

**CITY OF EL PASO  
FIREMEN & POLICEMEN'S PENSION FUND  
PLAN DOCUMENT  
As Restated Effective July 1, 2007**

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**CITY OF EL PASO  
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As Restated Effective July 1, 2007**

**SECTION 1. NAME AND AUTHORITY.** The El Paso Firemen & Policemen's Pension Fund ("Pension Fund" or "the Fund") is established pursuant to Article 6243b, Vernon's Annotated Texas Statute (V.A.T.S.). The Board of Trustees of the Pension Fund shall have charge of and administer the Fund under Article 6243b, V.A.T.S. and Title 8, Subtitle A, of the Government Code, subject to Section 66, Article XVI of the Texas Constitution, and applicable state law. Modification of the terms and conditions of the Pension Fund shall be made by the Board of Trustees in accordance with Sections 10A and 14A of Article 6243b, V.A.T.S. (Amended August 15, 2007, Effective September 1, 2007)

**SECTION 2. RESTATEMENT AND EFFECTIVE DATE.** The Pension Fund was originally enacted under Chapter 101, Acts of the 43<sup>rd</sup> Legislature, 1<sup>st</sup> Called Session, 1933, subsequently modified from time to time, and is herein restated, effective July 1, 2007, in two parts: PART I, The Base Plan, and PART II, The Second-Tier Plan.

## **PART I: THE BASE PLAN**

**SECTION 3. DEFINITIONS.** The following words and phrases for the purposes herein are defined as follows, where the masculine gender shall include the feminine, and the singular shall include the plural:

**3.01** "Administrator" means the Executive Director of the Pension Fund or that person otherwise delegated by the Board of Trustees as responsible for the administration of the Fund.

**3.02** "Appointed Position" shall be any position to which a Member is permanently appointed without having qualified under a competitive civil service examination.

**3.03** "Back DROP Benefit Computation Date" means the starting date elected by a Member for purposes of calculating retirement benefits under the Back Deferred Retirement Option Program ("Back DROP"), described under Section 8.

**3.04** "Beneficiary" or "Beneficiaries" means a person, other than the Member or Retiree, who is eligible to receive a benefit from the Pension Fund pursuant to Section 12.

**3.05** "Board of Trustees" or "Board" means the Board of Trustees of the Firemen and Policemen's Pension Fund, El Paso, Texas, as provided under Section 1 of Article 6243b, V.A.T.S.

**3.06** "City" means the City of El Paso, Texas.

**3.07** "Code" means the federal Internal Revenue Code of 1986, as amended.

**3.08** "Credited Service" means what is described at sub-section 6.01.

**3.09** "Final Wages" means the greater of: (i) the highest regular monthly Wage, excluding overtime pay and lump-sum payments for accrued vacation and/or accrued sick leave, on which a Member made contributions to the Pension Fund within that twelve (12) month period preceding the earlier of June 30, 2007, or the Final Wages

Determination Date, provided the Member has six (6) months in his then permanent current rank (except for Disability Pensions under Section 11 and Death Benefits under Section 12), or otherwise meets the requirements of an Appointed Position as described under Section 17, and the Member has made contributions on such Wage in effect for not less than thirty (30) days, or (ii) the average of the regular monthly Wages, excluding overtime pay and lump-sum payments for accrued vacation and/or accrued sick leave, on which a Member made contributions to the Pension Fund during the consecutive thirty-six (36) month period preceding the Final Wages Determination Date that produces the highest average.

a. "Wage" or "Wages" means the Salary (including any workers' compensation periodic payments received in lieu of Salary by a Member on leave of absence with pay), plus incentive, plus overtime and lump-sum payments for accrued vacation and accrued sick leave, received by a Member from the City for personal services rendered as a fireman or policeman, but shall not include any allowance for clothing, equipment or travel expense.

b. "Salary" means base pay plus longevity pay received by a Member from the City for personal services rendered as a fireman or policeman, excluding all other forms of compensation.

c. For purposes of "Final Wages" as defined under sub-section 3.09(i) hereinabove, for a Member who has been contributing to the Pension Fund for less than thirty (30) days or for less than thirty (30) days after a re-employment to which sub-section 9.01 applies, his then current Wages, excluding overtime pay and lump-sum payments for accrued vacation and/or accrued sick leave, shall be used for purposes of determining the amount of his Pension under Section 7, Disability Pension under sub-sections 11.01 and 11.02, Death Benefit provided under paragraph 12.01.c and Pension

calculated in accordance with sub-section 9.01. For purposes of "Final Wages" as defined under sub-section 3.09(ii), for a Member who has been contributing for less than thirty-six (36) months or for less than thirty-six (36) months after a re-employment to which sub-section 9.01 applies, the sum of his regular monthly Wages, excluding overtime pay and lump-sum payments for accrued vacation and/or accrued sick leave, during his period of Credited Service, divided by his Credited Service excluding Credited Service earned for accrued vacation and/or sick leave, shall be used for purposes of determining the amount of his Pension under Section 7, Disability pension under sub-sections 11.01 and 11.02, Death Benefit provided under paragraph 12.01.c and Pension calculated in accordance with sub-section 9.01. (Amended October 17, 2007, Effective July 1, 2007)

**3.10** "Final Wages Determination Date" means the earlier of a Member's Retirement or Back DROP Computation Date, if any.

**3.11** "Fund" or "Pension Fund" means the El Paso Firemen & Policemen's Pension Fund.

**3.12** "Fund Division" or "Division" means the Firemen's Division and/or Policemen's Division of the Pension Fund.

**3.13** "Lump-Sum Accumulation Period" means the number of months, not to exceed thirty-six (36) nor less than six (6), that a Member elects to have deducted from Credited Service for purposes of determining the lump-sum amount under the Back DROP, representing the difference in months between a Member's actual date of Retirement and the Back DROP Benefit Computation Date.

**3.14** "Member" means a duly appointed and enrolled fireman or policeman in the Fire or Police Departments of the City who first contributed to a Fund Division on or prior to June 30, 2007.

**3.15** "Pension" means an annuity payable monthly from a Fund Division to a Retiree or Beneficiary.

**3.16** "Pension Commencement Date" means what is described at sub-section 13.03.

**3.17** "Plan Year" for the Fund means the twelve (12) month period ending December 31<sup>st</sup>.

**3.18** "Qualified Child" or "Qualified Children" means the surviving unmarried dependent child or children of a Member or Retiree (a) under the age of nineteen (19); or (b) if over the age of nineteen (19), and under the age of twenty-three (23), then a full-time student at an accredited secondary university, technical or trade school approved by the Board; or (c) regardless of age, deemed physically disabled and non-self supporting by the Board of Trustees or declared mentally incompetent by a court of competent jurisdiction for as long as such incompetence or disability exists. For purposes of this sub-section "dependent" means a child who is less than fifty percent (50%) self-supporting. Notwithstanding these criteria, in no case shall "non-self-supporting" be construed to include persons over the age of nineteen (19) and disabled by excessive use of drugs or alcohol as determined by the Board of Trustees.

**3.19** "Qualified Spouse" means the unmarried widow (or widower) of a deceased Member or Retiree who (a) was married to the deceased Member before his or her retirement; or, (b) if married after the Member's retirement, the unmarried widow (or widower) of a deceased Retiree shall have been married to the Retiree at least two (2) years prior to his death.

