURPOSES OF APPLYING THE LIMITATIONS OF THIS SECTION, "COMPENSATION" FOR PLAN YEARS BEGINNING ON OR AFTER JANUARY 1, 2008 SHALL NOT INCLUDE:

1. PAYMENTS TO A PARTICIPANT WHO DOES NOT CURRENTLY PERFORM SERVICES FOR THE CITY BY REASON OF QUALIFIED MILITARY SERVICE;

2. AMOUNTS PAID TO A PARTICIPANT WHO IS PERMANENTLY AND TOTALLY DISABLED; OR

3. ANY AMOUNTS EARNED BY A PARTICIPANT BUT NOT PAID DURING THE LIMITATION YEAR SOLELY BECAUSE OF THE TIMING OF PAY PERIODS AND PAY DATES.

5. ARTICLE VI. BENEFITS, § 6.4 Vesting of Participant's Interests, shall be revised as follows:

6.4 Vesting of Participant's Interests.

(a) Participant Contributions Accounts and Prior Plan Account: A Participant's interest in his Participant Contributions Account and in his Prior Plan Account shall be fully vested and nonforfeitable at all times.

(b) Employer Contributions Account: A Participant's interest in his Employer Contributions Account, and the earnings, losses and changes in fair market value thereof, shall become vested to the extent of the following percentages based upon the number of Years of Service with the Employer by such Participant, pursuant to all Plan provisions regarding Leaves of Absence and Qualified Military Service. A Year of Service for vesting purposes means a computation period during which the Employee completes 1,000 Hours of Service. The vesting computation period shall be the Plan Year.

<u>Years of Service</u>	<u>Vested Percentage</u>
Less than 2 years	0%
2 years but less than 3	20%
3 years but less than 4	40%
4 years but less than 5	60%
5 years but less than 6	80 %
6 years or more	100%

Notwithstanding the foregoing, a Participant's right to his Employer Contribution Account balance shall be 100% vested and nonforfeitable if the Participant dies or sustains a Disability while in the service of the Employer.

~~Further, notwithstanding the foregoing, effective November 1, 2008, the City Manager's interest in his Employer Contributions Account, and the earnings, losses, and changes in fair market value thereof, shall be fully vested and nonforfeitable at all times.~~

Upon termination of employment, the Employer shall notify the Retirement Board in writing of the name and address of the Participant who has terminated employment. The Retirement Board shall determine the amount of the Participant's Aggregate Account as calculated above and shall distribute the Aggregate Account to the Participant in the optional form of benefit selected by the Participant in accordance with Section 6.5 as soon as administratively practicable after the Participant's termination of employment.

If a Participant has received a distribution of his Aggregate Account in accordance with the above paragraph representing less than 100% of such Aggregate Account and if he is subsequently reemployed prior to incurring a Break in Service, he may repay the amount of such distribution to the Plan any time before the end of the one-year period following the date the Participant is reemployed, in which event such amount shall be restored to his Aggregate Account. Upon such repayment, a Participant's account shall consist of the amount repaid plus the portion of such Aggregate Account which was not vested upon termination of employment. If a Participant eligible to make such repayment fails to do so, the amount previously forfeited shall not be restored to his Aggregate Account. Upon distribution to a Participant above, any part of the final balances in a Participant's Aggregate Account which is not part of his distribution is a Forfeiture.

6. ARTICLE VI. BENEFITS, § 6.5(a), Timing of Payment of Benefits, shall be revised as follows:

(a) Timing of Payment of Benefits. Within a reasonable time prior to or following termination of a Participant's employment for any reason, the Retirement Board shall provide to the Participant a retirement application form, which shall describe in plain language the terms and conditions of the optional forms of benefits described below and which shall be provided for the Participant to indicate his benefit commencement date, his election of an optional form of benefit, and his Beneficiary or contingent annuitant. The completed retirement application form should be returned to the Retirement Board prior to the Participant's benefit commencement date. If the Participant files another retirement application form after the first form and prior to his benefit commencement date, the earlier form shall be deemed annulled.

The Retirement Board shall follow a Participant's Beneficiary designation and may follow the method of payment, if any, selected by the Participant in the case of a distribution on account of the Participant's death.

~~Participants with less than ten (10) years of vesting service must commence distribution of benefits as soon as administratively practicable after termination of employment.~~

Payment of a Participant's benefits must commence within a reasonable time after the Participant's termination of employment, his election to retire after attainment of Early Retirement Age, his election to retire after attainment of Normal Retirement Age, or his death, as the case may be.

In any event, payment of a terminated Participant's benefits shall, unless the Participant otherwise elects a later date in writing, begin not later than the 60th day after the latest of the close of the Year in which (1) the Participant attains Normal Retirement Age, (2) the occurrence of the 10th anniversary of the year in which the Participant commenced participation in the Plan, or (3) the Participant terminates employment with the Employer.

Notwithstanding any provision above to the contrary, distribution of a Participant's benefits shall commence no later than April 1 of the calendar year following the later of (i) the calendar year in which the participant attains the age of 70 ½ or (ii) the calendar year in which the participant retires. A participant attaining the age of 70 ½ after 1995 shall have the option of commencing distribution by April 1 following the calendar year containing the date the participant attains the age of 70 ½ even if such participant is still employed. Alternatively, distribution to a Participant must begin no later than such taxable year and must be made over the life of the Participant (or lives of the Participant and the Participant's spouse) or over a period not exceeding the life expectancy of the Participant (or the life expectancies of the Participant and the Participant's spouse). All distributions shall be made in accordance with Section 6.6.

7. ARTICLE XI. AMENDMENT OR TERMINATION OF THE PLAN, § 11.1, RIGHT AND RESTRICTIONS, SHALL BE REVISED, EFFECTIVE AS OF JANUARY 1, 2009, AS FOLLOWS:

11.1 Right and Restrictions. The Employer reserves the right to amend (retroactively or otherwise) or terminate the Plan, in whole or in part, or to discontinue contributions thereunder, BY ACTION OF THE CITY COUNCIL PURSUANT TO A DULY ADOPTED RESOLUTION THEREOF, provided that no amendment shall have the effect of (1) diverting for the benefit of any persons, other than Participants or their Beneficiaries, amounts attributable to contributions by the Employer, (2) decreasing the nonforfeitable percentage or amount in any Participant's Aggregate Account, or (3) changing the vesting schedule set forth in Section 6.4 with respect to any Participant with seven (7) or more Years of

Service. Notwithstanding the foregoing, the Employer shall have the right, by action of the Retirement Board, to amend the Plan, solely for the purpose of incorporating minor, technical amendments which are required, from time to time, by changes in state or federal laws or regulations. In the event of the complete or partial termination of the Plan or complete discontinuance by the Employer of contributions under the Plan, the Aggregate Account of each of the affected Participants shall become nonforfeitable and shall be distributed pursuant to Section 6.5.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2009.

THE CITY OF NORTHGLENN

By: _____

Its: _____