

2011 Agreement Between the Houston Police Officers’ Pension System and the City of Houston

This Agreement is made and entered into by and between the HOUSTON POLICE OFFICERS’ PENSION SYSTEM (“HPOPS”), for the exclusive benefit of its members and their survivors (collectively, “beneficiaries”), acting pursuant to statutory authority under the provisions of Article 6243g-4, of the Revised Civil Statutes of Texas (hereinafter “Article 6243g-4”), and the CITY OF HOUSTON (“CITY”), collectively referred to as the “Parties.”

WHEREAS, under the provisions of Article 6243g-4, Section 27, the Board of Trustees of HPOPS (“BOARD”) may enter into a written agreement with the CITY on behalf of the Pension System created under Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, Vernon’s Texas Civil Statutes) and that operates under Section 67, Article XVI of the Texas Constitution, and its members and beneficiaries if the agreement is approved by final vote of the BOARD and signed by the Mayor of the CITY;

WHEREAS, the BOARD is responsible for the general administration, management, and operation of the Pension System for the CITY, which provides benefits as described in Article 6243g-4, as modified by this Meet and Confer Agreement;

WHEREAS, under the provisions of Article 6243g-4, Section 27, and notwithstanding any law to the contrary, the BOARD is responsible for representing the interests of the pension system on all pension related issues, including benefits, which affect the pension system or its beneficiaries under Article 6243g-4 and under this meet and confer agreement, as allowed by Article 6243g-4;

WHEREAS, the CITY and HPOPS, the Parties hereto, agree and acknowledge that certain provisions of this Agreement will have the effect of superseding certain provisions of Article 6243g-4 during the term of this Agreement, and both clarifying and ensuring that certain obligations under the prior 2004 Meet and Confer Agreement are fully understood, recognized and agreed upon by the Parties, and complied with in all respects, except that nothing in this Agreement can deprive a member, without the member’s written consent, of a right to receive benefits that have become fully vested and matured in the member;

WHEREAS, the Parties hereto, agree and acknowledge that HPOPS is the sole and exclusive bargaining agent for all classified City of Houston Police Officers, regular and disabled retired City of Houston Police Officers, and their survivors, in all matters involving pensions pursuant to this Meet and Confer Agreement and Article 6243g-4 expressly unless modified as set forth herein;

WHEREAS, HPOPS had successful meet and confer agreements with the City of Houston in 1999, 2001, 2003 and 2004 (“Prior Agreements”); and

WHEREAS, all Prior Agreements were codified in city ordinances and all Prior Agreements (except the 2004 Prior Agreement) were codified in Article 6243g-4;

WHEREAS Article 6243g-4 and this Meet and Confer Agreement automatically make cadets

subject to HPOPS upon becoming a City of Houston classified police officer; and

WHEREAS, HPOPS's beneficiaries, as a result of the performance of their duties (or duties provided by a deceased family member), have provided a great service to the CITY and the citizens of the CITY, under Houston, Texas, Code of Ordinances, Ch. 34, art. II, and are automatically entitled both contractually and statutorily to the benefits under the Plan provided by Article 6243g-4 and, as applicable, the various Meet and Confer Agreements between the City of Houston and HPOPS, under which HPOPS provides city services in administering the Plan, and the Plan, through its BOARD, provides fiduciary responsibilities to the beneficiaries, including all administrative services for eligible beneficiaries, pursuant to the Meet and Confer Agreements and the provisions of Article 6243g-4, which are incorporated into this Meet and Confer Agreement both contractually and statutorily (except to the extent this Meet and Confer Agreement alters the CITY's contributions to the Plan and benefits of certain beneficiaries);

NOW THEREFORE, for and in consideration of the promises, representations, and mutual covenants above and herein, and which the parties hereby acknowledge as essential and agreed terms for city services, the Parties agree as follows:

Definitions

Terms that are used and not defined in this Agreement have the same meanings as when used in Article 6243g-4. The following definitions apply to terms used in this Agreement, unless a different definition is required by the context in which the term is used.

Annual Required Contribution of the Employer ("ARC") is an amount determined pursuant to Government Accounting Standards Boards ("GASB") Statements 25 and 27 as in effect on effective date of this agreement.

City Fiscal Year is the year beginning July 1 of each year and ending the following June 30 (*e.g.*, City Fiscal Year 2012 begins July 1, 2011 and ends June 30, 2012).

Code means the Federal Internal Revenue Code of 1986, as amended, or any successor.

Funded Ratio means the ratio or percentage derived by dividing HPOPS's actuarial value of assets by HPOPS's actuarial accrued liability (representing the sum of the actuarial value of assets plus the unfunded actuarial accrued liability).

Final Average Pay means the total Pay received by a member over the last seventy-eight (78) bi-weekly pay periods ending before the member's termination of employment with the Police Department, divided by thirty-six (36).

Locked-in Benefit means the monthly retirement pension a member would have been entitled to receive if the member had retired or entered DROP immediately before October 9, 2004, calculated in accordance with the provisions of Section 12(b) of Article 6243g-4 without regard to the modifications made by this Agreement.

New Benefit Calculation means the monthly retirement pension a member is entitled to receive as of the date of retirement or DROP entry, calculated in accordance with the provisions of Section 12(b) of Article 6243g-4, but using Final Average Pay rather than average total direct pay in the calculations.

Pay means wages as defined by Section 3401(a) of the Code, plus any amounts that are not included in gross income by reason of Section 104(a)(1), 125, 132(f), 402(g)(2), or 457 of the Code, any member contributions picked up pursuant to Section 414(h)(2) of the Code, and any portion of a clothing allowance or motorcycle allowance that is not considered wages, , or other Pay described in the 2011 Meet and Confer Agreement between the HPOU and the City of Houston not expressly prohibited by this Agreement, less any pay received for overtime work (OT), Exempt Time Pay (ETP) or Strategic Officer Staffing Program (SOSP) pay. The term Pay does not include nontaxable payments not expressly described above.

Pay Date means the date (approximately one week after a pay period has ended) when a member receives his or her pay check for the preceding pay period.

Sliding Average Benefit means a monthly retirement benefit in which Final Average Pay is calculated initially by using twenty-six (26) times the highest Pay, considering only items of Pay that are included in each pay check, received for any pay period in the twenty-six (26) pay periods ending immediately before October 9, 2004 and adding the sum of all other items of Pay excluded above that was received over the twenty-six (26) pay periods, then dividing by twelve (12). The average is adjusted after the end of each pay period by adding the Pay, considering only items of Pay that are included in each pay check, for that pay period to the prior periods plus the sum of all other items of Pay excluded above that was received over all applicable pay periods, dividing by the number of pay periods then included, multiplying by twenty-six (26) then divided by twelve (12) to arrive at a new monthly average. Once seventy-eight (78) pay periods are included in the average, one (1) of the assumed twenty-six (26) original pay periods will be dropped from the average each pay period and replaced by the Pay for the new pay period in calculating the new average, until the effect of the Locked-in Benefit is phased out at the end of the seventy-eight (78) pay periods after October 9, 2004.