**3.20** "Regular Interest" means such rates of interest per annum, compounded annually as the Board shall establish.

**3.21** "Retiree" means a Member who leaves the employ of the City Fire or Police Department and is receiving a Pension payable from the Pension Fund.

**3.22** "Retirement" means a Member's termination of employment from the City Fire or Police Department and is entitled to a Pension from the Fund.

**3.23** "Service-Connected Death" means a Member's death which is the natural and proximate result of an occurrence while in the line of duty at some definite time and place determined by the Board to be in the line of duty and not caused by the willful negligence of the Member.

**3.24** "Vesting Service" means what is described at sub-section 6.02.

**SECTION 4. MEMBER ELIGIBILITY.** Any person duly appointed and enrolled as a fireman or policeman in the Fire or Police Departments of the City shall automatically become a Member of the Pension Fund, provided such person shall have attained eighteen (18) years of age.

**SECTION 5. CONTRIBUTIONS.**

**5.01** Member Contributions. Each Member shall contribute to the Pension Fund by automatic payroll deduction, subject to employer pick-up pursuant to Code Section 414(h)(2), at the following current rates:

a. If a Member of the City Police Department, 13.89% of Wages.

b. If a Member of the City Fire Department, 15.28% of Wages.

If for any reason the full amount of the Member's contribution is not received by the Pension Fund, such deficiency shall be deemed payable by the Member to the Pension Fund forthwith by payroll deduction or otherwise, upon demand and without additional notice by the Fund.

**5.02** City Contributions. The City shall annually contribute to the Pension Fund for the Plan Year that actuarially determined amount subject to the original requirements of Section 14A of Article 6243b, V.A.T.S. (Amended August 15, 2007, Effective September 1, 2007)

**5.03** Contributions Upon Leave of Absence. A former Member on a leave of absence, approved pursuant to the Civil Service Rules and Regulations of the City, may elect to make contributions to the Pension Fund, on such terms and conditions as the Board may require, equal to those amounts provided under sub-sections 5.01 and 5.02 above, plus Regular Interest thereon.

**5.04** Contributions in Repayment of Refunds. A Member re-employed by the Fire or Police Departments of the City may elect to repurchase that Credited Service, or portion thereof, previously forfeited by the Member pursuant to sub-section 10.02, by contributing to the Pension Fund, in one cash payment and on such additional terms and conditions as the Board may require, an amount equal to the Member's refunded contribution, or an amount proportionate to that part of Credited Service being re-purchased, plus Regular Interest thereon.

## **SECTION 6. SERVICE.**

**6.01** Credited Service shall mean that period of time during which a Member contributes to a Fund Division, including the period for which a member receives lump-sum payments for accrued vacation and sick leave, calculated in years and nearest months, with twelve (12) or more days being rounded up to the next month, not to exceed in the aggregate twenty-eight (28) years for any period of employment or re-employment, subject to the forfeiture provisions of Section 10. (Amended July 16, 2008, Effective July 1, 2007)

**6.02** Vesting Service shall mean a Member's Credited Service in either or both Fund Division(s), plus any qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code, and any service required to be recognized under the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code. (Police-Amended June 20, 2007, Effective July 1, 2007/Fire-Amended July 18, 2007, Effective July 1, 2007)

## **SECTION 7. SERVICE RETIREMENT BENEFIT.**

**7.01** Pension Upon Member Retirement With at Least 20 Years of Vesting Service and at Least Age 45. Upon the completion of twenty (20) or more years of Vesting Service and attainment of age forty-five (45) or more, a former Member shall receive a Pension equal to two and three-quarters (2.75%) percent multiplied by Credited Service, less the Lump-Sum Accumulation Period, if any, elected by the Member under Section 8, multiplied by Final Wages.

**7.02** Pension Upon Member Retirement With at Least 20 Years of Vesting Service and Less Than Age 45. Upon completion of twenty (20) or more years of Vesting Service, but not having attained the age of forty-five (45), a former Member may receive a Pension equal to that amount derived by applying that factor stated as applicable to the Member's age at Retirement pursuant to Column A below, multiplied by two and three-quarters (2.75%) percent, multiplied by Credited Service, multiplied by Final Wages.

In determining the amount to be paid a Retiree under this sub-section, "Attained Age" per the below shall mean the Retiree's age in years and completed months as of the date his Pension commences.

REDUCTION FACTORS FOR AGES LESS THAN FORTY-FIVE

<u>ATTAINED AGE</u>			<u>ATTAINED AGE</u>		
<u>YEARS</u>	<u>MONTHS</u>	<u>COLUMN A FACTOR</u>	<u>YEARS</u>	<u>MONTHS</u>	<u>COLUMN A FACTOR</u>
45	0	1.0000	41	6	.8100
			41	5	.8050
44	11	.9958	41	4	.8000
44	10	.9917	41	3	.7950
44	9	.9875	41	2	.7900
44	8	.9833	41	1	.7850
44	7	.9792	41	0	.7800
44	6	.9750			
44	5	.9708	40	11	.7742
44	4	.9667	40	10	.7683
44	3	.9625	40	9	.7625
44	2	.9583	40	8	.7567
44	1	.9542	40	7	.7508
44	0	.9500	40	6	.7450
			40	5	.7392
43	11	.9458	40	4	.7333
43	10	.9417	40	3	.7275
43	9	.9375	40	2	.7217
43	8	.9333	40	1	.7158
43	7	.9292	40	0	.7100
43	6	.9250			
43	5	.9208	39	11	.7033
43	4	.9167	39	10	.6967
43	3	.9125	39	9	.6900
43	2	.9083	39	8	.6833
43	1	.9042	39	7	.6767
43	0	.9000	39	6	.6700
			39	5	.6633
42	11	.8950	39	4	.6567
42	10	.8900	39	3	.6500
42	9	.8850	39	2	.6433
42	8	.8800	39	1	.6367
42	7	.8750	39	0	.6300
42	6	.8700			
42	5	.8650	38	11	.6233
42	4	.8600	38	10	.6167
42	3	.8550	38	9	.6100
42	2	.8500	38	8	.6033
42	1	.8450	38	7	.5967
42	0	.8400	38	6	.5900
			38	5	.5833
41	11	.8350	38	4	.5767
41	10	.8300	38	3	.5700
41	9	.8250	38	2	.5633
41	8	.8200	38	1	.5567
41	7	.8150	38	0	.5500

**7.03** Pension Upon Member Retirement With at Least 10 Years of Vesting Service. Upon completion of ten (10) but less than twenty (20) years of Vesting Service, and attainment of age fifty (50) or more, a former Member shall receive a Pension equal to two and three-quarters (2.75%) percent, multiplied by Credited Service, multiplied by Final Wages.

**SECTION 8. BACK DEFERRED RETIREMENT OPTION PROGRAM.**

**8.01** Eligibility to Participate. Members who are at least fifty (50) years of age, and have in excess of twenty and one-half (20½) years of Credited Service, are eligible to participate in the Back DROP. A Member may elect a Lump-Sum Accumulation Period for a minimum of six (6) months and for not more than thirty-six (36) months, provided the Member shall have at least twenty (20) years of Credited Service remaining for purposes of eligibility for a Service Retirement Benefit under sub-section 7.01. A Member may elect to retire and receive a one-time lump sum distribution under the Back DROP in addition to that pension to which the Member shall be entitled under sub-section 7.01. The lump sum amount shall be equal to the Member's monthly service retirement benefit calculated under sub-section 7.01 as of the Back DROP Benefit Computation Date, multiplied by the Lump-Sum Accumulation Period.

