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2011-0572

**AMENDED AND RESTATED MEET AND CONFER AGREEMENT
BETWEEN THE HOUSTON MUNICIPAL EMPLOYEES PENSION SYSTEM
AND THE CITY OF HOUSTON**

THIS AMENDED AND RESTATED MEET AND CONFER AGREEMENT ("Agreement") is made this July 1, 2011 (the "Effective Date"), by and between the External Affairs Committee of the Board of Trustees ("Board") of the Houston Municipal Employees Pension System ("HMEPS") and the City of Houston ("City") pursuant to the statutory authority under the provisions of Article 6243h, Tex. Rev. Civ. Stats. ("Statute" or "Act").

WHEREAS, the provisions of Section 3(n) of the Statute provide that, notwithstanding any other law, the Board may enter into a written agreement with the City regarding pension issues and benefits; and

WHEREAS, pursuant to such authority, the Board and City have previously entered into an agreement, effective September 15, 2004, as amended by the First Amendment to Meet and Confer Agreement, effective December 21, 2004, and by the Second Amendment to Meet and Confer Agreement, effective April 14, 2005, and by the Third Amendment to Meet and Confer Agreement, effective November 1, 2005, and by the Fourth Amendment to Meet and Confer Agreement, effective June 27, 2007, and by the Fifth Amendment to Meet and Confer Agreement, effective December 1, 2010 (collectively, the "Meet and Confer Agreement"), and

WHEREAS, the Agreement must be approved by the Board and the governing body of the City and signed by the Mayor and by the Board's designee; and

WHEREAS, the City and the Board (each, a "Party" and collectively, the "Parties"), agree and acknowledge that certain writings within this Agreement will have the effect of superseding provisions of the Statute during the term of this Agreement as provided in the Agreement; and

WHEREAS, the Agreement is enforceable against and binding on HMEPS' members, retirees, deferred participants, beneficiaries, eligible survivors, and alternate payees (collectively, "participants"), the City, the Board, and any third party who claims an interest in any matter covered by this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Agreement, the Board and the City agree as follows:

1. INCORPORATION OF AGREEMENT

The provisions of the Meet and Confer Agreement are fully incorporated into this Agreement as if the provisions were set forth verbatim herein, except as specifically amended as set forth herein.

2. DEFINITIONS

- (a) Unless specifically defined otherwise in this Agreement, all words shall have the same meaning provided in the Statute and/or the Agreement, as determined by the Board.
- (b) "ARC Effective Date" means the City fiscal year beginning the July 1 of the year immediately following the date the HMEPS actuary determines in an actuarial valuation that the City contribution rate, as calculated under Section 3(b)(2) of this Agreement, meets or exceeds the rate established by the HMEPS actuary as the actuarially required contribution (ARC) rate.
- (c) Effective January 1, 2005, Section 1(7)(B) of the Statute is amended to read as follows: "is under 21 years of age or is totally and permanently disabled from performing any full-time employment because of an injury or illness, including serious mental illness, retardation, or pervasive developmental disorder, that began before the child became 18 years of age and before the termination or death of the member, deferred participant, or retiree."
- (d) As of the Effective Date, a new Section 1(28) of the Statute is added to read as follows: "'Option-eligible Participant' means:
- (1) a former group A or group B member who terminates employment with the City or the pension system on or after June 30, 2011, and who is eligible to receive a normal retirement pension, but only if the former group A or group B member was not married as of the date of his termination of employment;
 - (2) a former group B member who terminated employment with the city or the predecessor system before September 1, 1997 and who is eligible to receive a normal retirement pension; or
 - (3) a former group D member who terminated employment with the city or the pension system and who is eligible to receive a normal retirement pension or an early retirement pension.
- The pension board, in its sole discretion, shall make determinations regarding an individual's status as an Option-eligible Participant."

3. CITY FUNDING COMMITMENT

- (a) Until the ARC Effective Date, the City shall provide funding to HMEPS as set forth in subsection (b) of this section, notwithstanding anything in the Statute to the contrary.
- (b) The City shall provide funding to HMEPS beginning July 1, 2011 as follows:
- (1) For the City fiscal year beginning July 1, 2011 (FY 2012), the City shall pay contributions to HMEPS in the amount of \$98.5 million (the "FY 2012 Contribution"). The City shall pay such contribution amounts to HMEPS no less frequently than bi-weekly commencing July 15, 2011. Each bi-weekly payment to HMEPS shall be the pro rata bi-weekly amount of the FY 2012 Contribution. The contribution rate for FY 2012 for purposes

of subsection (b)(2)(A)(i) of this section is assumed to be 19.36% of the combined salaries of all members, as such terms are defined in the Statute ("Covered Payroll").

(2) For the City fiscal year beginning July 1, 2012 (FY 2013) and for each subsequent fiscal year thereafter until the ARC Effective Date:

(A) The City shall pay contributions to HMEPS in an amount equal to the greater of:

(i) the previous fiscal year's contribution amount plus an additional 2% of Covered Payroll ("Additional 2% Contribution Rate"); or

(ii) an amount that is at least \$10 million more than the total contributions paid by the City to HMEPS for the immediately preceding fiscal year ("Additional \$10 Million Contribution Amount").

(B) The City shall pay contributions to HMEPS no less frequently than bi-weekly. As applicable, each bi-weekly payment to HMEPS shall be a contribution equal to, as applicable:

(i) a pro rata portion of that fiscal year's Additional 2% Contribution Rate calculated as an amount equal to that fiscal year's rate multiplied by the Covered Payroll for such bi-weekly period;

(ii) a pro rata portion of the Additional \$10 Million Contribution Amount, for that fiscal year.

In the event this Agreement is not approved until after July 1, 2011, any amounts which should have been contributed under the foregoing schedule prior to the date this Agreement is approved shall be made in the next bi-weekly period following the approval of this Agreement in addition to the regular amount required to be paid for such bi-weekly period.

(C) If the amount contributed to HMEPS by the City for a fiscal year is based on the Additional 2% Contribution Rate and that amount is less than the amount that would have been contributed for that fiscal year based on the Additional \$10 Million Contribution Amount, then the difference between the amount contributed and the Additional \$10 Million Contribution Amount shall be amortized and paid by the City to HMEPS on a pro rata basis over each bi-weekly pay period in the immediately following fiscal year.

(3) Until the ARC Effective Date, the period for amortizing the unfunded actuarial liability shall be a rolling 30-year period. Once the ARC Effective Date is reached, the amortization period shall be closed at 30 years from the ARC Effective Date and shall decrease by one year each subsequent fiscal year.