The Sliding Average Benefit computation is illustrated by the attached Exhibit A.

City Payment Schedule to HPOPS and Shortfall Financing

- A. The CITY agrees to make fixed cash payments (“Fixed Payments”) to HPOPS from any lawful source in the following amounts in each of the following City Fiscal Years during the term of this Agreement:

<u>City Fiscal Year</u>	<u>Amount</u>
2012	\$83 million, fixed payment, with any shortfall in the fixed payment not to exceed \$17 million (the “FY2012 Fixed Payment Shortfall”) and to be financed as set forth in Part B below.

2013 \$93 million, fixed payment, with any shortfall in the fixed payment not to exceed \$8.5 million (the “FY2013 Fixed Payment Shortfall”) and to be financed as set forth in Part B below.

2014 \$103 million, fixed payment.

For all subsequent Fiscal Years, and until the Funded Ratio (to be determined by actuarial method to be solely determined by HPOPS, in the sole authority of HPOPS actuary, and in HPOPS’s sole discretion, provided such actuary used by HPOPS is a recognizable, reputable actuarial firm in the industry using sound actuarial methods) reaches 100%, CITY payments shall increase each City Fiscal Year by \$10,000,000 until said 100% of funding is reached. Once the Funded Ratio has reached 100%, CITY payments each City Fiscal Year shall be in amounts equivalent to the greater of 16% of pay, as defined herein, or the ARC.

In addition, on the first day of City Fiscal Year 2012, once the Funded Ratio reaches 80%, if it should ever be subsequently determined that the Funded Ratio has declined below such 80%, then in the City Fiscal Year next following such determination, the CITY shall pay such additional amounts to HPOPS as necessary to increase the Funded Ratio to 80%.

For CITY payments herein agreed, such payments shall be made as soon as administratively feasible after each payroll period in amounts equal to 1/26 of the total CITY payment amount for such City Fiscal Year. In no event shall the payment be delayed more than 10 calendar days after a Pay Date.

B. SUB-AGREEMENT: The CITY agrees to finance the FY2012 and FY2013 Fixed Payment Shortfalls of CITY Contributions required by Section A as hereinafter set forth:

The CITY is the fee title owner of certain tracts of land on which are constructed the building known as the Houston Police Department Headquarters located at 1200 Travis Street, Houston, Texas, and a parking garage located at 801 Polk Street, Houston, Texas, more particularly described on Exhibit B attached hereto (collectively, the “Real Property”); and

HPOPS desires to acquire from the City an undivided interest in the Real Property to secure payment in full of the FY2012 and FY2013 Fixed Payment Shortfalls, and the City desires to convey the undivided interest to HPOPS to secure payment in full of the FY2012 and FY2013 Fixed Payment Shortfalls;

The Parties desired to enter into a Sub-Agreement (herein so-called) to finalize their agreement with respect to the Real Property. In consideration of the promises set forth in this Sub-Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

BINDING SUB-AGREEMENT

This Sub-Agreement constitutes a binding agreement between the CITY and HPOPS for the sale and purchase of the Property Interest (as defined below) subject to the terms set forth herein.

Subject to the limitations set forth herein, this Sub-Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns and shall not be revocable by changes in City Ordinances without further Meet and Confer of the Parties and approval by HPOPS.

PROPERTY

The term "Property Interest" shall mean an undivided interest in the Real Property. The percentage of undivided interest will be the ratio of the Purchase Price to the appraised value of the Real Property on the Closing Date, plus an undivided interest of an extra 10% to allow for differing valuations and changes in value during the period the Property Interest is held by HPOPS (as hereinafter defined). HPOPS may rely upon CITY's appraisal or obtain an appraisal of its own, at its option. If any shortfall amount (including interest) remains unpaid after City Fiscal Year 2014, HPOPS may have property reappraised and additional interest in Property shall be conveyed by City to HPOPS to cover the ratio of any unpaid shortfall debt (plus any unpaid interest) to the appraisal value plus 10%.

SHORTFALLS; ANNUAL PAYMENTS; FUTURE SALE

The City promises to pay the FY2012 Fixed Payment Shortfall in the amount of \$17 million dollars ("Shortfall Debt") and the FY2013 Fixed Payment Shortfall in the amount of \$8.5 million ("Additional Amount"), along with all unpaid interest thereon, to HPOPS in accordance with the terms hereof. The Shortfall Debt will not immediately be paid by the City. At Closing (hereinafter defined), the City will convey the Property Interest to HPOPS to secure payment of the Shortfall Debt.

The Property Interest shall be transferred and conveyed by execution by the City, and delivery by the City to HPOPS, of a Conveyance of Property Interest, a specimen of which is attached hereto as Exhibit C (the "Conveyance"). The Conveyance and all other documents to be executed and delivered at the Closing (defined below) by a Party are hereinafter collectively referred to as the "Transfer Documents." HPOPS may, at its option, cause to be recorded a brief memorandum of this Sub-Agreement.

For the fiscal year 2012 (July 1, 2011 through June 30, 2012), the City will make quarterly payments to HPOPS of interest on the Shortfall Debt accruing at a rate of 8.5% per annum, not compounded, being in the amount of Three Hundred Sixty-One Thousand, Two Hundred Fifty and No/100 Dollars (\$361,250.00) per quarter. Thereafter, so long as HPOPS retains the Property Interest, the City will make a quarterly payment to HPOPS of \$361,250.00 in accrued interest. The payments will be made as soon as administratively feasible after each quarterly period.

The City and HPOPS agree that the City has the option to convey to HPOPS an additional undivided interest in the Property at the beginning of fiscal year 2013 (July 1, 2012) to secure repayment of any FY2013 Fixed Payment Shortfall of CITY Contributions required by Section A. If the City exercises this option, the City will determine the exact amount of the shortfall, up to Eight Million, Five Hundred Thousand and No/100 (\$8,500,000.00) (the

“Additional Amount”). The City will notify HPOPS in writing of the Additional Amount on or before June 1, 2012. If the City notifies HPOPS, then HPOPS agrees to receive an additional undivided interest in the Property to secure repayment of the Additional Amount. The percentage of additional undivided interest will be the ratio of the Additional Amount to the appraised value of the Real Property as of the date of notice, plus an additional 10% of the appraisal value. The conveyance will take place as soon as practicable after notice by the City to HPOPS, and will be documented by a conveyance substantially in the form of the Conveyance attached hereto. Interest on the Additional Amount, at a rate of 8.5% per annum, not compounded (for example, in the amount of \$180,625.00 per quarter if the Additional Amount were \$8.5 million) will be paid by the City to HPOPS at the same time and in the same manner as interest on the Purchase Price, as set forth above.