A Member's election to participate in the Back DROP is irrevocable and shall be made under such terms and in accordance with such rules and processes as the Board in its reasonable discretion may require.

**8.02** Reservation of Program Suspension. If unanticipated actuarial costs occur as deemed by the Fund's actuary, the Board reserves the discretionary authority to take whatever measures it deems necessary to mitigate any such unanticipated costs, including but not limited to, not accepting additional elections of Members to participate in the

Back DROP. However, the Board of Trustees shall continue to administer the Back DROP for those Members and Retirees who have previously filed an election with the Administrator.

**SECTION 9. RE-EMPLOYMENT OF A RETIREE.**

**9.01** Upon Re-Employment by Same Fund Division. If a Retiree is re-employed by the City as a Member of a Fund Division from which he is receiving a Pension, the Retiree's Pension shall be suspended as of the date of such re-employment. Upon subsequent retirement of the former Retiree, he shall receive from said Fund Division a Pension that is the sum of:

- a. The Pension the Retiree was receiving prior to the re-employment, and
- b. A Pension calculated under sub-sections 7.01, 7.02 or 7.03, but only taking into account that Credited Service and Wages earned during the period of his re-employment.

**9.02** Upon Employment by Other Fund Division. If a Retiree is employed by the City as a Member of a Fund Division from which he is not receiving a Pension, he shall continue to receive a Pension from that first Division under which he is a Retiree, and commence to earn Credited Service and Vesting Service as a new Member of that second, other Division.

**SECTION 10. REFUND OF CONTRIBUTIONS.**

**10.01** Former Members With Less than Five Years Vesting Service. A former Member with less than five (5) years of Vesting Service shall not be entitled to a Pension or return of those amounts contributed pursuant to sub-sections 5.01 or 5.02.

**10.02** Former Members With Five or More Years Vesting Service. A former Member with five (5) or more years of Vesting Service may be refunded the amount previously contributed to the Pension Fund pursuant to sub-section 5.01, without interest, upon written application to the Administrator, and shall thereupon forfeit all years of Credited Service.

**10.03** Restoration of Forfeited Credited Service. A former Member who is not entitled to receive a refund of contributions pursuant to sub-section 10.01, and is subsequently re-employed by the City as a fireman or policeman, shall again become a member. Such Member shall have restored that previously Credited Service and Contributions forfeited. A former Member who had received a refund of contributions pursuant to above sub-section 10.02, and is subsequently re-employed by the City as a fireman or policeman, shall again become a Member. Such Member shall have the option of having restored that Credited Service forfeited pursuant to sub-section 10.02 proportionate to the Member's full or partial repayment of contributions pursuant to sub-section 5.04. A Member may only once purchase such forfeited Credited Service, or portion thereof, and then only in the form of a single cash payment.

## **SECTION 11. DISABILITY PENSION.**

**11.01** Service-Connected Disability. If a Member upon written application is determined by a majority of the Board to be permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty as a fireman or policeman, whichever is applicable, he shall receive a disability Pension equal to the greater of the amount calculated under sub-section 7.01, regardless of age and service, or fifty (50%) percent of the Member's Final Wages.

**11.02 Ordinary Disability.** If a Member upon written application is determined by a majority of the Board to be permanently disabled, not by the Member's own wrongful conduct, as to incapacitate him from the performance of duty as a fireman or policeman, whichever is applicable, he shall receive a disability Pension equal to the greater of the amount calculated under sub-section 7.01, regardless of age and service, or fifty (50%) percent of the Member's Final Wages.

**11.03 Disability Re-evaluation and Recall.** Pursuant to Section 12 of Article 6243b V.A.T.S., the Board in its discretion may cause a Member or Retiree who has less than twenty (20) years of Credited Service to undergo a medical examination to determine his continued eligibility for a disability Pension under this section.

## **SECTION 12. DEATH BENEFITS.**

### **12.01 Upon Death of a Retiree or Member.**

a. Upon the death of a Retiree receiving a Pension under sub-sections 7.01 or 7.02, or Section 11, the death benefit shall equal one hundred (100%) percent of the amount of Pension of such Retiree.

b. Upon the Service Connected Death or other death of a Member having completed twenty (20) years of Vesting Service, the death benefit shall equal the greater of the amount calculated under sub-sections 7.01 or 7.02, whichever is applicable, or fifty (50%) percent of such Member's Final Wages.

c. Upon the Service Connected Death or other death of a Member having completed less than twenty (20) years of Vesting Service, the death benefit shall equal the greater of fifty (50%) percent of such Member's Final Wages, or two and three-quarters (2.75%) percent multiplied by Credited Service, multiplied by Final Wages,

multiplied by the Reduction Factors for Ages Less Than Forty-Five described in sub-section 7.02 using the Member's Attained Age at death.

d. For those death benefits provided under this sub-section 12.01 –

i. if the only Beneficiary is a Qualified Spouse, he or she shall receive one hundred (100%) percent of the death benefit provided under this sub-section;

ii. if the only Beneficiary or Beneficiaries is/are a Qualified Child or Qualified Children, he, she or they shall receive two-thirds ( $2/3$ ) of the death benefit herein to be divided equally among the Qualified Children; or

iii. if the Beneficiaries are a Qualified Spouse and a Qualified Child or Qualified Children, the Qualified Spouse shall receive two-thirds ( $2/3$ ) of the death benefit, and the Qualified Child or Qualified Children shall receive one-third ( $1/3$ ) of the death benefit herein to be divided equally among the Qualified Children.

In the event the death benefits paid herein to a Qualified Child or Qualified Children are found by the Board as not being used for the sole benefit of the Qualified Child or Qualified Children, the Board may order such benefits to be paid on their behalf in any manner as may be provided in equity or by law.

**12.02 Upon Death of a Former Member and Other Retirees.**

a. Upon the death of a former Member having completed ten (10) years but less than twenty (20) years of Vesting Service, or upon the death of a Retiree receiving a Pension under sub-section 7.03, the death benefit shall equal two-thirds ( $2/3$ ) of the amount of Pension calculated under sub-section 7.03 payable immediately to the Beneficiary of a Retiree, or to the Beneficiary of a former Member upon such time as the former Member would have attained age fifty (50).

b. For those death benefits payable under this sub-section 12.02 –

i. if the only Beneficiary is a Qualified Spouse, he or she shall receive

one hundred (100%) percent of the death benefit provided under this sub-section but not to exceed one-third (1/3) of the Member's Final Wages;

ii. if the only Beneficiary or Beneficiaries is/are a Qualified Child or Qualified Children, he, she or they shall receive one hundred (100%) percent of the death benefit herein but not to exceed one-third (1/3) of the Member's Final Wages, to be divided equally among the Qualified Children; or

iii. if the Beneficiaries are a Qualified Spouse and a Qualified Child or Qualified Children, the Qualified Spouse shall receive one hundred (100%) percent of the death benefit, and the Qualified Child or Qualified Children shall receive fifty (50%) percent of the death benefit herein to be divided equally among the Qualified Children, provided such amount shall not exceed one-half (1/2) of the Member's Final Wages.