(c) For all subsequent City fiscal years beginning with the ARC Effective Date, the City shall provide funding to HMEPS in an amount equal to the contribution rate percentage

multiplied by the Covered Payroll. The contribution rate, expressed as a percentage, shall be based on the results of actuarial valuations by the HMEPS' actuary made at least every three years. The City's contribution rate shall consist of the normal cost plus the level percentage of salary payments required to amortize the unfunded actuarial liability over a period of 30 years from the ARC Effective Date, computed on the basis of an actuarial reserve funding method approved by the HMEPS Board. Notwithstanding any other provision of the Statute, the City's contribution rate, when added to any contributions with respect to a qualified governmental excess benefit arrangement maintained in accordance with Section 24 of the Statute, may not be an amount less than the greater of (i) 10 percent of the Covered Payroll or (ii) two times the contribution rate of the members in the group with the highest contribution rate. The City shall pay contribution amounts to HMEPS no less frequently than bi-weekly. For each bi-weekly payment to HMEPS, the City shall pay an amount equal to the actuarially determined rate multiplied by the combined salaries of all members for such bi-weekly period.

4. BOARD COMPOSITION

(a) Effective July 1, 2011, Section 2 of the Statute is amended as follows:

(i) Section 2(c) shall read: "The pension board consists of eleven trustees as follows:

(1) one person who is appointed by the mayor of the city and who is not a participant or beneficiary of the pension system;

(2) one person who is appointed by the controller of the city and who is not a participant or beneficiary of the pension system;

(3) four municipal employees of the city who are members of the pension system;

(4) two retirees, each of whom

(A) has at least five years of credited service in the pension system;

(B) receives a retirement pension from the pension system; and

(C) is not an officer or employee of the city; and

(5) One person appointed by the elected trustees who has been a resident of this state for the three years preceding the date of initial appointment; and

(6) Two persons appointed by the governing body of the city, each of whom cannot be a participant or beneficiary of the pension system."

(ii) The first sentence in Section 2(d) shall read: "To serve as a trustee under Subsection (c)(3) of this section, a person must be a member with at least five years of credited

service and be elected by a majority of the active members of the pension system voting at an election called by the pension board.”

(iii) Section 2(g) shall read: “To serve as a trustee under Subsection (c)(4) of this section, a person must be elected by a majority of the retirees of the pension system voting at an election called by the pension board.”

(iv) Section 2(j) shall read:

“(1) To serve as a trustee under Subsection (c)(1) of this section a person must be appointed by the mayor of the city. Such trustee shall serve a three-year term. The appointment or reappointment of the appointed trustee shall take place in July of each year in which the term ends. The appointed trustee may be removed at any time by the mayor. A vacancy caused by the appointed trustee’s death, resignation or removal shall be filled by a new appointment by the mayor. The appointee serves for the remainder of the unexpired term of the replaced trustee. An appointed trustee may not serve beyond the expiration of the three-year term other than by an appointment for a new term by the mayor.

(2) To serve as a trustee under Subsection (c)(2) of this section a person must be appointed by the controller of the city. Such trustee shall serve a three-year term. The appointment or reappointment of the appointed trustee shall take place in July of each year in which the term ends. The appointed trustee may be removed at any time by the controller. A vacancy caused by the appointed trustee’s death, resignation or removal shall be filled by a new appointment by the controller. The appointee serves for the remainder of the unexpired term of the replaced trustee. An appointed trustee may not serve beyond the expiration of the three-year term other than by an appointment for a new term by the controller.

(3) To serve as a trustee under Subsection (c)(5) of this section a person must be appointed by a vote of a majority of the elected trustees of the pension board. The trustee appointed under Subsection (c)(5) of this section shall serve a three-year term. The appointment or reappointment of the appointed trustees shall take place in July of each year in which the term ends. A vacancy caused by the appointed trustee’s death, resignation or removal shall be filled by a vote of a majority of the elected trustees. The appointee serves for the remainder of the unexpired term of the replaced trustee. An appointed trustee may not serve beyond the expiration of the three-year term other than by an appointment for a new term by a majority of the elected trustees.

(4) To serve as a trustee under Subsection (c)(6) of this section a person must be appointed by a vote of a majority of the members of the governing body of the city. The trustees appointed under Subsection (c)(6) of this section shall serve three-year terms. The appointment or reappointment of the appointed trustees shall take place in July of each year in which the term ends. An appointed trustee may be removed at any time by a vote of a majority of the members of the governing body of the city. A vacancy caused by an appointed trustee’s death, resignation or removal shall be filled by a vote of a majority of the members of the governing body of the city. The appointee serves for

the remainder of the unexpired term of the replaced trustee. An appointed trustee may not serve beyond the expiration of the three-year term other than by an appointment for a new term by a majority of the members of the governing body of the city.”

(5) The parties understand that the existence of a conflict of interest on the part of any trustee, or the appearance of same, may be detrimental to the proper functioning of HMEPS if not properly addressed. To that end, an appointed trustee shall abstain from deliberation and voting on investment related actions if the appointed trustee or the firm with which the appointed trustee is affiliated is a competitor or an affiliate of the person or firm that is under consideration in the investment related action, or likely would be subject to due diligence review by the person or firm that is under consideration in the investment related action, or if it is otherwise determined by the Board that the proposed action would create a direct or indirect benefit for the appointed trustee or a firm with which the appointed trustee is affiliated.

The City Attorney shall provide annual preventative training to City appointees on such matters and shall, at the request of the External Affairs Committee, review and act upon a complaint of a conflict of interest on the part of a City appointed trustee to the Board, as authorized pursuant to the City Code of Ordinances.

(6) An appointed Trustee under Subsections (c)(1), (2) and (6) of this section may be removed by the appointing entity. In the event a majority of the HMEPS Board determines that a Trustee appointed by the governing body has or is acting in a manner that is contrary or adverse to the interests of HMEPS or in violation of the Statute or this Agreement, then the Board may make a recommendation to the appointing entity that such Trustee be removed from the Board. If the appointed Trustee is appointed by the governing body of the city, such recommendation shall be placed on the agenda of a meeting of such governing body for its consideration and action. A determination on the recommendation shall be made by the appointing entity and communicated to HMEPS within 45 days of the recommendation.

(v) Section 2(n) shall read: “The person serving as a trustee under Subsection (c)(1) of this section shall serve as the treasurer of the pension fund. Such treasurer shall file an official bond payable to the pension system. The treasurer is liable on the treasurer’s official bond for the faithful performance of the treasurer’s duties under this Act in connection with the pension fund.”

(vi) Section 2(ee) is added to read:

“2(ee) (1) A trustee appointed under Subsections (c)(1), (2), (5) or (6) of this section must have expertise in at least one of the following areas: accounting, financial, pension, investment or actuarial.

(2) The mayor, controller, and governing body of the city shall have no more than two of the trustees appointed under Subsections (c)(1), (2) and (6) of this section with expertise in the same area designated under Subsection (ee)(1).

(3) Each trustee appointed under Subsection (c)(1), (2), (5) and (6) of this section must attend at least 50% of all board meetings, as determined annually each July 1, or be subject to removal from the pension board by the appointing entity. An appointed trustee who is removed under this subsection is not eligible to be appointed as a trustee for one year following removal.”