On or before January 1, 2012, the City shall place the Real Property on the market for sale and lease back, and agrees to use its best efforts to accomplish a sale and lease back of the Real Property on terms reasonable to the City. The Parties agree that the following provisions will apply with respect to the transaction:

1. Under state law, the City is limited in its ability to make direct sales of real property. The City will explore its ability to sell the Real Property directly, but the City’s only option may be to offer the Real Property at an auction or for sale bid. If that is the case, the City will use one of those means to offer the Real Property for sale.
2. The City will not enter into a proposed sale agreement without the agreement of HPOPS to the terms and provisions of the agreement unless all amounts due and owing to HPOPS hereunder are to be paid upon closing.
3. In the event of a sealed bid sale, under state law the City is not required to accept any bid. Accordingly, after a sealed bid sale, the City in its discretion may elect not to accept any bid. If the City desires to accept a bid, it will not do so without the concurrence of HPOPS.
4. Any sale must include a lease back to the City, so that the City may continue to use the Real Property;
5. In the event that a sale does not occur, the Parties will continue to hold their respective interests in the Real Property and the City will continue to make the interest payments set forth above.
6. In the event that a sale takes place, proceeds of the sale will be allocated between the City and HPOPS according to their respective interests in the Real Property. Interest payments above will be prorated to the closing date of the third-party sale. In no event shall the proceeds received by HPOPS be any more or less than the sum of (a) the outstanding FY 2012 and FY 2013 Fixed Payment Shortfalls, and (b) the prorated amount of interest due and owing as of the closing date.

7. Until any sale takes place, the City shall have, at its sole option and discretion, the right to purchase HPOPS's Property Interest from HPOPS. HPOPS agrees that it will sell its Property Interest to the City upon thirty days written notice from the City. The price for the repurchase of the Property Interest will be the sum of (a) the outstanding FY2012 and FY2013 Fixed Payment Shortfalls, and (b) the prorated amount of interest due and owing as of the date of repurchase.
8. All of the provisions of the SHORTFALLS; ANNUAL PAYMENTS; FUTURE SALE section shall survive the Closing and not be merged into the Transfer Documents.

BUY BACK

If the Real Property has not been sold by July 1, 2015, the City shall buy back HPOPS's interest in the Real Property on July 1, 2015 for the Shortfall Debt (plus any Additional Amount) plus any accrued interest owing from the City to HPOPS that has not yet been paid. This BUY BACK section shall survive the Closing and not be merged into the Transfer Documents.

SURVEY AND TITLE COMMITMENT

If HPOPS requests, the City will provide a survey of the Property (the "Survey"). HPOPS may, if it desires, at its cost, obtain a Commitment for Title Insurance for the Property (the "Title Commitment") from a title insurance company acceptable to HPOPS.

If HPOPS obtains a Survey and/or a Title Commitment, HPOPS shall have until five business days after receipt of the last to be received of the Survey or Title Commitment to specify to the City those items affecting the Property that would materially interfere with HPOPS's use of the Property (the "Encumbrances"). Items shown in the Title Commitment or Survey and not objected to by HPOPS shall be deemed items that HPOPS will accept title subject to (the "Permitted Encumbrances").

The City will use its best efforts to remove all Encumbrances and Closing may, at HPOPS's option, be delayed to allow the City to cure or remove the Encumbrances. If the City fails or is unwilling to cause all of the Encumbrances to be removed or cured by the Closing Date, or if the Title Commitment or Survey indicates that the City does not own indefeasible fee simple title to the Property, HPOPS shall have the following rights, as its sole and exclusive remedies:

HPOPS may terminate this Sub-Agreement by giving the City written notice thereof, and neither party shall have any further rights, duties, or obligations under the Sub-Agreement, whereupon the City will not be entitled to a deferral of its contributions for fiscal year 2012 or fiscal year 2013; or

HPOPS may elect to waive the Encumbrances not so removed or cured and close the transaction contemplated by this Sub-Agreement without any reduction in the Shortfall Debt (or any Additional Amount) in accordance with the remaining terms and provisions, whereupon the

Encumbrances not so removed or cured shall become Permitted Encumbrances, to be treated in the manner provided herein for Permitted Encumbrances. The City affirmatively represents that the Property has no material encumbrances.

CONDITIONS PRECEDENT

HPOPS's obligations to perform under this Sub-Agreement and to close the transaction contemplated by this Sub-Agreement are expressly subject to the following:

1. The delivery by the City to HPOPS at Closing of executed originals of the Transfer Documents to be executed by the City (properly notarized where required); and
2. The delivery by the City to HPOPS at Closing of any additional documents as may be reasonably required for the proper consummation of the transaction contemplated by this Agreement or that may be usual and customary in closing similar transactions.

BROKER'S COMMISSION

The Parties warrant to one another that they have not dealt with any finder, broker or realtor in connection with this Agreement and, if any person shall assert a claim to a finder's fee or brokerage commission on account of alleged employment as a finder or broker in connection with this Agreement, the Party under whom the finder or broker is claiming shall, to the extent permitted by law, indemnify and hold the other Party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claim. The indemnification provisions of this Section shall survive termination of this Agreement or the Closing.

CLOSING

The consummation of the transactions contemplated by this Agreement (the "Closing") shall occur no later than June 30, 2011 (the "Closing Date") or such date as the Parties mutually agree, but no later than June 30, 2011.

ASSIGNMENT

Neither Party shall, directly or indirectly, assign this Sub-Agreement or any of its rights hereunder. Any attempted assignment in violation hereof shall be of no force or effect.

RISK OF LOSS

Risk of loss for damage to the Property, or any part thereof, shall at all times from and after the Effective Date be on the City and the City shall indemnify HPOPS for all risks of loss within thirty (30) days of any claims made against HPOPS or losses incurred by HPOPS on the Property while HPOPS retains its Property Interest or while any principal or interest remains unpaid on the Shortfall Debt or Additional Amount. The City's failure to indemnify HPOPS in full under this risk of loss provision shall cause the entire Sub-Agreement to be null and void,

and the Parties' Agreement shall revert in full to the statutory provisions of Article 6243g-4, except that the legislature issues provisions herein shall remain valid and in effect.

REMEDIES

The City's Breach. Except for the remedies in the risk of loss provision, if the City shall fail or refuse to consummate the transaction in accordance with the terms of this Sub-Agreement (and HPOPS is not in breach hereof), HPOPS may, at HPOPS's sole option, (1) terminate this Sub-Agreement; (2) enforce the City's entire \$83 million contribution for City Fiscal Year 2012 and \$93 million contribution for City Fiscal Year 2013; and (3) may enforce all other provisions of this 2011 Meet and Confer Agreement according to the remedies herein, in accordance with **Contract Conditioned on Agreed Provisions.**

HPOPS's Breach. If HPOPS shall fail or refuse to consummate the Sub-Agreement transaction(s) in accordance with the terms of this Sub-Agreement (and the City is not in breach hereof), the City may, at the City's option and as the City's exclusive remedy, by written notice to HPOPS, either (1) terminate this Sub-Agreement (whereupon (a) neither of the Parties shall have any further liability or obligation under this Sub-Agreement and (b) the City shall not be entitled to any reduction in its contributions for City Fiscal Year 2012 or City Fiscal Year 2013) or (2) specifically enforce this Sub-Agreement, including its shortfall provisions, by mandatory injunctive relief.