In the event the death benefits paid herein to a Qualified Child or Qualified Children are found by the Board as not being used for the sole benefit of the Qualified Child or Qualified Children, the Board may order such benefits to be paid on their behalf in any manner as may be provided in equity or by law.

**12.03 Other Member Death Benefits.** A Beneficiary who is not a Qualified Spouse or a Qualified Child of a deceased Member with five (5) or more years of Vesting Service shall receive a death benefit in a single cash payment in an amount equal to the Member's contributions made under sub-section 5.01, without interest.

**12.04 Additional Death Benefits.**

a. Upon the death of a Retiree whose Beneficiaries are not receiving a Pension under sub-sections 12.01 or 12.02, his Beneficiary or Beneficiaries shall receive a refund of the Retiree's contributions made under sub-section 5.01, without interest, reduced by the sum of the Pension received by the Retiree under Section 7 or Section 11,

as modified by Section 8 and Section 13, and any Pension received by a Qualified Spouse and/or Qualified Children under sub-sections 12.01 or 12.02.

b. In the event a deceased Member, not survived by a spouse or child, dies from injuries received or disease contracted while in the line of duty, and is survived by a father, mother, brother or sister wholly dependent upon the Member, such Beneficiary shall receive that death benefit provided under Section 10 of Article 6243b, V.A.T.S.

### **SECTION 13. COST OF LIVING ADJUSTMENT.**

**13.01** For Firemen. Each Retiree or Beneficiary receiving a Pension under Section 11, or sub-sections 7.01, 7.02 or 12.01, shall receive a cost of living adjustment (COLA) as follows:

a. Upon the earlier of the Retiree or former Member having or would have attained age sixty (60), or the fifth (5<sup>th</sup>) anniversary of the Pension Commencement Date, the Retiree or Beneficiary shall receive a three (3%) percent increase of such Pension; and

b. On each January 1<sup>st</sup> following the effective date of the above Pension adjustment, the Retiree or Beneficiary shall receive a periodic three (3%) percent increase of such Pension.

**13.02** For Policemen. Each Retiree or Beneficiary receiving a Pension under Section 11, or sub-sections 7.01, 7.02 or 12.01, shall receive a cost of living adjustment (COLA) as follows:

a. Upon the earlier of the Retiree or former Member having or would have attained age sixty (60), or the second (2<sup>nd</sup>) anniversary of the Pension Commencement Date, the Retiree or Beneficiary shall receive a three (3%) percent increase of such Pension; and

b. On each January 1<sup>st</sup> following the effective date of the above Pension adjustment, the Retiree or Beneficiary shall receive a periodic three (3%) percent increase of such pension.

**13.03 Pension Commencement Date.** For purposes of this Section 13, and for Section 11, sub-sections 7.01 and 7.02 and paragraph 12.01.a, "Pension Commencement Date" shall mean the first day of the period for which the initial Pension payment is made to the Retiree; and for paragraphs 12.01.b and c, the first day of the period for which the initial Pension payment is made to the Beneficiary. However, should a Retiree be re-employed under sub-section 9.01, the "Pension Commencement Date" shall mean the first day of the subsequent period for which a Pension payment is made to the Retiree.

**SECTION 14. MILITARY SERVICE CREDIT.** In the event a Member terminates his employment with the City as a fireman or policeman for the purpose of entering directly into the armed forces of the United States or other "qualified military service" within the meaning of section 414(u)(5) of the Code, he shall be entitled to:

a. Vesting Service for the period of such qualified military service provided he again becomes re-employed by the City as a fireman or policeman within one year of termination of such qualified military service, unless he is prevented from such re-employment by virtue of disability incurred during the period of such qualified military service; and

b. Credited Service for the period of such qualified military service provided he again becomes re-employed by the City as a fireman or policeman within one year of termination of such qualified military service, unless he is prevented from such re-employment by virtue of disability incurred during the period of such qualified military service, and further provided, that he elects to make, and makes within a period of time

equal to three (3) times the length of time of such service, but not more than five (5) years, the amount of those contributions under subsection 5.01 he would have been required to make during the period of such qualified military service. Credited Service purchased under this section shall be based on the Member's Salary, plus incentive pay(s), as increased during the period of such qualified military service.

**SECTION 15. SUICIDE OF A MEMBER.** No benefits shall be paid to any Beneficiary of a Member otherwise entitled to receive a benefit from the Pension Fund if that Member has less than two (2) years of Credited Service and commits suicide.

**SECTION 16. MINIMUM PENSION.**

**16.01** For Firemen. No Retiree or Qualified Spouse shall receive a Pension of less than four hundred dollars (\$400.00). However, the Minimum Pension shall not apply to a Retiree or Qualified Spouse whose total Pensions from either or both Fund Division(s), plus any benefit awarded as a result of service required to be recognized under the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code, exceeds four hundred dollars (\$400.00). (Amended October 17, 2007, Effective July 1, 2007)

**16.02** For Policemen. No Retiree or Qualified Spouse shall receive a Pension of less than five hundred dollars (\$500.00). However, the Minimum Pension shall not apply to a Retiree or Qualified Spouse whose total Pensions from either or both Fund Division(s), plus any benefit awarded as a result of service required to be recognized under the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code, exceeds five hundred dollars (\$500.00). (Amended October 17, 2007, Effective July 1, 2007)

**SECTION 17. APPOINTED POSITIONS.**

**17.01** Eligible Member. For purposes of sub-section 3.09(i), the Final Wages of a Member who serves or has served in an Appointed Position shall be the Wages of the Appointed Position, provided that the Member has served in such Appointed Position in the twelve (12) month period preceding the Final Wages Determination Date, and:

a. Such Member, having permanently held the rank or position immediately below the Appointed Position, has Credited Service in the higher Appointed Position at least six (6) months and has combined Credited Service in both positions totaling at least two and one-half (2½) years preceding the Final Wages Determination Date; or

b. Such Member, having been appointed from a rank or position not immediately below the Appointed Position, has Credited Service in the higher Appointed Position of at least four (4) years preceding the Final Wages Determination Date.

**17.02** Ineligible Member. For purposes of sub-section 3.09(i), if a Member in an Appointed Position is not eligible for Retirement at the Wage rate for the Appointed Position then the Member's Final Wages shall be based upon the Wage rate of the rank from which the Member was appointed, or that Wage rate he would have attained while the Member was in the Appointed Position, but which shall exclude overtime pay.

**SECTION 18. STATUTORY ELECTIONS.**

**18.01** Application of Proportionate Retirement Program Under Chapter 803 of Title 8, Subtitle A, of the Government Code. The Board of Trustees of the Pension Fund has elected to adopt the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code, effective September 1, 2000.

**18.02** Application of Chapter 804 of Title 8, Subtitle A, of the Government Code. The Board of Trustees of the Pension Fund has elected to adopt Chapter 804 of Title 8,

Subtitle A, of the Government Code, relating to domestic relations orders and spousal consent, effective August 26, 1991; and further elected to adopt Section 804.004 of Chapter A thereof, relating to lump sum payment in lieu of benefits awarded by qualified domestic relations orders, effective October 20, 2004.