(vii) The changes to Section 2 shall not affect the term of any current elected trustee as it existed prior to July 1, 2005. Each such trustee shall continue to serve to the end of his or her term, unless a vacancy occurs earlier through death, resignation or removal as authorized by the Statute or this Agreement.

5. TRUSTEE ISSUES

(a) Effective July 1, 2005, all trustees must have ongoing training and education in pension and pension-related matters. Each trustee must receive annually, as determined July 1st of each year, a minimum number of hours of training in pension and pension related matters as recommended by the Texas Association of Public Employee Retirement Systems. An appointed trustee who does not receive the minimum number of hours of training shall be subject to removal by the appointing entity.

(b) Other than as a participant or beneficiary in HMEPS, a trustee may have no conflict of interest during such trustee’s tenure on the Board and for one year after tenure ends, such that a trustee shall comply with the Board ethics policy during such trustee’s tenure, and a trustee shall not, during such trustee’s tenure on the Board and for one year after leaving the Board, represent any other person or organization in any formal or informal appearance before the Board or pension staff concerning a matter for which the person had responsibility as a trustee.

6. BOARD COMMITTEES

(a) The standing committees of the Board should cover the following areas:

- (1) Risk Management/Governance
- (2) Investment
- (3) Administrative (including compensation)
- (4) Finance/Actuarial
- (5) Audit
- (6) Disability

(b) The committee responsible for all meet and confer issues for HMEPS shall be a committee of the elected trustees and the trustee appointed by the elected trustees. Other than the committee responsible for meet and confer issues and the committee responsible for

personnel issues, all committees shall consist of at least one elected trustee and one trustee appointed by the Mayor, Controller or City Council.

(c) All meetings, other than meetings dealing with meet and confer issues and personnel issues, shall be open to all trustees.

(d) Except for meet and confer decisions and personnel decisions, no committee shall have authority to make final approvals, but shall only make recommendations to the full Board.

7. OTHER BOARD ACTIONS

(a) The Board annually shall make a report to the Mayor and the City Council, each of which shall provide a reasonable opportunity to the Board to prepare and present such report.

(b) The Board shall provide quarterly investment reports to the Mayor.

(c) At the request of the Mayor, the Board shall meet, discuss and analyze with the requesting party any City proposed policy changes and ordinances that have a financial impact on HMEPS.

(d) The Board shall work, including working with the other pension funds to which the City contributes, to reduce administrative expenses.

8. EMPLOYEE CONTRIBUTIONS

The Board agrees to establish the contribution rate for Group A members at 5% of salary beginning with the first pay period for such members on or after January 1, 2005, and agrees to maintain that contribution rate during the duration of this Agreement.

9. SERVICE PURCHASE AND INTEREST RATES ON AMOUNTS

(a) Effective December 31, 2005, a member may not elect to convert previous Group B service to Group A.

(b) The service purchase (including service conversion) interest rate under the Statute shall be eight and a half percent (8.5%) a year, not compounded, for each service purchase on or after December 31, 2005.

(c) If a retiree is reemployed in an HMEPS covered position and receives any pension during the period of reemployment (disallowed pension), and such reemployed retiree does not timely return the disallowed pension within 30 days of receipt, the Board may offset the disallowed pension not returned, plus interest on the disallowed pension at the rate of eight and a half percent (8.5%) a year, not compounded, from the date the reemployed retiree received the disallowed pension to the date of the offset on the disallowed pension. The offset may be against the payment of any future pension or benefit payment(s), and/or against any DROP balance.

10. MEMBERSHIP

Effective January 1, 2008, Section 5(b)(1) of the Statute is amended to read as follows:

“(b) Except as provided by subsections (c), (j), and (k) of this section and sections 4 and 6 of this Act, an employee is a group A member of the pension system as a condition of employment if the employee:

(1) is hired or rehired as an employee by the city, the predecessor system, or the pension system (i) on or after September 1, 1999 and before January 1, 2008; or”

Effective January 1, 2008, Section 5 of the Statute is amended to add subsections (j) and (k) to read as follows:

“(j) An employee is a group D member of the pension system as a condition of employment if the employee is hired as an employee by the city or the pension system on or after January 1, 2008.

(k) Notwithstanding any provision of this Section to the contrary, a former employee who is rehired as an employee by the city or the pension system on or after January 1, 2008 is, as a condition of employment, a member of the group in which such employee participated at the time of the employee’s immediately preceding separation from service.”

11. GROUP C

(a) Effective January 1, 2005, the provisions of Section 6 of the Statute shall not apply to any employee. An employee who would otherwise meet the definition of “executive official” under Section 6(b)(3) shall, if eligible, be a Group A member beginning January 1, 2005 for credited service earned on and after January 1, 2005.

(b) Subsection (a) of this Section:

(i) shall not affect any credited service or benefit percentage accrued in Group C prior to January 1, 2005;

(ii) shall not affect any Group C benefit that a deferred participant or retiree is eligible to receive that was earned prior to January 1, 2005; and

(iii) shall not affect the terms and obligations of any service purchase obligation to convert service to Group C that was entered into prior to January 1, 2005.

(c) A Group C member who terminates employment prior to January 1, 2005, is subject to the retirement eligibility requirements in effect on the termination date. A Group C member who becomes a Group A member as of January 1, 2005, is subject to the retirement eligibility provisions of Section 4 of the Agreement.

12. SERVICE

Effective January 1, 2008, Section 7(a) of the Statute is amended to read as follows:

“(a) Notwithstanding any other provision of this Act, duplication of service or credited service in group A, B, C, or D of the pension system or in the pension system and any other defined benefit pension plan to which the city contributes is prohibited.”

Effective July 1, 2011, Section 7(g) of the Statute is amended to read as follows:

“(g) If a group B member or a group D member separates from service before completing five years of credited service, the member’s service credit is canceled at the time of separation. If the member is reemployed by the city before the first anniversary of the date of separation, all credit for previous service is restored. Any member whose service credit is canceled under this subsection and who is reemployed by the city after the first anniversary of the date of separation receives one year of previous service credit in group B for a group B member, or in group D for a group D member, for each full year of subsequent service up to the amount of the previous service that was canceled.”

Effective January 1, 2008, Section 7 of the Statute is amended by adding subsection (i) to read as follows:

“(i) Under rules and procedures adopted by the pension board, a group D member may effectuate a direct trustee-to-trustee transfer from a qualifying Code Section 457(b) plan to the pension system to purchase an increased or enhanced benefit in accordance with the provisions of Code Sections 415(n) and 457(e)(17). The amount so transferred shall be held by the pension system but not separately accounted for. The member shall be entitled to receive such additional benefits under the pension system with respect to the amounts so transferred as prescribed by the pension board.”