AS-IS; DISCLAIMER; INDEMNITY; INSURANCE

THE CITY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (A) THE NATURE, QUALITY OR CONDITION OF THE REAL PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (B) THE SUITABILITY OF THE REAL PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH HPOPS MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE REAL PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (D) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE REAL PROPERTY; (E) THE PRESENCE OF ANY ENDANGERED OR THREATENED SPECIES ON THE REAL PROPERTY, AS WELL AS THE SUITABILITY OF THE REAL PROPERTY AS HABITAT FOR ANY OF THOSE SPECIES; (F) THE ACCURACY OR COMPLETENESS OF ANY MATERIALS GENERATED BY THIRD PARTIES FOR THE CITY WHICH ARE PROVIDED TO HPOPS UNDER THE PROVISIONS OF THIS AGREEMENT OR OTHERWISE; (G) THE ENFORCEABILITY OR EFFECT OF ANY LEGAL, CONTRACTUAL OR OTHER RIGHTS OR OBLIGATIONS PERTAINING TO THE REAL PROPERTY; OR (H) ANY OTHER MATTER WITH RESPECT TO

THE REAL PROPERTY. WITHOUT LIMITING THE FOREGOING, THE CITY DOES NOT MAKE AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIAL ON, UNDER OR ABOUT THE REAL PROPERTY OR THE COMPLIANCE OR NON-COMPLIANCE OF THE REAL PROPERTY WITH ANY AND ALL FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAWS, ORDINANCES, REGULATIONS, ORDERS, DECREES OR RULES REGULATING, RELATING TO OR IMPOSING LIABILITY OR STANDARDS OF CONDUCT CONCERNING ANY HAZARDOUS MATERIAL.

HPOPS HEREBY ACKNOWLEDGES AND AGREES THAT, BEING GIVEN THE OPPORTUNITY TO INSPECT THE REAL PROPERTY, IF THIS TRANSACTION IS CONSUMMATED, HPOPS WILL BE PURCHASING THE PROPERTY INTEREST PURSUANT TO HPOPS'S INDEPENDENT EXAMINATION, STUDY, INSPECTION AND KNOWLEDGE OF THE REAL PROPERTY AND HPOPS IS RELYING UPON ITS OWN DETERMINATION OF THE VALUE AND CONDITION OF THE REAL PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE CITY. HPOPS FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE REAL PROPERTY WAS OR WILL BE OBTAINED FROM A VARIETY OF SOURCES AND THAT THE CITY HAS NOT MADE AND WILL NOT BE OBLIGATED TO MAKE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND THE CITY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION TO THE EXTENT GENERATED BY THIRD PARTIES FOR THE CITY. HPOPS IS RELYING UPON ITS OWN INSPECTIONS, INVESTIGATIONS, RESEARCH AND ANALYSES IN ENTERING INTO THIS AGREEMENT AND IS NOT RELYING IN ANY WAY UPON ANY REPRESENTATIONS, WARRANTIES, STATEMENTS, PLANS, SPECIFICATIONS, COST ESTIMATES, STUDIES, REPORTS, DESCRIPTIONS, GUIDELINES OR OTHER INFORMATION OR MATERIAL FURNISHED BY THE CITY OR ITS REPRESENTATIVES TO HPOPS OR ITS REPRESENTATIVES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER REGARDING ANY SUCH MATTERS. THE CITY SHALL HAVE NO LIABILITY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF SUCH DELIVERED INFORMATION.

THE OCCURRENCE OF CLOSING WILL CONSTITUTE AN ACKNOWLEDGEMENT BY HPOPS THAT THE PROPERTY INTEREST WAS ACCEPTED WITHOUT REPRESENTATION OR WARRANTY, STATUTORY, EXPRESS OR IMPLIED, AND OTHERWISE IN AN "AS IS, WHERE IS, AND WITH ALL FAULTS" CONDITION BASED ON HPOPS'S OWN INSPECTION THEREOF. HPOPS FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS COLLATERAL TO OR AFFECTING THE REAL PROPERTY BY THE CITY, ANY AGENT OF THE CITY OR ANY THIRD PARTY. THE CITY IS FURTHER NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR

INFORMATION PERTAINING TO THE REAL PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE EXPRESSLY SET FORTH OR REFERRED TO HEREIN.

HPOPS HEREBY RELEASES THE CITY AND ITS PARTNERS, AGENTS, REPRESENTATIVES, AFFILIATES, OFFICERS, OFFICIALS, SHAREHOLDERS AND EMPLOYEES (TOGETHER WITH THE CITY, THE “CITY RELATED PARTIES”) FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES WHICH HPOPS OR ANY PARTY RELATED TO OR AFFILIATED WITH HPOPS HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO THE REAL PROPERTY OR THE PHYSICAL CONDITION OF THE REAL PROPERTY, ANY CONSTRUCTION DEFECTS, ANY ERRORS OR OMISSIONS IN THE DESIGN OR CONSTRUCTION OF THE REAL PROPERTY AND ANY ENVIRONMENTAL CONDITIONS AT, IN, ON OR UNDER THE REAL PROPERTY, AND HPOPS WILL NOT LOOK TO ANY OF THE CITY RELATED PARTIES IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE INCLUDES CLAIMS OF WHICH HPOPS IS PRESENTLY UNAWARE OR WHICH HPOPS DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY HPOPS, WOULD MATERIALLY AFFECT HPOPS’S RELEASE TO THE CITY. THIS RELEASE WILL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESS TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION.

TO THE EXTENT REQUIRED TO BE OPERATIVE, THE DISCLAIMERS, RELEASES AND/OR WARRANTIES CONTAINED IN THIS SECTION ARE “CONSPICUOUS” FOR PURPOSES OF ANY APPLICABLE LAW, RULE, REGULATION OR ORDER.

NOTWITHSTANDING THE FOREGOING, INCLUDING BUT NOT LIMITED TO THE RELEASE OF THE CITY BY HPOPS SET FORTH ABOVE, THE CITY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS HPOPS FROM ANY AND ALL CLAIMS FROM THIRD PARTIES THAT ARISE FROM THE CONDITION OF THE REAL PROPERTY, THE PROPERTY INTEREST OR FROM THE USE OF THE REAL PROPERTY DURING THE TIME THAT HPOPS HAS THE PROPERTY INTEREST. IT IS THE INTENT OF THE PARTIES THAT HPOPS WILL BEAR NO RISK RELATED TO THE CONDITION OR USE OF THE REAL PROPERTY DURING THE TIME THAT HPOPS HAS AN INTEREST IN THE REAL PROPERTY. The City’s failure to indemnify HPOPS pursuant to this provision shall authorize HPOPS, at HPOPS’ option, to declare this Agreement void, except for the legislature issues provisions, which shall remain in force, at HPOPS’ option, and to give HPOPS the right to enforce its rights under Article 6243g-4.

In addition to the indemnity provision set forth immediately above, during the time that HPOPS has an interest in the REAL PROPERTY, the City shall continue its program of property insurance covering the REAL PROPERTY, and shall cause HPOPS to be named as a loss payee on such program. The City shall cause to be delivered to HPOPS valid certificates of insurance

during this time period identifying HPOPS as a loss payee under this insurance program. All of the provisions of this AS-IS; DISCLAIMER; INDEMNITY; INSURANCE section shall survive the Closing and not be merged into the Transfer Documents.