**SECTION 19. ASSIGNMENT AND ALIENATION OF BENEFITS.** No right or claim to, or interest in, any part of the Pension Fund, or any payment from the Fund, shall be assignable, transferable, or subject to sale, mortgage, pledge, hypothecation, commutation, anticipation, garnishment, attachment, execution, or levy of any kind. Neither the Board of Trustees nor the Administrator shall recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, commute, or anticipate the same, except to the extent required by law. Notwithstanding the foregoing, pursuant to subsection 18.02 above, the Pension Fund may pay to an alternate beneficiary, in lieu of that interest awarded under a qualified domestic relations order pursuant to Chapter 804 of Title 8, Subtitle A, of the Government Code, a lump sum benefit otherwise payable from the Pension Fund to a Member, Retiree or Beneficiary.

**SECTION 20. BOARD OF TRUSTEES.**

**20.01** Administration of Pension Fund. The administration and charge of the Pension Fund is fully and exclusively vested in its Board of Trustees, which shall have the full power to appoint, employ and compensate as a charge upon the assets of the Pension Fund such employees, custodians, brokers, consultants, investment managers, actuaries, attorneys and other professional advisors as it may deem necessary. The assets of the Pension Fund shall be segregated in a separate Firemen's Division and a Policemen's Division pursuant to Sections 16 and 17 of Article 6243b, V.A.T.S.

**20.02 Board Composition.** The Board shall be comprised of eleven (11) trustees as follows: Three (3) citizens of the City to be appointed by its mayor; two (2) citizens of the City to be appointed by its city manager; three (3) Member firemen of the City Fire Department, to be elected by the firemen Members of the Fund; and three (3) Member policemen of the City Police Department, to be elected by the policemen Members of the Fund. (Amended August 15, 2007, Effective September 1, 2007)

**20.03 Term and Election of Board Trustees.** The five (5) citizen appointed members and the six (6) firemen and policemen elected members of the Board shall each serve for a term of four (4) years; however, one (1) of the citizen members appointed by the city manager shall be designated by the city manager to serve for an initial two (2) year term, commencing September 1, 2007. The Board of Trustees shall provide by rule for election by secret ballot of its six (6) firemen and policemen members. (Amended August 15, 2007, Effective September 1, 2007)

**20.04 Rules, Regulations and Bylaws.** The Board shall establish such rules, regulations and bylaws as it deems necessary for the proper administration of the Pension Fund.

**20.05 Fiduciary Responsibility of the Board.** In making and supervising investments of the Pension Fund, the Board of Trustees shall discharge its duties solely in the interest of the Members and Beneficiaries for the exclusive purposes of providing benefits to the Members and Beneficiaries, and defraying reasonable expenses of administering the Pension Fund: (a) with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person action in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims; (b) by diversifying the investments of the Pension Fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (c) in

accordance with the documents and instruments governing the Pension Fund to the extent such are consistent with applicable statute.

**20.06 Indemnification of Board Members.** No member of the Board of Trustees shall be held liable for the acts or omissions of an investment manager appointed under Section 802.204 of Chapter 802 of Title 8, Subtitle A, of the Government Code, nor is a Board member obligated to invest or otherwise manage any asset of the Pension Fund subject to management by such appointed investment manager. The Board of Trustees may purchase fiduciary responsibility insurance on behalf of the members of the Board and employees of the Pension Fund for liability imposed as damages, costs and expenses incurred in connection with his or their action as a fiduciary of the Fund. The Board of Trustees may otherwise indemnify members of the Board and employees of the Pension Fund for such liability for damages, and for reasonable costs and expenses incurred in defense of any alleged act, error or omission committed in his or their fiduciary or co-fiduciary capacity, provided, such indemnification by the Pension Fund is approved by a majority of the Board of Trustees subject to the requirements of Section 1 of Article 6243b, V.A.T.S.

**SECTION 21. AMENDMENT.** The Board of Trustees, by majority vote of the whole Board, may modify and amend the terms and conditions of the Pension Fund herein, provided such change shall apply to the Members of a Division of the Pension Fund only if approved by a majority of the Members of such Division, and further satisfies all the requirements of Section 10A of Article 6243b, V.A.T.S.

## **PART II: THE SECOND-TIER PLAN**

**SECTION 3. DEFINITIONS.** The following words and phrases for the purposes herein are defined as follows, where the masculine gender shall include the feminine, and the singular shall include the plural:

**3.01** "Administrator" means the Executive Director of the Pension Fund or that person otherwise delegated by the Board of Trustees as responsible for the administration of the Fund.

**3.02** [Intentionally Left Blank].

**3.03** "Back DROP Benefit Computation Date" means the starting date elected by a Member for purposes of calculating retirement benefits under the Back Deferred Retirement Option Program ("Back DROP"), described under Section 8.

**3.04** "Beneficiary" or "Beneficiaries" means a person, other than the Member or Retiree, who is eligible to receive a benefit from the Pension Fund pursuant to Section 12.

**3.05** "Board of Trustees" or "Board" means the Board of Trustees of the Firemen and Policemen's Pension Fund, El Paso, Texas, as provided under Section 1 of Article 6243b, V.A.T.S.

**3.06** "City" means the City of El Paso, Texas.

**3.07** "Code" means the federal Internal Revenue Code of 1986, as amended.

**3.08** "Credited Service" means what is described at sub-section 6.01.

**3.09** "Final Wages" means the average of the regular monthly Wages, excluding overtime pay and lump-sum payments for accrued vacation and/or accrued sick leave, on which a Member made contributions to the Pension Fund during the consecutive thirty-six (36) month period preceding the Final Wages Determination Date that produces the highest average.

a. "Wage" or "Wages" means the Salary (including any workers' compensation periodic payments received in lieu of Salary by a Member on leave of absence with pay), plus incentive, plus overtime and lump-sum payments for accrued vacation and accrued sick leave, received by a Member from the City for personal services rendered as a fireman or policeman, but shall not include any allowance for clothing, equipment or travel expense.

b. "Salary" means base pay plus longevity pay received by a Member from the City for personal services rendered as a fireman or policeman, excluding all other forms of compensation.

c. For purposes of "Final Wages" as defined under sub-section 3.09 hereinabove, for a Member who has been contributing for less than thirty-six (36) months or for less than thirty-six (36) months after a re-employment to which sub-section 9.01 applies, the sum of his regular monthly Wages, excluding overtime pay and lump-sum payments for accrued vacation and/or accrued sick leave, during his period of Credited Service, divided by his Credited Service excluding Credited Service earned for accrued vacation and/or sick leave, shall be used for purposes of determining the amount of his Pension under Section 7, Disability pension under sub-sections 11.01 and 11.02, Death Benefit provided under paragraph 12.01.c and Pension calculated in accordance with sub-section 9.01. (Amended October 17, 2007, Effective July 1, 2007)

**3.10** "Final Wages Determination Date" means the earlier of a Member's Retirement or Back DROP Computation Date, if any.

**3.11** "Fund" or "Pension Fund" means the El Paso Firemen & Policemen's Pension Fund.

**3.12** "Fund Division" or "Division" means the Firemen's Division and/or Policemen's Division of the Pension Fund.

**3.13** "Lump-Sum Accumulation Period" means the number of months, not to exceed thirty-six (36) nor less than six (6), that a Member elects to have deducted from Credited Service for purposes of determining the lump-sum amount under the Back DROP, representing the difference in months between a Member's actual date of Retirement and the Back DROP Benefit Computation Date.