Effective December 1, 2010, Section 7 of the Statute is amended by adding subsection (j) to read as follows:

“(j) a person who has been voluntarily or involuntarily furloughed shall receive credited service for each day that such person has been furloughed (“furlough time”), provided that:

(i) HMEPS receives all required City contributions and member contributions for the credited service attributable to the furlough time for the pay period in which the furlough occurs, based on the regular salary that each furloughed member would have received if he or she had worked the furlough time;

(ii) a member may receive no more than 10 days of credited service in a fiscal year (July 1 – June 30) for furlough time; and

(iii) credited service for furlough time cannot be used to meet the five-year requirement under Section 10 of the Statute for eligibility for a benefit if the person otherwise would not meet the five-year requirement without the furlough time.

For purposes of this subsection (j), the City shall establish a unique pay code for furlough time to provide for timely payment of City contributions and member contributions for furlough time and to allow HMEPS to identify furlough time for each furloughed employee.”

13. CONTRIBUTION REFUNDS

Effective June 27, 2007, Section 9(c) of the Statute is amended to read as follows:

“(c) If a member dies and there are no eligible survivors to receive the allowance provided for in section 14 of this Act, the member's spouse or, if there is no spouse, the member's estate shall receive the refund amount.”

14. RETIREMENT ELIGIBILITY AND BENEFIT ACCRUAL RATES

Effective January 1, 2008, Section 10 of the Statute is amended in its entirety to read as follows:

“Sec. 10. (a) For purposes of this section, a pension under this section is referred to as a normal retirement pension.

(b) (1) Except as provided in subsection (b)(2) of this section, a group A or group B member of the pension system who terminates employment is eligible for a normal retirement pension beginning on the member's effective retirement date after the date the member completes at least five years of credited service and attains either:

(i) 62 years of age; or

(ii) a combination of years of age and years of credited service, including parts of years, the sum of which equals the number 75, provided the member is at least 50 years of age.

(2) A group A or group B member of the pension system who terminates employment is eligible for a normal retirement pension beginning on the member's effective retirement date after the date the member completes at least five years of credited service and attains either:

(i) 62 years of age; or

(ii) a combination of years of age and years of credited service, including parts of years, the sum of which equals the number 70, provided that the member attained a combination of years of age and years of credited service, including parts of years, the sum of which equals or is greater than the number 68 as of December 31, 2004.

- (c) (1) A group C member of the pension system who terminates employment is eligible for a normal retirement pension beginning on the member's effective retirement date as provided by Section 6(e) of this Act.
- (2) A group D member who terminates employment is eligible for a normal retirement pension beginning on the member's effective retirement date after the date the member completes at least five years of credited service and attains 62 years of age.
- (d) The accrued monthly normal retirement pension of each group A member and group B member as of December 31, 2004, shall be determined under the provisions of the Statute in effect on December 31, 2004, subject to Section 17 of the Statute. Beginning January 1, 2005 for a group A member or a group B member, and beginning January 1, 2008 for a group D member:
- (1) The amount of the monthly normal retirement pension payable to an eligible group A member who retires on or after January 1, 2005 is equal to (A) the member's average monthly salary multiplied by the percentage accrued by the member under the Statute as of December 31, 2004, plus (B) the member's average monthly salary multiplied by 2.5% for each year of the member's years of credited service in group A during the member's first 20 years of service that is earned after January 1, 2005, plus (C) the member's average monthly salary multiplied by 3.25% for each year of credited service of the member in group A during the member's years of service in excess of 20 years that is earned after January 1, 2005.
- (2) The amount of the monthly normal retirement pension payable to an eligible group B member who retires on or after January 1, 2005 is equal to (A) the member's average monthly salary multiplied by the percentage accrued by the member under the Statute as of December 31, 2004, plus (B) the member's average monthly salary multiplied by 1.75% for each year of the member's years of credited service in group B during the member's first 10 years of service that is earned after January 1, 2005, plus (C) the member's average monthly salary multiplied by 2% for each of the member's years of credited service in group B during the member's next 10 years of service that is earned after January 1, 2005, plus (D) the member's average monthly salary multiplied by 2.5% for each year of credited service of the member in group B during the member's years of service in excess of 20 years that is earned after January 1, 2005.
- (3) The amount of the monthly normal retirement pension payable to an eligible group D member who retires is equal to (A) the member's average monthly salary multiplied by 1.80% for each year of the member's years of credited service in group D during the member's first 25 years of service, plus (B) the member's average monthly salary multiplied by 1.00% for each year of credited service of the member in group D during the member's years of service in excess of 25 years.
- (e) A group D member who terminates employment with the city or the pension system may elect to receive an early retirement pension payable as a reduced benefit if the member has attained: (A) at least ten (10) years of credited service and age 55; or (B) five years of credited service and a combination of years of age and years of credited service, including

parts of years, the sum of which equals or is greater than the number 75. The amount of the early retirement pension payable to a retired group D member shall be equal to the normal pension reduced by 0.25% for each month the member is less than age sixty-two (62) at retirement.

(f) The amount of the monthly normal retirement pension payable to a retired group C member is computed as provided by Section 6 of this Act.

(g) Notwithstanding any other provision of this Act, the total normal retirement pension of a retired member with credited service in group A, group B, group C, or group D may not exceed 90 percent of the member's average monthly salary. For purposes of subsection (d), service credit is rounded to the nearest one-twelfth of a year.

(h) (1) Effective January 1, 2005, for future payments only, pension benefits for all group A retirees and group B retirees and survivor benefits for eligible survivors of a former member of group A or group B participant shall be increased annually by three percent (3%), not compounded, for all persons receiving a pension or survivor benefit as of January 1 of the year in which the increase is made, provided the retiree receiving the pension was an employee on or before December 31, 2004, and the eligible survivor receiving the survivor benefit is the eligible survivor of a former member who was an employee on or before December 31, 2004.

(2) Effective January 1, 2005, for future payments only, pension benefits for all group A retirees and group B retirees and survivor benefits for eligible survivors of a former member of group A or group B shall be increased annually by two percent (2%), not compounded, for all eligible survivors receiving a pension or survivor benefit as of January 1 of the year in which the increase is made, provided the retiree receiving the pension was hired or rehired on or after January 1, 2005, and the eligible survivor receiving the survivor benefit is the eligible survivor of a former member who was hired or rehired on or after January 1, 2005.

(3) For DROP participants in group A or group B, effective January 1, 2005, for future credit only, the cost of living adjustment credited to a DROP participant's DROP account shall be three percent (3%), not compounded, provided the DROP participant was an employee on or before December 31, 2004. For DROP participants in group A or group B who were hired on or after January 1, 2005, the cost of living adjustment credited to a DROP participant's DROP account shall be two percent (2%), not compounded.

(4) Notwithstanding any provision of this section to the contrary, if a retiree receives a three percent (3%) cost of living adjustment on the retiree's pension benefit, and such retiree is rehired in a covered position in group A or group B on or after January 1, 2005, such retiree shall receive, upon subsequent termination of employment and retirement and for future payments only, a cost of living adjustment of three percent (3%), not compounded, on the retiree's pension attributable to the period of credited service accrued before and after the retiree's reemployment.

