CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

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DEPARTMENT: Financial and Administrative Services

AGENDA DATE: May 15, 2007

CONTACT PERSON/PHONE: Bill Studer, (915) 541-4215

DISTRICT(S) AFFECTED: All

SUBJECT: Resolution authorizing the City Manager to sign a Memorandum of Agreement by and between the City of El Paso and the Firemen and Policemen Pension Fund, El Paso, Texas relating to the resolution of the underfunding of the Fund. The Resolution includes a finding as to the applicable exception to the Charter Lame Duck provision, which allows the Council to approve this Agreement at this time.

BACKGROUND / DISCUSSION: The City Council has been briefed regarding the issues pertaining to the underfunding of the Firemen and Policemen Pension Fund. Negotiations have taken place between the City and the Fund to resolve the underfunded liability issue. The Memorandum of Agreement now before the Council will constitute a binding written agreement pursuant to Section 6.13-11D of the Charter regarding the resolution of the underfunding to enable the City to make a one-time contribution to the fund, in two fundings.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one? The Council was last briefed on this issue at the March 27, 2007 City Council meeting.

AMOUNT AND SOURCE OF FUNDING: Upon becoming effective, the Agreement will require the City to issue Pension Obligation Bonds in the total amount of $210,000,000.00 in two fundings, with the first installment received by the Fund on or before July 31, 2007 in the amount of $100,000,000.00, and the second installment received by the Fund on or before July 31, 2009 in the amount of $110,000,000.00.

BOARD / COMMISSION ACTION: N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required)_____ **FINANCE:** (if required)_____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

#30514

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RESOLUTION

WHEREAS, Section 6.13-11D of the City Charter provides in part that the City shall have the authority to contract with the Firemen and Policemen Pension Fund to make a one time contribution to the fund solely for certain underfunded liability; and

WHEREAS, this Charter provision requires that a binding written agreement between the City and the Fund regarding the liability before the contribution can be made; and

WHEREAS, the proposed Memorandum of Agreement by and between the City of El Paso and the Firemen and Policemen Pension Fund, El Paso, Texas will constitute such a binding written agreement; and

WHEREAS, the City Council is prohibited from entering contracts in excess of $3,000 from the date of a City general election until the inauguration of those elected except in certain situations; and

WHEREAS, the City Council finds that the Lame Duck prohibitions of the City Charter do not apply to the entry into this Memorandum of Agreement for the reason that this Agreement was lawfully authorized prior to the City general election of May 12, 2007, when the voters of the City approved the Charter amendment on February 7, 2004, amending Section 6.13-11D and authorizing this binding written agreement regarding the underfunded liability.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Memorandum of Agreement by and between the City of El Paso and the Firemen and Policemen Pension Fund, El Paso, Texas relating to the resolution of the underfunding of the Fund.

Dated this 15th day of May 2007.

Document #: 30511
Document Name: Reso-07/Pension Fund agreement/
Document Author: EHEN

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CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Laura P Gordon
_____
Laura P. Gordon
Deputy City Attorney

Document #: 30511
Document Name: Reso-07/Pension Fund agreement/
Document Author: EHEN

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STATE OF TEXAS)
)
COUNTY OF EL PASO)

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into by and between the City of El Paso, hereinafter referred to as "City" and the Firemen and Policemen Pension Fund, El Paso, Texas, hereinafter referred to as "Fund," on this the _____ day of May, 2007:

WITNESSETH:

WHEREAS, a pension fund for the firemen and policemen of the City of El Paso has been created and exists pursuant to state statute and in accordance with the El Paso City Charter; and

WHEREAS, the City and the Fund have recognized that the pension fund is presently underfunded and the parties have undertaken negotiations to reach an agreement regarding how to address and resolve the underfunding; and

WHEREAS, the City Charter requires the parties to enter into a binding written agreement to achieve all aspects of the resolution of the underfunding, as negotiated by the parties.

NOW, THEREFORE the City and the Fund hereby mutually agree that:

1. In accordance with the approval granted by a vote of the membership, the Fund agrees that it has conditionally made certain changes to the Fund's benefit plan structure as reflected in Attachment "A".

2. Both parties agree to support a proposal before the Texas Legislature to amend Article 6243b, V.T.C.S., including provision for a change in the governance of the Board of Firemen and Policemen Pension Fund, El Paso, Texas, substantially in the form as reflected in Attachment "B"

3. The City Manager will present appropriate items for action by the City Council in a timely manner to the Council for the approval and issuance of Pension Obligation Bonds in the total amount of $210,000,000.00 (Two hundred ten million and no/100 dollars), in two fundings, with the first installment received by the Fund on or before July 31, 2007 in the amount of $100,000,000.00 (One hundred million and no/100 dollars) and the second installment received by the Fund on or before July 31, 2009 in the amount of $110,000,000.00 (One hundred ten million and no/100 dollars).