**3.14** "Member" means a duly appointed and enrolled fireman or policeman in the Fire or Police Departments of the City who first contributes to a Fund Division on or after July 1, 2007.

**3.15** "Pension" means an annuity payable monthly from a Fund Division to a Retiree or Beneficiary.

**3.16** "Pension Commencement Date" means what is described at sub-section 13.03.

**3.17** "Plan Year" for the Fund means the twelve (12) month period ending December 31<sup>st</sup>.

**3.18** "Qualified Child" or "Qualified Children" means the surviving unmarried dependent child or children of a Member or Retiree (a) under the age of nineteen (19); or (b) if over the age of nineteen (19), and under the age of twenty-three (23), then a full-time student at an accredited secondary university, technical or trade school approved by the Board; or (c) regardless of age, deemed physically disabled and non-self supporting by the Board of Trustees or declared mentally incompetent by a court of competent jurisdiction for as long as such incompetence or disability exists. For purposes of this sub-section "dependent" means a child who is less than fifty percent (50%) self-supporting. Notwithstanding these criteria, in no case shall "non-self-supporting" be construed to include persons over the age of nineteen (19) and disabled by excessive use of drugs or alcohol as determined by the Board of Trustees.

**3.19** "Qualified Spouse" means the unmarried widow (or widower) of a deceased Member or Retiree who (a) was married to the deceased Member before his or her retirement; or, (b) if married after the Member's retirement, the unmarried widow (or widower) of a deceased Retiree shall have been married to the Retiree at least two (2) years prior to his death.

**3.20** "Regular Interest" means such rates of interest per annum, compounded annually as the Board shall establish.

**3.21** "Retiree" means a Member who leaves the employ of the City Fire or Police Department and is receiving a Pension payable from the Pension Fund.

**3.22** "Retirement" means a Member's termination of employment from the City Fire or Police Department and is entitled to a Pension from the Fund.

**3.23** "Service-Connected Death" means a Member's death which is the natural and proximate result of an occurrence while in the line of duty at some definite time and place determined by the Board to be in the line of duty and not caused by the willful negligence of the Member.

**3.24** "Vesting Service" means what is described at sub-section 6.02.

**SECTION 4. MEMBER ELIGIBILITY.** Any person duly appointed and enrolled as a fireman or policeman in the Fire or Police Departments of the City shall automatically become a Member of the Pension Fund, provided such person shall have attained eighteen (18) years of age.

## **SECTION 5. CONTRIBUTIONS.**

**5.01** Member Contributions. Each Member shall contribute to the Pension Fund by automatic payroll deduction, subject to employer pick-up pursuant to Code Section 414(h)(2), at the following current rates:

- a. If a Member of the City Police Department, 13.89% of Wages.
- b. If a Member of the City Fire Department, 15.28% of Wages.

If for any reason the full amount of the Member's contribution is not received by the Pension Fund, such deficiency shall be deemed payable by the Member to the Pension Fund forthwith by payroll deduction or otherwise, upon demand and without additional notice by the Fund.

**5.02** City Contributions. The City shall annually contribute to the Pension Fund for the Plan Year that actuarially determined amount subject to the original requirements of Section 14A of Article 6243b, V.A.T.S. (Amended August 15, 2007, Effective September 1, 2007)

**5.03** Contributions Upon Leave of Absence. A former Member on a leave of absence, approved pursuant to the Civil Service Rules and Regulations of the City, may elect to make contributions to the Pension Fund, on such terms and conditions as the Board may require, equal to those amounts provided under sub-sections 5.01 and 5.02 above, plus Regular Interest thereon.

**5.04** Contributions in Repayment of Refunds. A Member re-employed by the Fire or Police Departments of the City may elect to repurchase that Credited Service, or portion thereof, previously forfeited by the Member pursuant to sub-section 10.02, by contributing to the Pension Fund, in one cash payment and on such additional terms and conditions as the Board may require, an amount equal to the Member's refunded contribution, or an amount proportionate to that part of Credited Service being re-purchased, plus Regular Interest thereon.

**SECTION 6. SERVICE.**

**6.01** Credited Service shall mean that period of time during which a Member contributes to a Fund Division, including the period for which a member receives lump-sum payments for accrued vacation and sick leave, calculated in years and nearest months, with twelve (12) or more days being rounded up to the next month, subject to the forfeiture provisions of Section 10. (Amended July 16, 2008, Effective July 1, 2007)

**6.02** Vesting Service shall mean a Member's Credited Service in either or both Fund Division(s), plus any qualified military service within the meaning of Section 414(u)(5) of the Internal Revenue Code, and any service required to be recognized under the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code. (Police-Amended June 20, 2007, Effective July 1, 2007/Fire-Amended July 18, 2007, Effective July 1, 2007)

**SECTION 7. SERVICE RETIREMENT BENEFIT.**

**7.01** Pension Upon Member Retirement With at Least 25 Years of Vesting Service and at Least Age 50. Upon the completion of twenty-five (25) or more years of Vesting Service and attainment of age fifty (50) or more, a former Member shall receive a Pension equal to two and one-half (2.50%) percent multiplied by Credited Service, less the Lump-Sum Accumulation Period, if any, elected by the Member under Section 8, multiplied by Final Wages.

**7.02** [Intentionally Left Blank]

**7.03** Pension Upon Member Retirement With at Least 10 Years of Vesting Service. Upon completion of ten (10) but less than twenty-five (25) years of Vesting Service, and attainment of age fifty (50) or more, a former Member shall receive a

Pension equal to two and one-half (2.50%) percent, multiplied by Credited Service, multiplied by Final Wages.

## **SECTION 8. BACK DEFERRED RETIREMENT OPTION PROGRAM**

**8.01** Eligibility to Participate. Members who are at least fifty and one-half (50½) years of age, and have in excess of twenty-five and one-half (25½) years of Credited Service, are eligible to participate in the Back DROP. A Member may elect a Lump-Sum Accumulation Period for a minimum of six (6) months and for not more than thirty-six (36) months, provided the Member shall have at least twenty-five (25) years of Credited Service remaining for purposes of eligibility for a Service Retirement Benefit under sub-section 7.01. A Member may elect to retire and receive a one-time lump sum distribution under the Back DROP in addition to that pension to which the Member shall be entitled under sub-section 7.01. The lump sum amount shall be equal to the Member's monthly service retirement benefit calculated under sub-section 7.01 as of the Back DROP Benefit Computation Date, multiplied by the Lump-Sum Accumulation Period.

A Member's election to participate in the Back DROP is irrevocable and shall be made under such terms and in accordance with such rules and processes as the Board in its reasonable discretion may require.

**8.02** Reservation of Program Suspension. If unanticipated actuarial costs occur as deemed by the Fund's actuary, the Board reserves the discretionary authority to take whatever measures it deems necessary to mitigate any such unanticipated costs, including but not limited to, not accepting additional elections of Members to participate in the Back DROP. However, the Board of Trustees shall continue to administer the Back DROP for those Members and Retirees who have previously filed an election with the Administrator.

**SECTION 9. RE-EMPLOYMENT OF A RETIREE.**

**9.01** Upon Re-Employment by Same Fund Division. If a Retiree is re-employed by the City as a Member of a Fund Division from which he is receiving a Pension, the Retiree's Pension shall be suspended as of the date of such re-employment. Upon subsequent retirement of the former Retiree, he shall receive from said Fund Division a Pension that is the sum of:

- a. The Pension the Retiree was receiving prior to the re-employment, and
- b. A Pension calculated under sub-section 7.01 or 7.03, but only taking into account that Credited Service and Wages earned during the period of his re-employment.