(i) A member receiving a normal retirement pension is considered to have resigned and shall be removed from the regular full-time employment rolls of the city or the pension system not later than the day before the member's effective retirement date.

(j) A disability benefit or survivor benefit that first becomes payable under the Statute on or after January 1, 2005 for a former member who separated from service on or after January 1, 2005, shall be determined in accordance with the monthly normal retirement pension calculation under this section.”

15. BENEFIT OPTIONS

Effective January 1, 2008 through June 30, 2011, Section 11 of the Statute is amended in its entirety to read as follows:

“Sec. 11. (a) A group B member who terminated employment with the city or the predecessor system before September 1, 1997, or a group D member who terminates employment with the city or the pension system, must elect no later than 60 days before the member's benefit commencement date whether to have the member's normal retirement pension or early retirement pension paid under one of the options provided by Subsection (b) of this section. The election may be revoked, in a manner and at a time established by the pension board, not later than the 60th day before the member's benefit commencement date.

(b) The normal retirement pension or early retirement pension may be one of the following actuarially equivalent amounts:

(1) option 1: a reduced pension payable to the member, then on the member's death one-half of the amount of that reduced pension is payable to the member's designated survivor, for life;

(2) option 2: a reduced pension payable to the member, then on the member's death that same reduced pension is payable to the member's designated survivor, for life; and

(3) option 3: a reduced pension payable to the member, and if the member dies within 10 years, the pension is paid to the member's designated survivor for the remainder of the 10-year period beginning on the member's effective retirement date.

(c) If a former group B or group D member who has made the election provided by Subsection (b) of this section dies after terminating employment with at least five years of credited service but before attaining the age required to begin receiving a normal or early retirement pension, the person's designated survivor is eligible for the benefits provided by the option selected by the former member at the time of separation from service. The benefits first become payable to an eligible designated survivor on the date the former member would have become eligible to begin receiving a pension; provided, however, that if the designated survivor elects for earlier payment, in a time and manner determined by the Board, the actuarial equivalent of such amount shall be payable at such earlier date.

(d) If a former group B or group D member under subsection (a) of this section does not elect one of the options under subsection (b) of this section and dies after retirement has commenced, a survivor benefit is not payable. If a former group B or group D member under subsection (a) of this section elects a normal retirement pension or early retirement pension, in a time and manner determined by the board, and dies prior to retirement, a survivor benefit is not payable. If a former group B member under subsection (a) of this section has made an election under this section and is rehired in a covered position and converts the service to group A, the election governs the payment of any pension or benefit attributable to the period of service covered by the election, and no other survivor benefit is payable for such period of service.”

Effective with the Effective Date, Section 11 of the Statute is amended in its entirety to read as follows:

“Sec. 11. (a) An Option-eligible Participant must elect, in a manner and at a time determined by the board, before the participant's benefit commencement date whether to have the participant's normal retirement pension or early retirement pension, if applicable, paid under one of the options provided by Subsection (b) of this section (J&S Annuity). The election may be revoked, in a manner and at a time established by the pension board, not later than the 60th day before the participant's benefit commencement date.

(b) The normal retirement pension or early retirement pension may be one of the following actuarially equivalent amounts:

(1) option 1: a reduced pension payable to the participant, then on the participant's death one-half of the amount of that reduced pension is payable to the participant's designated survivor, for life;

(2) option 2: a reduced pension payable to the participant, then on the participant's death that same reduced pension is payable to the participant's designated survivor, for life; and

(3) option 3: a reduced pension payable to the participant, and if the participant dies within 10 years, the pension is paid to the participant's designated survivor for the remainder of the 10-year period beginning on the participant's effective retirement date.

(c) If an Option-eligible Participant who has made the election provided by Subsection (b) of this section dies after terminating employment with at least five years of credited service but before attaining the age required to begin receiving a normal or early retirement pension, the participant's designated survivor is eligible for the J&S Annuity provided by the option selected by the Option-eligible Participant at the time of separation from service. The benefits first become payable to an eligible designated survivor on the date the Option-eligible Participant would have become eligible to begin receiving a pension; provided, however, that if the designated survivor elects for earlier payment, in a time and manner determined by the Board, the actuarial equivalent of such amount shall be payable at such earlier date.

- (d)(1) No survivor benefit or J&S Annuity is payable if:
- (A) an Option-eligible Participant does not elect one of the options under subsection (b) of this section and dies before retirement has commenced, except as provided in subsection (d)(2) of this Section.
 - (B) an Option-eligible Participant elects a normal retirement pension or early retirement pension and dies before retirement has commenced.
 - (C) an Option-eligible Participant dies after retirement has commenced and such Option-eligible Participant:
 - (i) elected a normal retirement pension or early retirement pension;
 - (ii) did not make a valid election under subsection (b) of this section; or
 - (iii) made an election that was void.
- (2) If an Option-eligible Participant under Section 2(d)(3) of this Agreement is survived by a Surviving Spouse and is not in the service of the city or the pension system at the time of his death, and the Option-eligible Participant did not elect one of the options under subsection (b) of this section and dies before retirement has commenced, such Option-eligible Participant shall be deemed to have made an election under subsection (b)(1) of this section and designated the Surviving Spouse as the optional annuitant. If an Option-eligible Participant described in the previous sentence has no Surviving Spouse, no survivor benefit or J&S Annuity is payable. If a survivor annuity is paid under this subsection (d)(2), no survivor benefit is payable under subsection (d)(3) or Section 14.
- (3) If subsection (d)(1) of this section would otherwise apply to prohibit the payment of a survivor benefit or J&S Annuity, but there is one or more Dependent Child(ren) of the deceased Option-eligible Participant, the provisions of Section 14 control the payment of survivor benefits to such Dependent Child(ren); provided, however, that the pension system shall not pay both a J&S Annuity under this Section and a survivor benefit under Section 14 with respect to any Option-eligible Participant. If a J&S Annuity is paid under subsection (d)(2) of this Section, no survivor benefit is payable. No survivor benefit is payable upon the death of a group D member.
- (e) If an Option-eligible Participant has previously elected a J&S Annuity for a previous period of service (Prior Election), and terminates employment on or after January 1, 2012, then the Prior Election is void and the Option-eligible Participant must make the election under subsection (a) to apply to all periods of service.
- (f) If a former group B member with pre-September 1, 1997 service was rehired in a covered position and converted the group B service covered by a J&S Annuity to group A service, and such member terminates employment on or after January 1, 2012 and is not an Option-eligible Participant at the time of his subsequent termination, the Prior Election is void and survivor benefits for an Eligible Survivor, if any, will be payable as provided in

Section 14 of the Statute.

- (g) The designation of a spouse as a designated survivor of a participant from whom such spouse is subsequently divorced is void, unless after the date of divorce the Option-eligible Participant names the former spouse as a designated survivor for the J&S Annuity.”