NOTICES

Addresses. Except as otherwise required by law, any notice required or permitted under this Sub-Agreement shall be in writing and shall be given by personal delivery, or by deposit in the U.S. Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at the addresses set forth below, or at such other address as a Party may designate in writing pursuant hereto, or tested fax number (with a copy to follow by overnight courier) or email address (with a copy to follow by overnight courier), or any express or overnight delivery service (*e.g.*, Federal Express), delivery charges prepaid:

if to the City: City of Houston
 Attention: David M. Feldman
 City Attorney
 P. O. Box 368
 Houston, Texas 77001-0368

if to HPOPS: Houston Police Officers' Pension System
 John Lawson
 Executive Director
 602 Sawyer, Suite 300
 Houston, Texas 77007

Effective Date of Notices. Notice shall be deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, facsimile (with a copy to follow by overnight courier) or email (with a copy to follow by overnight courier), and on the date of deposit in the mail, if mailed or deposited with an overnight carrier. Notice shall be deemed to have been received on the date on which the notice is received, if notice is given by personal delivery, and on the third (3rd) day following deposit in the U.S. Mail, if notice is mailed.

CLOSING COSTS

At Closing, Seller shall pay recording fees related to the Transfer Documents. All other customary costs of closing shall be borne by Seller, including cost of appraisal and survey. Otherwise, the City and HPOPS will each be solely responsible for and bear all of their own respective expenses, including but not limited to expenses of legal counsel and other advisors incurred in connection with the transaction contemplated herein.

APPROVALS

Concerning all matters in this Agreement requiring the consent or approval of any Party,

the Parties agree that any such consent or approval shall not be unreasonably withheld unless otherwise provided in this Agreement. HPOPS acknowledges that the City is not bound to any agreement until an ordinance has been passed by the City Council of the City of Houston. However, HPOPS shall have the right, but not the obligation, to terminate this Agreement by June 30, 2011 if (1) all approvals necessary for this entire Agreement to be binding have not been obtained or (2) the required City Ordinance has not been passed. Further, the CITY agrees that any subsequent changes to, or repeal of, the City Ordinance enacting this Agreement shall not in any way affect its validity or enforceability unless approved by HPOPS.

ADDITIONAL ACTS

The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the terms and provisions of this Agreement.

Change in Member Contributions

The Parties agree that effective for the pay period commencing October 9, 2004, all then active members shall begin to contribute to HPOPS at the rate of nine percent (9%) of Pay. The additional one-quarter of one percent (0.25%) of Pay, over the current eight and three-quarters percent (8.75%), shall be credited to HPOPS' general fund, and not to the members' DROP accounts, if any. The Parties further agree that persons who first become active members of HPOPS after October 9, 2004 shall contribute ten and one-quarter percent (10.25%) of their Pay to HPOPS general fund. Former police officers who are reemployed on or after October 9, 2004 will contribute at the ten and one-quarter percent (10.25%) rate, except that any active member who was involuntarily separated from service before October 9, 2004, and is reinstated due to arbitration, civil service and or court rulings after that date shall be entitled to contribute at the nine percent (9%) rate, and will be able to repurchase any forfeited service for the amount of the contributions that were paid to them. Active members who are entitled to purchase service that was forfeited at the time of a prior separation from service may repurchase the service for the amount of the contributions paid to them at the time of the forfeiture, but all new service credit for these reinstated active members will be calculated under the new rules and regulations for new active members first employed after October 9, 2004.

Either former members reemployed after October 9, 2004 or current members who leave after October 9, 2004 when reemployed may buyback prior service credit at two and one-quarter percent (2.25%) per year under the rules that apply to active members hired after October 9, 2004. Current active members who have not yet bought back prior service credit or those members involuntarily separated may buyback prior service credit at two and three-quarters percent (2.75%) per year under Article 6243g-4, Section 12(b).

Data

The CITY agrees that, within 14 days of any request, it will accurately supply to HPOPS all personnel, payroll, and financial records necessary for HPOPS to provide pension administrative and fiduciary services hereunder to establish beneficiaries' eligibility for any benefit, members' credited service, the amount of any benefits (including but not limited to disability benefits), and such other information needed, if any, to calculate the Plan's ARC, including but not limited to:

- A. Service Verification
 - 1. Sworn Date
 - 2. Suspension days
 - 3. Absent without pay days (including maternity leave)
 - 4. Date of Termination
 - 5. Re-employment Date
- B. Medical Records
- C. Workers' Compensation Records and Pay Information
- D. Payroll information
- E. Phase down participants (entry date, phase down plan)
- F. Members on military leave

In addition, the CITY agrees to provide any information that may be reasonably necessary to enable HPOPS to comply with administrative services HPOPS performs for the CITY as reasonably necessary to obtain any ruling or determination letter from the Internal Revenue Service. The information provided by the CITY shall be transmitted to HPOPS electronically in a format specified by HPOPS, to the extent available to the CITY, or in writing if so requested by HPOPS. As a service to the City, HPOPS agrees to determine each member's credited service and pension benefits on the basis of the personnel and financial records of the CITY and the records of HPOPS.

Change in Definition of Pay Used for New Benefit Calculation

The Parties agree that, subject to **Transitional Benefit Options Before October 7, 2007**, monthly pension benefits for persons whose retirement commences after October 9, 2004 will be determined utilizing the New Benefit Calculation.

Floor and Ceiling on Annual Drop Earnings Crediting Rate

The Parties agree that the rate of hypothetical earnings credited to a member's DROP notional account for each calendar year, as computed under Section 14(e) and (h) of Article 6243g-4, shall not be less than three percent (3%) nor more than seven percent (7%), except that for any year for which HPOPS' actuary certifies that HPOPS' past service costs are fully funded, the credit may be as high as ten percent (10%). The computation of the hypothetical earnings credit is not otherwise changed.

Change in Future Cost of Living Allowances

The Parties agree that annual adjustments for cost of living allowances (COLA's), described in Section 12(c), 14(c), 15, or 16(h) of Article 6243g-4, shall be eighty percent (80%) of the

increase in the Consumer Price Index for all Urban Consumers for the preceding year for all years beginning after October 9, 2004. The Parties further agree that this adjustment shall not be less than two and four-tenths percent (2.4%) nor more than eight percent (8%).

Thirteenth Benefit Payment

The Parties agree that no thirteenth benefit payment will be paid on behalf of any person who first becomes a member after October 9, 2004. The Parties further agree that current active, disabled, or retired members or survivors of active, disabled, or retired members shall not be entitled to a thirteenth benefit payment for any year in which HPOPS' Funded Ratio is less than one hundred and twenty percent (120%).

Retirement Age for New Active Members

The Parties agree that minimum retirement age for any person who becomes an active member or a reemployed member after October 9, 2004, other than those active members referenced in **Change in Member Contributions** who are reinstated as a result of their discipline being overturned as stated therein, shall be age fifty-five (55), and the person must also have at least ten (10) years of service in order to retire.