**9.02** Upon Employment by Other Fund Division. If a Retiree is employed by the City as a Member of a Fund Division from which he is not receiving a Pension, he shall continue to receive a Pension from that first Division under which he is a Retiree, and commence to earn Credited Service and Vesting Service as a new Member of that second, other Division.

**SECTION 10. REFUND OF CONTRIBUTIONS.**

**10.01** Former Members With Less than Five Years Vesting Service. A former Member with less than five (5) years of Vesting Service shall not be entitled to a Pension or return of those amounts contributed pursuant to sub-sections 5.01 or 5.02.

**10.02** Former Members With Five or More Years Vesting Service. A former Member with five (5) or more years of Vesting Service may be refunded the amount previously contributed to the Pension Fund pursuant to sub-section 5.01, without interest, upon written application to the Administrator, and shall thereupon forfeit all years of Credited Service.

**10.03** Restoration of Forfeited Credited Service. A former Member who is not entitled to receive a refund of contributions pursuant to sub-section 10.01, and is subsequently re-employed by the City as a fireman or policeman, shall again become a member. Such Member shall have restored that previously Credited Service and Contributions forfeited. A former Member who had received a refund of contributions pursuant to above sub-section 10.02, and is subsequently re-employed by the City as a fireman or policeman, shall again become a Member. Such Member shall have the option of having restored that Credited Service forfeited pursuant to sub-section 10.02 proportionate to the Member's full or partial repayment of contributions pursuant to sub-section 5.04. A Member may only once purchase such forfeited Credited Service, or portion thereof, and then only in the form of a single cash payment.

## **SECTION 11. DISABILITY PENSION.**

**11.01** Service-Connected Disability. If a Member upon written application is determined by a majority of the Board to be permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty as a fireman or policeman, whichever is applicable, he shall receive a disability Pension equal to the greater of the amount calculated under sub-section 7.01, regardless of age and service, or fifty (50%) percent of the Member's Final Wages.

**11.02** Ordinary Disability. If a Member upon written application is determined by a majority of the Board to be permanently disabled, not by the Member's own wrongful conduct, as to incapacitate him from the performance of duty as a fireman or policeman, whichever is applicable, he shall receive a disability Pension equal to the greater of the amount calculated under sub-section 7.01, regardless of age and service, or fifty (50%) percent of the Member's Final Wages.

**11.03 Disability Re-evaluation and Recall.** Pursuant to Section 12 of Article 6243b V.A.T.S., the Board in its discretion may cause a Member or Retiree who has less than twenty-five (25) years of Credited Service to undergo a medical examination to determine his continued eligibility for a disability Pension under this section.

**SECTION 12. DEATH BENEFITS.**

**12.01 Upon Death of a Retiree or Member.**

a. Upon the death of a Retiree receiving a Pension under sub-section 7.01 or Section 11, the death benefit shall equal seventy-five (75%) percent of the amount of Pension of such Retiree.

b. Upon the Service Connected Death or other death of a Member having completed twenty-five (25) years of Vesting Service and attainment of age fifty (50), the death benefit shall equal the greater of fifty (50%) percent of such Member's Final Wages, or seventy-five (75%) percent of the amount calculated under sub-section 7.01.

c. Upon the Service Connected Death or other death of a Member having completed less than twenty-five (25) years of Vesting Service or has not attained the age of fifty (50), the death benefit shall equal the greater of fifty (50%) percent of such Member's Final Wages, or one and seven-eighths (1.875%) percent multiplied by Credited Service, multiplied by Final Wages.

d. For those death benefits provided under this sub-section 12.01 –

i. if the only Beneficiary is a Qualified Spouse, he or she shall receive one hundred (100%) percent of the death benefit provided under this sub-section;

ii. if the only Beneficiary or Beneficiaries is/are a Qualified Child or Qualified Children, he, she or they shall receive two-thirds (2/3) of the death benefit herein to be divided equally among the Qualified Children; or

iii. if the Beneficiaries are a Qualified Spouse and a Qualified Child or Qualified Children, the Qualified Spouse shall receive two-thirds (2/3) of the death benefit, and the Qualified Child or Qualified Children shall receive one-third (1/3) of the death benefit herein to be divided equally among the Qualified Children.

In the event the death benefits paid herein to a Qualified Child or Qualified Children are found by the Board as not being used for the sole benefit of the Qualified Child or Qualified Children, the Board may order such benefits to be paid on their behalf in any manner as may be provided in equity or by law.

**12.02 Upon Death of a Former Member and Other Retirees.**

a. Upon the death of a former Member having completed ten (10) years but less than twenty-five (25) years of Vesting Service, or upon the death of a Retiree receiving a Pension under sub-section 7.03, the death benefit shall equal two-thirds (2/3) of the amount of Pension calculated under sub-section 7.03 payable immediately to the Beneficiary of a Retiree, or to the Beneficiary of a former Member upon such time as the former Member would have attained age fifty (50).

b. For those death benefits payable under this sub-section 12.02 –

i. if the only Beneficiary is a Qualified Spouse, he or she shall receive one hundred (100%) percent of the death benefit provided under this sub-section but not to exceed one-third (1/3) of the Member's Final Wages;

ii. if the only Beneficiary or Beneficiaries is/are a Qualified Child or Qualified Children, he, she or they shall receive one hundred (100%) percent of the death benefit herein but not to exceed one-third (1/3) of the Member's Final Wages, to be divided equally among the Qualified Children; or

iii. if the Beneficiaries are a Qualified Spouse and a Qualified Child or Qualified Children, the Qualified Spouse shall receive one hundred (100%) percent of the

death benefit, and the Qualified Child or Qualified Children shall receive fifty (50%) percent of the death benefit herein to be divided equally among the Qualified Children, provided such amount shall not exceed one-half (1/2) of the Member's Final Wages.

In the event the death benefits paid herein to a Qualified Child or Qualified Children are found by the Board as not being used for the sole benefit of the Qualified Child or Qualified Children, the Board may order such benefits to be paid on their behalf in any manner as may be provided in equity or by law.

**12.03 Other Member Death Benefits.** A Beneficiary who is not a Qualified Spouse or a Qualified Child of a deceased Member with five (5) or more years of Vesting Service shall receive a death benefit in a single cash payment in an amount equal to the Member's contributions made under sub-section 5.01, without interest.

**12.04 Additional Death Benefits.**

a. Upon the death of a Retiree whose Beneficiaries are not receiving a Pension under sub-sections 12.01 or 12.02, his Beneficiary or Beneficiaries shall receive a refund of the Retiree's contributions made under sub-section 5.01, without interest, reduced by the sum of the Pension received by the Retiree under Section 7 or Section 11, as modified by Section 8 and Section 13, and any Pension received by a Qualified Spouse and/or Qualified Children under sub-sections 12.01 or 12.02.

b. In the event a deceased Member, not survived by a spouse or child, dies from injuries received or disease contracted while in the line of duty, and is survived by a father, mother, brother or sister wholly dependent upon the Member, such Beneficiary shall receive that death benefit provided under Section 10 of Article 6243b, V.A.T.S.