16. DROP

- (a) Effective January 1, 2005, a member’s DROP election to participate in DROP, in a manner and form determined by the Board, cannot establish a DROP entry date that occurs prior to the date of HMEPS’s receipt of the member’s request to participate in DROP, except as provided in subsection (b) of this section.
- (b) Subsection (a) does not apply to a member who, prior to January 1, 2005, has at least five (5) years of credited service and has attained either (i) 62 years of age, or (ii) a combination of years of age and years of credited service, including parts of years, the sum of which equals 70, but only if the member submits to HMEPS prior to January 1, 2005, a one-time request to enter DROP that specifies an eligible DROP entry date that precedes the date of the request.
- (c) For DROP participation beginning on or after January 1, 2005, a member must meet the normal retirement eligibility requirements of Section 4(a) of this Agreement in order to be eligible to elect to participate in DROP. This subsection (c) does not apply to:
- (i) a member who met the eligibility requirements under Section 10(b) of the Statute prior to January 1, 2005;
 - (ii) a member who, prior to January 1, 2005, has at least five years of credited service and a combination of years of age and years of credited service, including parts of years, the sum of which equals or is greater than the number 68.
- (d) A member who, as of January 1, 2005, has at least five (5) years of credited service and has attained either (i) 62 years of age, or (ii) a combination of years of age and years of credited service, including parts of years, the sum of which equals 70 shall, if the member is a DROP participant at termination of employment, receive a normal retirement pension as provided in section 12(o) of the Statute (using the applicable accrual formula under section 4(c) of this Agreement), except that the member’s average monthly salary shall be the average monthly salary determined as of January 1, 2005; provided, however, that if the member enters DROP after January 1, 2005, the member’s average monthly salary shall be the average monthly salary determined as of the member’s DROP entry date.
- (e) Effective January 1, 2005, a member who is not described in subsection (d) of this section shall, if the member is a DROP participant at termination of employment, receive a normal retirement pension as provided in section 12(o) of the Statute (using the applicable accrual formula under section 4(c) of this Agreement), except that the member’s average

monthly salary shall be the average monthly salary determined as of the member's DROP entry date.

(f) A DROP participant's member contributions to HMEPS on or after January 1, 2005 shall not be credited to the DROP participant's DROP account, unless such contributions are directly attributable to an eligible DROP period preceding January 1, 2005. However, required contributions must be paid to HMEPS for all time in DROP that would otherwise constitute service in order for a DROP participant to receive other allowable credits to the DROP participant's DROP account.

(g) Effective January 1, 2005, the Board agrees to establish the interest rate that is credited to a DROP participant's DROP account at half the return on HMEPS's investments for the prior fiscal year, with a minimum rate of 2.5% and a maximum rate of 7.5%, and agrees to maintain such interest rate formula for the duration of this Agreement.

(h) The Board is authorized to establish deadlines for the submission of any information, document or other record pertaining to DROP.

(i) The Board, in its sole discretion, may authorize a participant to elect to receive partial payments from the participant's DROP account in a manner and form determined by the Board. The Board may establish procedures concerning partial payments, including limitations on the timing and frequency of such payments. A participant who elects partial payments may elect to receive such participant's entire remaining DROP account balance in a single lump-sum payment. All distributions and changes in form of distribution must be made in a manner and at a time that comply with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended.

(j) On or after January 1, 2005, the Board, in its sole discretion, may authorize, at a time and in a manner and form determined by the Board, the voluntary revocation of a DROP election by a DROP participant who made a DROP election prior to the Effective Date and who has not been granted a benefit. A member who revokes a DROP election under this subsection is subject to subsection (a) of this section, such that the member is not eligible to subsequently elect a DROP entry date that is before the date of the member's subsequent request.

17. DISABILITY BENEFITS

Effective January 1, 2008, Sections 13(a)-(b) of the Statute are amended to read as follows:

“Sec. 13. (a) A member who has completed five or more years of credited service and who becomes disabled is eligible, regardless of age, for an ordinary disability retirement and shall receive a monthly disability pension computed in accordance with section 10(d).

(b) A member who is disabled by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, the member's employment duties at some definite place and at some definite time on or after the date of becoming a member, without serious and willful misconduct on the member's part, is eligible for a service

disability retirement and shall receive a monthly disability pension equal to the greater of:

- (1) the monthly normal retirement pension computed under section 10(d); or
- (2) 20 percent of the member's monthly salary on the date the injury occurred or the hazard was undergone.”

18. SURVIVOR BENEFITS

Effective January 1, 2008, Sections 14(a)-(d) of the Statute are amended to read as follows:

“Sec. 14. (a) Except as provided by sections 11 and 12 of this Act, the pension board shall order survivor benefits to be paid in the form of a monthly allowance to an eligible survivor under this section if:

- (1) a member or former member of group A or group B dies from any cause after the completion of five years of credited service with the city or the pension system;
- (2) while in the service of the city or the pension system, a member dies from any cause directly resulting from a specific incident in the performance of the member's duty; or
- (3) a member of group A or group B dies after the date the member retires on a pension because of length of service or a disability and the member leaves an eligible survivor; or
- (4) a member of group D dies from any cause after the completion of five years of credited service with the city or the pension system.

(b) (1) A surviving spouse of a member or former member described in subsection 14(a)(1) who dies after having completed five years of credited service with the city or the pension system, but before beginning to receive retirement benefits, is eligible for a sum equal to 100 percent of the retirement benefits to which the deceased member or former member would have been eligible had the member been totally disabled with an ordinary disability at the time of the member's last day of credited service, except that the allowance payable to the surviving spouse may not be less than \$100 a month.

(2) A surviving spouse of a member described in subsection 14(a)(4) who dies after having completed five years of credited service with the city or the pension system while still in service with the city or the pension system is eligible for a sum equal to 100 percent of the retirement benefits to which the deceased member or former member would have been eligible had the member been totally disabled with an ordinary disability at the time of the member's last day of credited service.

(c) A surviving spouse of a member described in subsection 14(a)(2) who dies from a cause directly resulting from a specific incident in the performance of the member's duty with the

city or the pension system, without serious or willful misconduct on the member's part, is eligible for a sum equal to 100 percent of the deceased member's final average salary.

(d) A surviving spouse of a retiree described in subsection 14(a)(3) who dies after having received retirement benefits is eligible for a sum equal to 100 percent of the retirement benefits being received at the time of the retiree's death. The cost-of-living adjustment in the survivor benefit under Section 10(h) of this Act is computed based on the unadjusted normal retirement pension of the deceased retiree.”

Effective with the Effective Date, Section 14(h) of the Statute is amended in its entirety to read as follows:

“(h) If a retiree dies and there is no eligible survivor or no designated survivor under Section 11, the retiree’s spouse, if any, or if there is no spouse, the retiree’s estate, is eligible to receive a lump-sum payment of the unamortized balance of the retiree’s accrued employee contributions, if any, other than contributions after the DROP entry date, as determined by an amortization schedule and method approved by the pension board. A pension payable to a retiree ceases on the last day of the month in which the retiree’s death occurs. A survivor benefit payable to an eligible survivor or a J&S Annuity payable to a designated survivor is effective on the first day of the month following the month in which the retiree’s death occurs, and ceases on the last day of the month in which the survivor dies or otherwise ceases to be eligible to receive a survivor’s benefit or J&S Annuity.”