Change in Benefit Formula for New Active Members

The Parties agree that the formula for determining the monthly benefit of any person who first becomes an active member or a reinstated member after October 9, 2004, other than those active members referenced in **Change in Member Contributions** who are reinstated as a result of their discipline being overturned as stated therein, shall be two and one-quarter percent (2.25%) of the person's Final Average Pay times years of service for the first twenty (20) years of service, plus two percent (2%) of Final Average Pay times years of service for all years of service in excess of twenty (20) years of service. The Parties also agree that such a member shall not be able to accrue a benefit in excess of eighty percent (80%) of Final Average Pay. The Parties further agree that there will be no five thousand dollar (\$5,000) lump-sum payment made upon the retirement or death of any person who first becomes an active member after October 9, 2004. There will be no change in the formula for determining the monthly benefit for existing active members, except to the extent provided in **Change in Member Contributions, Change in Future Cost of Living Allowances, and Thirteenth Benefit Payment**.

All new cadets hired on or after the effective date of this Agreement will sign a form prepared by HPOPS (attached hereto as Exhibit D) acknowledging the services provided by HPOPS to the CITY and its police and acknowledging the benefits contained therein for new members. Further, the CITY acknowledges the Form attached hereto as Exhibit D and previously provided to new cadets after the effective date of the 2004 Meet and Confer Agreement, as applicable to new cadets, and cadets hired, after the effective date of the 2004 Meet and Confer Agreement, and agreed by the Executive Assistant Police Chief to be placed in their personnel files with the police and HPOPS for services provided by HPOPS in administering CITY pension benefits for its police.

Transitional Benefit Options Before October 7, 2007

Notwithstanding the other provisions of this Agreement, the Parties agree that, during the transitional period (from the October 9, 2004, until October 7, 2007), the following benefit computations will be available to eligible current active members:

- A. Retirement and DROP Entrance During Transitional Period. The Parties agree that current active members or their survivors who commence to receive a service or disability pension or elect to enter DROP during the transitional period may receive a monthly pension or DROP benefit determined under any one of the following options:
 - 1. The benefit calculated using Final Average Pay in accordance with **Change in Definition of Pay Used for New Benefit Calculation**;
 - 2. The Locked-in Benefit;
 - 3. The Sliding Average Benefit; or,
 - 4. The member's DROP account and a monthly pension determined in accordance with 1, 2 or 3 above.
- B. Backdrop Election. The Parties agree that active members who make a backdrop election in accordance with Section 14(f) of Article 6243g-4 shall be entitled to use average total direct pay rather than Final Average Pay in determining their DROP account and monthly pension, but only if the election is made before 5:00 p.m. on June 30, 2005.
- C. Senior Police Officers. The Parties agree that active members who have at least seventeen (17) years of service on October 9, 2004, and have not then attained Senior Police Officer status, as contractually defined in the 2011 labor agreement between the CITY and HPOU, shall have their Locked-in Benefit adjusted by adding their Senior Police Officer Pay if they attain Senior Police Officer status no later than October 9, 2005.
- D. Members in Phase Down Program. The members currently in the Phase Down Program described in the 2004 Amendments to 2001 Meet & Confer Agreement between the City and the Houston Police Officers' Union are no longer earning pension service, and the Parties agree that benefits for those members will be calculated under Article 6243g-4 without regard to this Agreement. The Parties also agree that active members who enter the Phase Down Program after October 9, 2004, but before October 7, 2007, will have the opportunity to have, a monthly retirement benefit that is computed using either the Locked-in Benefit or the Sliding Average Benefit.

Contract Conditioned on Agreed Provisions

HPOPS has entered into this Agreement in reliance upon the CITY's agreement to each provision of this Agreement. If for any reason the CITY fails to comply with any material provision in this Agreement, including but not limited to the timing and amount of payments for Shortfall Debt, Additional Amount, and interest thereon, and legislature issues provisions provided herein, and such failure remains uncorrected for thirty days following written notice of such failure from HPOPS, then HPOPS may terminate any or all provisions of this Agreement at HPOPS's election; the CITY agrees that all past due and future contributions will be calculated under Article 6243g-4 without regard to this Agreement at HPOPS's election; and the CITY agrees that HPOPS may file suit against it in Harris County district court for any remedy available at law or in equity, including the specific remedies provided for violations of legislature issues provisions, as provided herein.

Closing of Drop Option to New Members

The Parties agree that, subject to the change in earnings credits described in **Change in Future Cost of Living Allowances, Floor and Ceiling on Annual Drop Earnings Crediting Rate, Thirteenth Benefit Payment**, the DROP option shall remain available to current active members (or survivors) as of October 9, 2004. However, DROP shall not be available to persons who first become active members or a reinstated member after October 9, 2004, other than those active members referenced in **Change in Member Contributions** who are reinstated as a result of their discipline being overturned as stated therein.

Disability Provisions for New Members

The Parties agree that the additional disability benefits described in Section 15(h) of Article 6243g-4 shall not be available to persons who first become active members of HPOPS or a reinstated member after October 9, 2004, other than those active members referenced in **Change in Member Contributions** who are reinstated as a result of their discipline being overturned as stated therein.

Medical Insurance

As provided for by the 2011 labor contract between HPOU and the CITY, the CITY agrees to make a good faith effort to address the rising costs of medical insurance and other health care costs for retired members and survivors, including, but not limited to, consideration of funding for a Code Section 401(h) account.

PLOP Option

The Parties agree that a new partial lump sum optional payment (PLOP) of not more than twenty percent (20%) of the actuarial value of the member's accrued pension at retirement shall be made available to persons who become active members of HPOPS after October 9, 2004. The benefit shall be actuarially neutral. Thus, the value of the pension the member would have received, but

for the lump sum, shall be reduced actuarially to reflect the lump sum payment.

Sole and Exclusive Right to Discuss Pension Matters With HPOPS Members, Including Cadets, at HPD Facilities

The CITY and HPOPS agree that HPOPS has the sole and exclusive right to discuss pension matters with HPOPS members and police cadets at all HPD facilities, or at HPD sponsored functions that may be held away from HPD facilities. The CITY will, to the fullest extent necessary, make certain that HPOPS is the only entity or person, outside of HPD management, permitted to discuss pension matters with HPOPS members and police cadets at HPD facilities, or at HPD sponsored functions which may be held away from HPD facilities. HPD management retains the right to discuss with its classified employees, including police cadets, all employment matters that may also include matters relating to pensions. HPD management agrees to make every effort to limit its discussion of pension related matters with classified personnel without first seeking the approval of HPOPS. HPD management also agrees to attempt to work with HPOPS in advance of any dissemination of information regarding pension matters in any police cadet orientation, in-service training and/or roll-call training. If HPD does disseminate pension-related information without the prior approval of HPOPS, HPD will insure that all personnel understand that management is in no way acting as an agent of HPOPS and that the information disseminated has not been approved for dissemination by HPOPS.