**SECTION 13. COST OF LIVING ADJUSTMENT.**

**[Intentionally Left Blank]**

**SECTION 14. MILITARY SERVICE CREDIT.** In the event a Member terminates his employment with the City as a fireman or policeman for the purpose of entering directly into the armed forces of the United States or other "qualified military service" within the meaning of section 414(u)(5) of the Code, he shall be entitled to:

a. Vesting Service for the period of such qualified military service provided he again becomes re-employed by the City as a fireman or policeman within one year of termination of such qualified military service, unless he is prevented from such re-employment by virtue of disability incurred during the period of such qualified military service; and

b. Credited Service for the period of such qualified military service provided he again becomes re-employed by the City as a fireman or policeman within one year of termination of such qualified military service, unless he is prevented from such re-employment by virtue of disability incurred during the period of such qualified military service, and further provided, that he elects to make, and makes within a period of time equal to three (3) times the length of time of such service, but not more than five (5) years, the amount of those contributions under subsection 5.01 he would have been required to make during the period of such qualified military service. Credited Service purchased under this section shall be based on the Member's Salary, plus incentive pay(s), as increased during the period of such qualified military service.

**SECTION 15. SUICIDE OF A MEMBER.** No benefits shall be paid to any Beneficiary of a Member otherwise entitled to receive a benefit from the Pension Fund if that Member has less than two (2) years of Credited Service and commits suicide.

**SECTION 16. MINIMUM PENSION.**

**16.01** For Firemen. No Retiree or Qualified Spouse shall receive a Pension of less than four hundred dollars (\$400.00). However, the Minimum Pension shall not apply to a Retiree or Qualified Spouse whose total Pensions from either or both Fund Division(s), plus any benefit awarded as a result of service required to be recognized under the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code, exceeds four hundred dollars (\$400.00). (Amended October 17, 2007, Effective July 1, 2007)

**16.02** For Policemen. No Retiree or Qualified Spouse shall receive a Pension of less than five hundred dollars (\$500.00). However, the Minimum Pension shall not apply to a Retiree or Qualified Spouse whose total Pensions from either or both Fund Division(s), plus any benefit awarded as a result of service required to be recognized under the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code, exceeds five hundred dollars (\$500.00). (Amended October 17, 2007, Effective July 1, 2007)

**SECTION 17. [Intentionally Left Blank]**

**SECTION 18. STATUTORY ELECTIONS.**

**18.01** Application of Proportionate Retirement Program Under Chapter 803 of Title 8, Subtitle A, of the Government Code. The Board of Trustees of the Pension Fund has elected to adopt the Proportionate Retirement Program under Chapter 803 of Title 8, Subtitle A, of the Government Code, effective September 1, 2000.

**18.02** Application of Chapter 804 of Title 8, Subtitle A, of the Government Code. The Board of Trustees of the Pension Fund has elected to adopt Chapter 804 of Title 8, Subtitle A, of the Government Code, relating to domestic relations orders and spousal

consent, effective August 26, 1991; and further elected to adopt Section 804.004 of Chapter A thereof, relating to lump sum payment in lieu of benefits awarded by qualified domestic relations orders, effective October 20, 2004.

**SECTION 19. ASSIGNMENT AND ALIENATION OF BENEFITS.** No right or claim to, or interest in, any part of the Pension Fund, or any payment from the Fund, shall be assignable, transferable, or subject to sale, mortgage, pledge, hypothecation, commutation, anticipation, garnishment, attachment, execution, or levy of any kind. Neither the Board of Trustees nor the Administrator shall recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, commute, or anticipate the same, except to the extent required by law. Notwithstanding the foregoing, pursuant to subsection 18.02 above, the Pension Fund may pay to an alternate beneficiary, in lieu of that interest awarded under a qualified domestic relations order pursuant to Chapter 804 of Title 8, Subtitle A, of the Government Code, a lump sum benefit otherwise payable from the Pension Fund to a Member, Retiree or Beneficiary.

**SECTION 20. BOARD OF TRUSTEES.**

**20.01 Administration of Pension Fund.** The administration and charge of the Pension Fund is fully and exclusively vested in its Board of Trustees, which shall have the full power to appoint, employ and compensate as a charge upon the assets of the Pension Fund such employees, custodians, brokers, consultants, investment managers, actuaries, attorneys and other professional advisors as it may deem necessary. The assets of the Pension Fund shall be segregated in a separate Firemen's Division and a Policemen's Division pursuant to Sections 16 and 17 of Article 6243b, V.A.T.S.

**20.02 Board Composition.** The Board shall be comprised of eleven (11) trustees as follows: Three (3) citizens of the City to be appointed by its mayor; two (2) citizens of the City to be appointed by its city manager; three (3) Member firemen of the City Fire Department, to be elected by the firemen Members of the Fund; and three (3) Member policemen of the City Police Department, to be elected by the policemen Members of the Fund. (Amended August 15, 2007, Effective September 1, 2007)

**20.03 Term and Election of Board Trustees.** The five (5) citizen appointed members and the six (6) firemen and policemen elected members of the Board shall each serve for a term of four (4) years; however, one (1) of the citizen members appointed by the city manager shall be designated by the city manager to serve for an initial two (2) year term, commencing September 1, 2007. The Board of Trustees shall provide by rule for election by secret ballot of its six (6) firemen and policemen members. (Amended August 15, 2007, Effective September 1, 2007)

**20.04 Rules, Regulations and Bylaws.** The Board shall establish such rules, regulations and bylaws as it deems necessary for the proper administration of the Pension Fund.

**20.05 Fiduciary Responsibility of the Board.** In making and supervising investments of the Pension Fund, the Board of Trustees shall discharge its duties solely in the interest of the Members and Beneficiaries for the exclusive purposes of providing benefits to the Members and Beneficiaries, and defraying reasonable expenses of administering the Pension Fund: (a) with the care, skill, prudence and diligence under the prevailing circumstances that a prudent person action in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims; (b) by diversifying the investments of the Pension Fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and (c) in

accordance with the documents and instruments governing the Pension Fund to the extent such are consistent with applicable statute.

**20.06 Indemnification of Board Members.** No member of the Board of Trustees shall be held liable for the acts or omissions of an investment manager appointed under Section 802.204 of Chapter 802 of Title 8, Subtitle A, of the Government Code, nor is a Board member obligated to invest or otherwise manage any asset of the Pension Fund subject to management by such appointed investment manager. The Board of Trustees may purchase fiduciary responsibility insurance on behalf of the members of the Board and employees of the Pension Fund for liability imposed as damages, costs and expenses incurred in connection with his or their action as a fiduciary of the Fund. The Board of Trustees may otherwise indemnify members of the Board and employees of the Pension Fund for such liability for damages, and for reasonable costs and expenses incurred in defense of any alleged act, error or omission committed in his or their fiduciary or co-fiduciary capacity, provided, such indemnification by the Pension Fund is approved by a majority of the Board of Trustees subject to the requirements of Section 1 of Article 6243b, V.A.T.S.

**SECTION 21. AMENDMENT.** The Board of Trustees, by majority vote of the whole Board, may modify and amend the terms and conditions of the Pension Fund herein, provided such change shall apply to the Members of a Division of the Pension Fund only if approved by a majority of the Members of such Division, and further satisfies all the requirements of Section 10A of Article 6243b, V.A.T.S.