19. LUMP SUM BENEFIT PAYMENT

Effective June 27, 2007, Section 16(a) of the Statute is amended to read as follows:

“Sec. 16. (a) Notwithstanding any other provision of this Act, the pension board may pay to a member, deferred participant, eligible survivor, alternate payee, or beneficiary in a lump-sum payment the present value of any benefit payable to such a person that is less than \$20,000 instead of paying any other benefit payable under this Act. If the lump-sum present value of the benefit is at least \$1,000 but less than \$20,000, the pension board may make a lump-sum payment only on written request by the member, deferred participant, eligible survivor, alternate payee, or other beneficiary. The pension board shall make any payment under this subsection as soon as practicable after eligibility under this section has been determined by the pension board.”

20. TERMINATION OF EMPLOYMENT AND REEMPLOYMENT

(a) Effective January 1, 2008, Section 17(c) of the Statute is amended to read as follows:

“(c) (1) A former member of group A or group B whose employment is terminated for a reason other than death or receipt of a retirement or disability pension after the completion of five years of credited service may elect, in a manner and time determined by the pension board, to receive a deferred normal retirement pension that

begins on the former member's effective retirement date after the member attains either 62 years of age or a combination of years of age and years of credited service, including parts of years, the sum of which equals the number 75, provided the former member is at least 50 years of age. The amount of monthly benefit shall be computed in the same manner as for a normal retirement pension, but based on average monthly salary and credited service as of the former member's last day of credited service and subject to the provisions of this Act or Chapter 358, Acts of 48th Legislature, Regular Session, 1943 (Article 6243g, Vernon's Texas Civil Statutes), in effect on the former member's last day of credited service.

(2) A former member of group D whose employment is terminated for a reason other than death or receipt of a retirement or disability pension after the completion of five years of credited service may elect, in a manner determined by the pension board, to receive a deferred normal retirement pension that begins on the former member's effective retirement date after the member attains 62 years of age. The amount of monthly benefit shall be computed in the same manner as for a normal retirement pension, but based on average monthly salary and credited service as of the former member's last day of credited service and subject to the provisions of the Statute in effect on the former member's last day of credited service.

(3) A former member of group D whose employment is terminated for a reason other than death or receipt of a retirement or disability pension and who has met the minimum years of credited service to receive an early reduced retirement pension under section 10(e) upon attaining the required age, may elect, in a manner determined by the pension board, to receive a deferred early retirement pension that begins on the former member's effective retirement date after the member attains the required age under section 10(e). The amount of monthly benefit shall be computed in the same manner as for an early retirement pension under section 10(e), but based on average monthly salary and credited service as of the former member's last day of credited service and subject to the provisions of the Statute in effect on the former member's last day of credited service.”

(b) Effective January 1, 2005, Section 17(e) of the Statute is amended to read as follows:

“(e) If there is no eligible survivor of a former group A member, all of the former member's rights in the pension fund shall be satisfied by the refund to the former member's spouse, if any, or if there is no spouse, to the former member's estate, of all eligible payments made by the former member into the pension fund by way of employee contributions, without interest.”

(c) Effective January 1, 2005, subsections 17(g)-(l) of the Statute shall not apply to the calculation of any benefit for, or attributable to (i) any individual hired or rehired on or after January 1, 2005, or (ii) a deferred retiree or retiree who is reemployed in an HMEPS covered position prior to January 1, 2005 but for a period of two years or less of continuous credited service. If any such deferred retiree or retiree to whom this subsection (c) applies is reemployed

in an HMEPS covered position, the following provisions shall apply to the computation of the pension due such member upon such member's subsequent retirement:

(i) The portion of such member's pension attributable to his/her period of credited service accrued prior to reemployment shall be calculated on the basis of the schedule of benefits for retiring members that was in effect at the time of said member's previous termination of employment.

(ii) The portion of such member's pension attributable to his/her period of credited service accrued after his/her reemployment shall be calculated on the basis of the schedule of benefits for retiring members that is in effect at the time of said member's subsequent retirement.

21. MILITARY CREDIT

Effective January 1, 2008, Section 18(d) of the Statute is amended to read as follows:

“(d) The military service credited under Subsection (c) of this section:

- (1) may not exceed a total of 60 months; and
- (2) may be claimed as service solely in the group in which the member participates at the time the member claims the service.”

22. ACTUARIAL SERVICES AND REVIEW

(a) The actuary or actuarial firm engaged by HMEPS and approved by the Board shall be the sole actuary or actuarial firm authorized to perform services for purposes of actuarial valuations, funding and benefit matters under the Meet and Confer Agreement, this Agreement, and the Statute.

(b) For each actuarial valuation of HMEPS performed by the actuary retained by HMEPS, the City will make a determination as to whether the City will order, at the City's cost, an independent review of such actuarial valuation or have an independent actuarial analysis of HMEPS. If ordered, such review or analysis must be performed by an independent, qualified and experienced actuary. The actuary will have access to all relevant information available to HMEPS; however, all such information provided to the actuary will be confidential and the actuary must agree to treat all such information as confidential.

23. CREATION OF §401(a) PLAN

HMEPS shall have sole authority in its discretion to establish a benefit program qualified under §401(a) of Internal Revenue Code of 1986, to receive allowable amounts represented by forfeited accrued and unused terminal leave pay and to pay authorized benefits under the program for some or all of the members of HMEPS.

24. PHASE DOWN MATTERS

An HMEPS member who has met the applicable age and credited service requirements for normal retirement and who elects (including by default) to participate in the Phase Down Program Option C or the Deferred Cash-Out Option/Rollover Election, as authorized by "The 2004 Amendments to 2001 Meet & Confer Agreement" between the Houston Police Officers' Union and the City of Houston, Texas, or who enters into a severance pay program authorized by HMEPS, shall be eligible to retire and receive benefits from HMEPS as if the member had terminated employment and was not employed during the Phase Down or severance pay period; provided, however, that any such benefits are made subject to and expressly conditioned upon the receipt of (i) a favorable determination letter from the Internal Revenue Service to the effect that the provision of such benefit will not adversely affect the qualified status of HMEPS under the applicable requirements of the Internal Revenue Code of 1986, as amended, or (ii) advice of counsel to HMEPS to such effect. A person who participates in Phase Down or a severance pay program is not considered to be employed in an HMEPS-covered position. Notwithstanding the foregoing sentence, a HMEPS member who commenced participation in Phase Down Option A prior to April 14, 2005 shall be considered to be or to have been employed in an HMEPS-covered position and to be or to have been on an authorized absence during the entire Phase Down Option A period, to the extent the person is or was otherwise eligible to participate in HMEPS during that period.