Legislature Issues

Until June 30, 2023 (unless the term of this Agreement is extended pursuant to the **Duration** provisions herein), the Parties agree to cooperatively and separately defend and protect this Agreement against any future legislative changes at the local, state or national level that have not been mutually agreed to by the Parties. The Parties further agree not to file or support, and to oppose, any legislative effort that, in any way, affects the terms and conditions which have been agreed to in this Agreement or enacted by Article 6243g-4 of the Statute.

However, the CITY specifically reserves the right to seek or support legislation that may affect the pension benefits of individuals who are hired after the effective date of the legislation.

The City specifically agrees that its obligations under this section are being relied upon by HPOPS and the Parties specifically agree that they are material to the Agreement and that time is of the essence in the enforcement of these provisions, and that any breach thereof by the City may be enjoined by TRO, temporary injunction, and permanent injunction brought by HPOPS, or that HPOPS may seek specific performance by way of TRO, and temporary and permanent mandatory injunction, under which HPOPS may recover costs and attorney's fees as a prevailing party, or such other remedies provided in **Contract Conditioned Upon Provisions** without regard to the City's sovereign immunity or immunity against suit.

City Section 457 Advisory Committee

The Parties agree that the Mayor or the Mayor's designee will continue to appoint an elected active member of the BOARD to the City of Houston Deferred Compensation Plan Advisory Committee.

Tax Matters

The Parties agree that HPOPS 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 new determination letter. The Parties also agree that any provision in this Agreement will be suspended if the Internal Revenue Service determines that the provision will result in the loss of HPOPS' tax qualified status. It is further agreed and understood that HPOPS may make any change in the terms of this 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 Code, or any other applicable law.

Reemployment of Retired Police Offices by the City

The Parties agree that, in accordance with Article 6243g-4 and current practice, HPOPS will discontinue a retired member's pension while the member is reemployed as a police officer. The CITY agrees that it will not make a commitment to employ, in a non-police officer position, any active member who is eligible for a disability pension before first informing the active member of the potential consequences of working for the City while receiving a pension. The CITY will assist HPOPS in dealing with any tax problems HPOPS believes may exist by, among other things, providing the use of the CITY's Washington lobbyist (if any) to assist them with any proposed legislation.

Effectuation of Changes

Pursuant to Section 6(f) of Article 6243g-4, the Parties agree that HPOPS shall have full discretion and authority to administer, construe, and interpret this Agreement, and to do all other acts necessary to administer pension services for the CITY providing pension benefits for its police, including the assumption of fiduciary responsibility by the BOARD for the exclusive benefit of beneficiaries and in furtherance of the purposes of HPOPS's governing statute, Article 6243g-4 or any successor statute(s), as modified by this 2011 Meet and Confer which the parties agree changes were made within the statutory scheme of Article 6243g-4, as previously modified by prior Meet and Confer Agreements, to sustain the actuarial full funding of HPOPS's Plan to Article 6243g-4 under the current benefit structure to HPOPS's beneficiaries in a manner, and upon timing, the CITY believes in good faith will sustain the Plan as set forth under the terms herein and that neither party has information that the Plan is not sustainable on the schedule as set forth herein.

Members in Phase Down Program

The Parties also agree that members in the Phase Down Program, defined in the 2011 labor agreement between the CITY and HPOU, who have separated from service shall be entitled to receive monthly pension payments if they have attained normal retirement age.

Workers' Compensation

Members who are receiving workers' compensation payments or have received workers' compensation and subsequently retire or enter DROP will have their retirement or DROP entrance benefit calculated on the salary that the member would have received had the member not been receiving workers' compensation benefits.

Savings Clause

Subject to **Contract Conditioned on Agreed Provisions**, 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, which the CITY and HPOPS shall oppose, as set forth herein, such remaining parts or portions of this Agreement shall remain in full force and effect at HPOPS sole election.

If any provision of this Agreement regarding contributions as set forth in **City Payment Schedule to HPOPS and Shortfall Financing** is not made, or is not enforceable, or suit cannot be brought due to sovereign immunity, including immunity against suit, the City contribution provisions of Article 6243g-4 shall apply and become enforceable to the full extent allowed by law.

Termination and Modification

The contractual provisions of this 2011 Meet and Confer Agreement shall remain in effect, absent mutual agreement of the parties, as provided below under **Duration**. To be valid or binding, any change, amendment, or modification of the terms or provisions herein must be in writing and signed by the Parties to be bound.

Additional Employer Contributions

To the extent allowed by law, the CITY may make and HPOPS agrees to accept certain additional pretax employer contributions on behalf of members who have separated from service from the CITY, made a retirement election with HPOPS, and still have accrued benefits from the CITY. For each such member identified above, the CITY shall indicate the member's DROP Account that shall receive these employer contributions.

Certification

By the signature of a representative of each of the Parties, except as expressly limited herein, the Parties certify that the persons who sign on their behalf have the express authority to bind the respective Party and that the authorization is in compliance with Article 6243g-4 § 27 and this Meet and Confer contract. The Parties further agree that this is an enforceable agreement contractually and under all applicable laws, common, statutory, and legislative, including but not limited to enforcement by writ of mandamus, and city ordinances; and nothing herein, however, waives HPOPS's right to claim that any Texas Legislature change, if any, passed over the CITY or HPOPS's objection, violates the Texas or United States Constitutions.

Termination of 2004 Prior Agreement

This Agreement supersedes and replaces the Agreement Between the Houston Police Officers' Pension System and the City of Houston, whose effective date was October 9, 2004, which is hereby terminated.

Authority

The CITY hereby acknowledges that it has no authority to bind HPOPS or affect beneficiaries' pension rights in any administrative, arbitration, or other legal proceeding. In addition, the CITY agrees to give notice to all parties and to HPOPS within 30 days of any such proceedings and within 30 days of any dispute potentially affecting any beneficiary's pension rights.

Duration

This Agreement shall be effective on the date executed by HPOPS or the Mayor of the CITY, whichever is later, and shall be codified by City Ordinance by June 30, 2011, and shall remain in full force and effect until June 30, 2023, unless earlier terminated, modified or changed by a new agreement between the Parties or by a lawful amendment to Article 6243g-4 or successor statute(s), enacted by the Texas Legislature, or terminated under **Contract Conditioned on Agreed Provisions**. Nothing herein is an admission by HPOPS that the Texas Legislature has the right to change this Agreement or Article 6243g-4. If neither party notifies the other party that it desires to end the Agreement at least ninety (90) days before June 30, 2023, this Agreement shall continue in effect for successive one (1) year terms until the earliest of:

- A. June 30, 2040;
- B. One of the Parties gives a termination notice to the other, at least ninety (90) days before the end of an extended one-year term; or
- C. The June 30th following the date on which it is determined HPOPS has reached a one hundred and ten percent (110%) funded level except those provisions dealing with active members hired or reemployed on or after October 9, 2004 will continue to be in full force and effect.

If HPOPS reaches 110% funding level, HPOPS and the CITY agree to commence negotiations in good faith under a Meet and Confer agreement to consider enhanced benefits for active members hired or reinstated after October 9, 2004.