4. In the event that the legislation described in Section 2 above does not become law substantially in the form reflected in Attachment B, then this Agreement may be terminated by either party upon written notice to the other party for no cause, leaving the parties status quo ante. Notice contemplated herein will be hand delivered or mailed certified mail return receipt requested to the City Manager for the City of El Paso or the Executive Director of the Firemen and Policemen Pension Fund respectively.

THE CITY OF EL PASO

By: _____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Laura P. Gordon
Deputy City Attorney

APPROVED AS TO CONTENT

William F. Studer, Jr.
Deputy City Manager

FIREMEN AND POLICEMEN PENSION FUND, EL PASO, TEXAS

By: _____
Robert Feidner
Chairman, Board of Trustees

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ATTACHMENT A

Index of documents in Attachment A:

1. Copy of the minutes for the meeting of March 28, 2007 reflecting certification of the election results regarding the ballot proposition on plan amendments.

2. Copy of the El Paso Firemen and Policemen's Pension Fund Ballot Proposition #1 Underfunding – Fire Division.

3. Copy of the El Paso Firemen and Policemen's Pension Fund Ballot Proposition #1 Underfunding – Police Division.

4. Copy of the Results of the El Paso Firemen and Policemen's Pension Fund Ballot Proposition #1 Underfunding – Police Division.

5. Copy of the Results of the El Paso Firemen and Policemen's Pension Fund Ballot Proposition #1 Underfunding – Fire Division.

ATTACHMENT A, #1

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THE EL PASO FIREMEN & POLICEMEN'S PENSION BOARD OF TRUSTEES
REGULAR MEETING HELD
Wednesday, March 28, 2007, at 1:00 P.M.
Fire Administration Building-8600 Montana Conference Room, 1st Floor

MINUTES

MEMBERS PRESENT:

Mayoral Appointments:

Dr. Robert Tollen
Mr. John D. Davis, III

Police Department

Chief Diana Kirk - Designated representative for Chief Richard Wiles
Commander Robert Feidner
Detective Stanley Hayes
Lieutenant Mark Austin

Fire Department

Chief Mike Pritchard - Designated representative for Chief Roberto Rivera
Chief Ralph B. Johnson
Chief Matt G. Widtfeldt

OTHERS PRESENT:

Mr. Robert J. Stanton – Secretary
Ms. Yolanda Carreon - Assistant Secretary

MEMBERS ABSENT:

Mayor John Cook
Chief Michael Calderazzo

1. **Call to order:**

Acting Chairperson Pritchard called the meeting of the El Paso Firemen & Policemen's Pension Fund to order at 1:00 p.m.

2. **Approve minutes of Board meeting held:**

A. Special meeting February 15, 2007
B. February 21, 2007

Mr. Davis requested that the February 15th minutes be double checked as he did not recall abstaining. The minutes do not reflect Mr. Davis abstaining. However, the minutes of February 21, 2007 do indicate that Mr. Davis abstained on Items 13 and 14. The audio tape for 2/21/07 was revisited and Mr. Davis did abstain on this vote.

Mr. Pritchard moved to approve the minutes of the Special Board meeting held February 15, 2007 with the provision that the notes be double checked, seconded by Mr. Johnson and passed by the Board.

Mr. Pritchard moved to approve the minutes of the Regular Board meeting held February 21, 2007, seconded by Mr. Hayes and passed by the Board.

3. **Consideration and approval of the Financial Report for the month ending February 28, 2007:**

Mr. Pritchard reporting for the Budget and Finance Committee stated that the documentation was in order.

Mr. Johnson moved to approve the Financial Reports for the month ending February 28, 2007, seconded by Mr. Austin and passed by the Board.

4. **Discussion and action on authorization to transfer $15,000.00 to the Lomaland West LLC checking account.**

Mr. Stanton recommends keeping a balance in this account. A surveying invoice was recently paid from the administrative budget and reimbursement is now necessary. Keeping a balance on this account will also avoid monthly bank fees.

Mr. Davis moved to authorize this transfer, seconded by Mr. Johnson and passed by the Board.

5. **Approve Pension Payrolls:**

Fire	$ 1,488,929.98
Police	$ 1,961,846.38

Mr. Stanton stated the Pension Payrolls were in order.

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ATTACHMENT A. #2

BALLOT PROPOSITION
PROPOSED AMENDMENT
OF THE EL PASO FIREMEN & POLICEMEN'S PENSION FUND

FIRE DIVISION

The purpose of this vote is to correct the significant under funding that exists in the Fire Division of the El Paso Firemen and Policemen's Pension Fund through additional City of El Paso contributions and changes to active member benefits. These changes include a change in the wages used to determine retirement benefits for current and new active members from the highest monthly wage to an average of monthly wages over a 36-month period and, for new members only, create a "second-tier" of revised retirement eligibilities, accrual rates, survivor benefits and post-retirement increases (i.e., COLAs). These changes shall take effect only upon the City of El Paso making special additional contributions of $100,000,000 on or about July 1, 2007 and $110,000,000 on or about July 1, 2009.