25. LEGISLATIVE ISSUES

Effective upon the Effective Date, the Parties agree, cooperatively and separately, not to file or submit, and to oppose any legislation that is filed in or submitted to the Texas Legislature, in the form of a bill or an amendment to a bill, that would result in a reduction of benefits or in a change under the Statute, and/or that would affect any of the matters covered by the Agreement, unless such change is mutually agreed to by the Parties.

26. NOTICES

All notices and other material to be delivered hereunder shall be in writing and shall be delivered or mailed to the following addresses, unless a party notifies the other party in writing of a different address:

If to HMEPS:

Executive Director

HMEPS

1111 Bagby, Suite 2450

Houston, TX 77002

If to the City:

Mayor

City of Houston

P.O. Box 1562

27. EFFECTUATION OF CHANGES

The Parties agree that HMEPS shall have full discretion and authority to administer, construe and interpret this Agreement, and to do all other acts necessary to carry out the purpose of HMEPS' governing statute, Art. 6243h, or successor statute(s). To the extent that any administrative changes must be made to effectuate any of the foregoing changes, HMEPS shall have a reasonable period of time after the execution of this Agreement to put such changes into effect.

This Agreement shall not result in retroactive benefit payments for any time period that has expired before the Effective Date.

28. TERM

This Agreement shall be effective from the Effective Date. Except as otherwise expressly amended hereby, the Meet and Confer Agreement remains in full force and effect from and after the Effective Date hereof and the provisions of the Meet and Confer Agreement are fully incorporated into this Agreement. The Meet and Confer Agreement and this Agreement (collectively, the "Agreement") shall remain in full force and effect until the July 1 of the year following the ARC Effective Date, unless earlier terminated, modified or amended as provided in the Agreement. If neither party notifies the other party at least 90 calendar days prior to the July 1 of the year following the ARC Effective Date that it desires to terminate the Agreement, the Agreement shall continue in effect for successive one-year terms until either party gives notice to the other party at least 90 calendar days prior to the end of the term that it desires to terminate the Agreement.

29. AMENDMENTS TO AGREEMENT

The Parties reserve the right to make amendments or modifications to this Agreement by written amendment signed by both parties. No amendments shall be effective unless agreed to by the Board and the governing body of the City, and signed by the Mayor and by the Board or the Board's designee. If the Statute is amended or repealed in the Texas Legislature in a manner that is not mutually agreeable to the Parties, the Parties shall amend this Agreement or enter into a separate agreement to reestablish the amended or repealed provision(s).

30. ENTIRE AGREEMENT

Other than the provisions of the Statute not expressly modified by this Agreement, and the rules and regulations promulgated by the Board, this Agreement and the documents referred to or incorporated herein contain the complete agreement between the parties regarding the matters covered hereby and supersede any prior understandings, agreements or representations by or between the parties, written or oral, and any oral statements made after execution of the Agreement which may have related or relate to such subject matter. No waiver, alteration or

modification of any of the provisions of this Agreement shall be effective or binding unless in writing and signed by authorized representatives of both parties.

31. SAVINGS CLAUSE

If any provision of this Agreement, or the application of such provision, should be rendered or declared invalid by any court action or by reason of any existing or subsequently enacted legislation, the remaining parts or portions of this Agreement shall remain in full force and effect.

32. SOVEREIGN IMMUNITY

By entering into this Agreement, neither HMEPS nor the City in any way waives its sovereign immunities or defenses as provided by law.

33. WAIVER

Remedies under this Agreement are cumulative; a Party's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the Party's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

34. HEADINGS

Paragraph headings are included in this Agreement for convenience only and do not modify, limit or expand any right or obligation of this Agreement.

35. APPLICABLE LAW

This Agreement shall be governed in all respects by the law and statutes of the state of Texas, without reference to conflict of law principles. The venue for any action relating to this Agreement shall be in the state or federal courts in Harris County, Texas. This Agreement is solely for the benefit of the Parties hereto and no provision of this Agreement shall be deemed to confer any remedy, claim or right upon any third party, including, but not limited to, any participant of HMEPS.

36. TAX MATTERS

The Parties agree that HMEPS is solely responsible for drafting the necessary language to reflect the substantive changes to the statutory language required by the changes adopted in this Agreement and submitting it to the Internal Revenue Service for a ruling and/or determination letter. In addition, the City agrees to provide all required information, documents and authorizations in furtherance thereof. The Parties also agree that any and all benefits intended to be provided to participants by this agreement are made subject to and expressly conditioned upon the receipt of a favorable determination letter from the Internal Revenue Service to the effect that the provision of such benefit will not affect the qualified status of HMEPS under the applicable requirements of the Internal Revenue Code of 1986, as amended. Furthermore, while the Parties

have adopted some of the changes in this Agreement in the expectation of securing additional tax benefits to participants, the Parties recognize that the determination of participants' tax treatment will be made by the Internal Revenue Service in accordance with current and future law, regulations and other guidelines. Accordingly, the Parties assume no responsibility for the failure of the desired tax benefits to be realized by any person. It is expressly agreed and understood that HMEPS may make any change in the terms of the Agreement or the benefit changes effectuated thereby to the extent that the change is necessary to ensure compliance with the qualification requirements of Section 401 of the Internal Revenue Code of 1986, as amended, or any other applicable governmental law.

37. SURVIVAL OF PROVISIONS

Any right or obligation established under the Meet and Confer Agreement shall survive except as expressly provided otherwise in this Agreement.

38. AUTHORITY

Each of the Parties has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first above written.

**HOUSTON MUNICIPAL EMPLOYEES
PENSION SYSTEM**

By: 

Name: Rhonda Smith

Title: Executive Director

Date: July 5, 2011

CITY OF HOUSTON

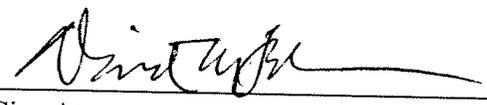
By: 

Name: Annise D. Paulson

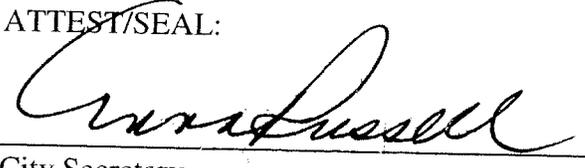
Title: MAYOR

Date: 7-7-11

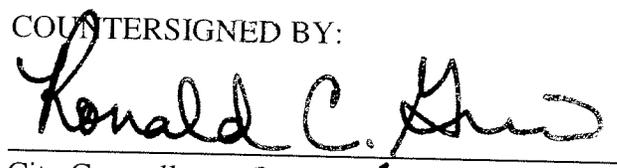
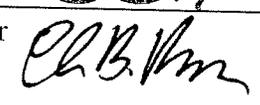
APPROVED AS TO FORM:


City Attorney

ATTEST/SEAL:


City Secretary

COUNTERSIGNED BY:


City Controller 

DATE COUNTERSIGNED:

7/11/11