Attorneys' Fees

In the event of any litigation between the Parties as a result of or arising out of this Agreement, the prevailing Party shall be entitled to recover all costs and expenses of such litigation, including reasonable attorney's fees, from the non-prevailing Party.

Time of Essence

Time is of the essence in this Agreement. However, if this Agreement requires any act to be

done or action to be taken on a date which is a Saturday, Sunday or legal holiday, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day which is not a Saturday, Sunday or legal holiday, and the successive periods shall be deemed extended accordingly.

Terminology and Incorporation of Exhibits by Reference

All exhibits to this Agreement are fully incorporated herein as though set forth at length herein.

“Include,” “includes,” and “including” as used in this Agreement shall be deemed to be followed by “, but not limited to,” whether or not they are in fact followed by such words or words of like import.

“Hereof,” “herein,” “hereunder,” and comparable terms refer, unless otherwise expressly indicated, to the entire Agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto.

EFFECTIVE DATE

The date this Agreement is signed by the Mayor of the City of Houston shall be the “Effective Date” of this Agreement. However, if required by State or City law, the provisions of the Sub-Agreement shall be June 30, 2011 unless the required signatures are not obtained by such date, giving HPOPS the right to terminate this Agreement or any of its provisions.

Houston Police Officers’ Pension System:

City of Houston, Texas:

J. Larry Doss, Chairman DATE

Annise Parker, Mayor DATE

COUNTERSIGNED:

City Controller DATE

ATTEST:

City Secretary DATE

APPROVED AS TO FORM:

City Attorney DATE

ACKNOWLEDGED AND ACCEPTED

FOR PURPOSES OF EXHIBIT "D":

Houston Police Chief

DATE

Exhibit A
Example of the Sliding Average Benefit Calculation

Sliding Average Benefit shall be calculated as follows:

1. Take the highest biweekly Pay received by a member for any single pay period in the last 26 pay periods in which the member worked full-time, considering only items of Pay that are included in each pay check.

Highest Pay Period = \$1800

2. Multiply by 26

\$1800 x 26 = \$46,800

3. Add the Pay for any subsequent pay period, considering only items of Pay that are included in each pay check.

\$46,800
Pay period 27: \$1,800
Pay period 28: \$2,000
Pay period 29: \$2,000
\$52,600

4. Add all Pay, excluding all items of the type included above received during the same last included biweekly pay periods.

Sum of averagable* pays for first 26 pay periods: \$5,000
Averagable pays for Pay period 27: \$44
Averagable pays for Pay period 28: \$400
Averagable pays for Pay period 29: \$120

$\$5,000 + \$44 + \$400 + \$120 = \$5,564$ (Sum of averagable pays for all applicable pay periods)

Sum of categories of Pay occurring in each paycheck and other averagable pays over the 29 pay periods.

\$52,600 + \$5,564 = \$58,164

5. Divide by the total number of pay periods included which gives the average pay per pay period

\$58,164 ÷ 29 = \$2,005.66 (Average bi-weekly pay)

6. Multiply this number by 26

$$\mathbf{\$2,006 \times 26 = \$52,147.16}$$

7. Divide by 12 to get the AMS (average monthly salary)
 $\mathbf{\$52,156 \div 12 = \$4,345.60}$ (Average Monthly Salary, AMS)
8. Multiply the AMS by the member's benefit percentage
 $\mathbf{\$4,345.60 \times 55\% = \$2,390.08}$ (Member's monthly benefit)

*As explained in Article 6243g-4 Section 2 (2) "Average Total Direct Pay" excluding Exempt Time Pay (ETP) and Strategic Officer's Staffing Pay (SOSP)

EXHIBIT B

LEGAL DESCRIPTION OF THE REAL PROPERTY

[To come]

EXHIBIT C

**CONVEYANCE OF UNDIVIDED INTEREST
(With Reconveyance Rights)**

THE STATE OF TEXAS §

COUNTY OF HARRIS §

THE CITY OF HOUSTON, TEXAS, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("City"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) paid to City, the receipt and sufficiency of which are hereby acknowledged, has, subject to the matters hereinafter set forth, GRANTED, ASSIGNED AND SET OVER and does hereby GRANT, ASSIGN AND SET OVER unto **HOUSTON POLICE OFFICERS' PENSION FUND**, acting pursuant to statutory authority under the provisions of Article 6234g-4 of the Revised Civil Statutes of Texas ("HPOPS"), whose address is _____, Houston, Texas _____, the following real property interest::

an undivided interest (the "Property Interest") in the tracts of land known as the Houston Police Department Headquarters located at 1200 Travis Street, Houston, Texas, and a parking garage located at 801 Polk Street, Houston, Texas, more particularly described on Exhibit "A" attached hereto (the "Real Property".)

This conveyance is made and accepted subject to all matters of record against the Real Property and all matters that a true and correct survey of the Real Property would show, to the extent such matters are valid and subsisting and affect the Real Property as of the date hereof (the "Permitted Encumbrances").

This conveyance is subject to the terms and provisions of that certain Sub-Agreement dated _____, 2011 (the "Agreement"), between City and HPOPS. The Agreement provides, among other matters, that City has, at its sole option and discretion, the right to purchase the Property Interest from HPOPS until the Real Property is sold to a third party.

TO HAVE AND TO HOLD the Property Interest, together with the rights, privileges and appurtenances thereto belonging, subject to the Permitted Encumbrances and other matters set forth herein, unto HPOPS and City binds itself and its representatives to warrant and forever defend the Property Interest, subject to the Permitted Encumbrances and other matters set forth herein, unto HPOPS, and its successors and assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof, by through or under City, but not otherwise.

City and HPOPS expressly agree that the Property Interest is being conveyed by City and accepted by HPOPS "**AS IS**" WITH ALL FAULTS OF ANY KIND,

INCLUDING ENVIRONMENTAL FAULTS (WHETHER ABOVE, WITHIN, ON OR UNDER THE REAL PROPERTY), AND CITY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE FITNESS, ENVIRONMENTAL COMPLIANCE, MERCHANTABILITY OR HABITABILITY OF THE REAL PROPERTY, EXCEPT THE WARRANTY OF TITLE SET FORTH HEREIN. CITY SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, AS TO THE STATE OF THE REAL PROPERTY, AND PERSONAL PROPERTY TO BE CONVEYED THEREWITH, ITS CONDITION, QUALITY, QUANTITY, CHARACTER, SIZE, DESCRIPTION OR SUITABILITY OR FITNESS FOR ANY USE OR PURPOSE, WHETHER EXISTING OR CONTEMPLATED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONVEYANCE.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the ____ day of _____, 2011.

CITY:

THE CITY OF HOUSTON, TEXAS

ATTEST:

Anna Russell
City Secretary

Annise D. Parker
Mayor of the City of Houston

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____, 2011, by Annise D. Parker, Mayor of **THE CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas, on behalf of said corporation.

Notary Public, State of Texas

(Notary Seal)

APPROVED AS TO FORM:

Gary W. Dzierlenga
Senior Assistant City Attorney

Exhibit A
Real Property