

FINANCE MEMORANDUM
#09-04

February 26, 2009

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

FROM: William Simmons, City Manager *WJS*
Shawn Cordsen, Finance Director *SC*
Tammy Guenther, Pension Administrator *TG*

SUBJECT: Second Amendment to the City of Northglenn Police Money Purchase Pension Plan

RECOMMENDATION:

Approve CB-1681, effective as of January 1, 2008, an Ordinance amending the amended and restated City of Northglenn Police Money Purchase 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.
- The amendment also provides the City will amend the Plan by and through a City Council resolution. The complete 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-1681
Series of 2009

Series of 2009

A BILL FOR A SPECIAL ORDINANCE ADOPTING THE SECOND AMENDMENT TO THE AMENDED AND RESTATED CITY OF NORTHGLENN POLICE MONEY PURCHASE PENSION PLAN

WHEREAS, the City Council of the City of Northglenn adopted the Amended and Restated City of Northglenn Police Money Purchase Pension Plan (the "Police Plan") by adoption of Ordinance No. 1378, Series of 2004, as amended by the First Amendment thereto by Ordinance No. 1505, Series of 2007; 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 Police Plan is hereby amended, effective January 1, 2008, as more particularly set forth in the Second 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 V. HOFFMANN
City Attorney

Exhibit A

**SECOND AMENDMENT
TO THE CITY OF NORTHGLENN POLICE
MONEY PURCHASE PENSION PLAN**

WHEREAS, the City Council of the City of Northglenn by Ordinance No. 1378, Series of 2004, adopted the amended and restated City of Northglenn Police Money Purchase Pension Plan (the "Plan"), effective January 1, 2004, as amended by the First Amendment thereto by Ordinance No. 1505, Series of 2007, effective January 1, 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) 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 (IV) 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 with the consent of at least sixty-five percent (65%) of the total votes cast by actively-employed eligible Employees and all former Employees who are entitled to a benefit from the Plan; and

NOW THEREFORE, the Plan is hereby amended, effective January 1, 2008, 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, off-duty employment, 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 to any profit-sharing plan, simplified employee pension plan, cafeteria plan, qualified transportation fringe benefit plan, tax sheltered annuity or deferred compensation plan by the Employer 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 Section 401(a)(17) of the Code) shall not be taken into account under the Plan.

2. **ARTICLE V. ALLOCATIONS TO PARTICIPANTS' ACCOUNTS, § 5.3**
Maximum Additions, shall be revised 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.

3. 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.

4. **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, BY ACTION OF THE CITY COUNCIL PURSUANT TO A DULY ADOPTED RESOLUTION THEREOF, and upon approval of at least sixty-five percent (65%) of the total votes cast by actively employed eligible Employees and all former employees who are entitled to a benefit from the Plan, to amend (retroactively or otherwise) or terminate the Plan, in whole or in part, or to discontinue contributions thereunder, 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 6.3 with respect to any Participant with eleven or more Years of Service. Notwithstanding the foregoing, the Employer shall have the right, by action of the Retirement Board, to amend the Plan without the approval of Participants, 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. On the complete or partial termination of the Plan or complete discontinuance by the Employer of contributions under the Plan, the accrued benefit of each of the affected Participant's Aggregate Accounts shall be nonforfeitable and shall be distributed pursuant to Section 6.4.

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

THE CITY OF NORTHGLENN

By: _____

Its: _____