Are you in favor of approving the amendment of the El Paso Firemen & Policemen's Pension Fund By-Laws implementing the change in the definition of final wages from being based on the highest monthly wage to being based on a 36-month average of monthly wages and implementing a "second-tier" of benefits for new members, in the form approved by the Board of Trustees on February 15, 2007, pursuant to Section 10A of Article 6243b, Vernon's Annotated Texas Statutes, such amendment to be effective July 1, 2007, but only if the City of El Paso makes a special contribution of not less than $100 Million to the Fund, on or about July 1, 2007, and an additional special contribution of not less than $110 Million to the Fund, on or about July 1, 2009?

☐ **YES**

☐ **NO**

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ATTACHMENT A, #3

BALLOT PROPOSITION NUMBER 1
PROPOSED AMENDMENT
OF THE EL PASO FIREMEN & POLICEMEN'S PENSION FUND

POLICE DIVISION

The purpose of this vote is to correct the significant under funding that exists in the Police Division of the El Paso Firemen and Policemen's Pension Fund through additional City of El Paso contributions and changes to active member benefits. These changes include an increase in the active member contribution rate to 13.89% of pay and a change in the wages used to determine retirement benefits for current and new active members, and, for new members only, create a "second-tier" of revised retirement eligibilities, accrual rates, survivor benefits and post-retirement increases (i.e., COLAs). These changes shall take effect only upon the City of El Paso making special additional contributions of $100,000,000 on or about July 1, 2007 and $110,000,000 on or about July 1, 2009.

Are you in favor of approving the amendment of the El Paso Firemen & Policemen's Pension Fund By-Laws implementing the change in the contribution rate and the definition of final wages from being based on the highest monthly wage to being based on a 36-month average of monthly wages and implementing a second-tier of benefits for new members, in the form approved by the Board of Trustees on February 15, 2007, pursuant to Section 10A of Article 6243b, Vernon's Annotated Texas Statutes, such amendment to be effective July 1, 2007, but only if the City of El Paso makes a special contribution of not less than $100 Million to the Fund, on or about July 1, 2007, and an additional special contribution of not less than $110 Million to the Fund, on or about July 1, 2009?

☐ **YES**

☐ **NO**

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EL PASO FIREMEN & POLICEMEN'S PENSION FUND
BALLOT PROPOSITION #1/UNDERFUNDING - POLICE DIVISION

RESULTS

	FOR	AGAINST	TOTAL	Initial	
EARLY & REGULAR	654	134	788	MA	MC
Total Membership			1076	MA	MC
Percent Voting	60.78%	12.45%	73.23%	MA	MC
TOTALS					
Total Thrown Out Duplicates; no name to verify eligibility; blanks			15	MA	MC

Representatives of Board of Trustees present:
Mike Calderazzo, Mark Austin, Stan Hayes, Ralph Johnson, and Mike Pritchard

Administrative Staff present: RJS
Robert J. Stanton, Yolanda Carreon, Angie Rodriguez, and Nashyelli Matthews

Date: 03/09/07

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EL PASO FIREMEN & POLICEMEN'S PENSION FUND
BALLOT PROPOSITION/UNDERFUNDING - FIRE DIVISION

RESULTS

	FOR	AGAINST	TOTAL	Initial	
EARLY & REGULAR	571	27	598	MC	MA
Total Membership			792	MC	MA
Percent Voting	72.10%	3.41%	75.51%	MC	MA
TOTALS					
Total Thrown Out Duplicates; no name to verify eligibility; blanks			12	MC	MA

Representatives of Board of Trustees present:
Mike Calderazzo, Mark Austin, Stan Hayes, Ralph Johnson, and Mike Pritchard

Administrative Staff present: RJS
Robert J. Stanton, Yolanda Carreon, Angie Rodriguez, and Nashyelli Matthews

Date: 03/09/07

ATTACHMENT B

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80R15974 DLF-F

By: Haggerty, Quintanilla, Chavez, Pickett H.B. No. 3355

Substitute the following for H.B. No. 3355:

By: Rodriguez C.S.H.B. No. 3355

A BILL TO BE ENTITLED

AN ACT

relating to the board of trustees, benefits, and contributions of certain fire and police pension funds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CONTINGENT PROVISIONS EFFECTIVE SEPTEMBER 1, 2007

SECTION 1.01. Sections 1(a) and (b), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) In all incorporated cities and towns containing more than 550,000 inhabitants and less than 600,000 inhabitants, having a fully or partially paid fire department, three (3) citizens of said city or town to be designated by the mayor [~~or the mayor's authorized representative~~], two (2) citizens of said city or town to be designated by the city manager of said city or town [~~mayor, the chief of police or the chief's authorized representative, the chief of the fire department or the chief's authorized representative, and the successors of the mayor, chief of police, and chief of the fire department~~], three (3) policemen [~~other than the chief or assistant chief,~~] to be elected by members of the policemen's pension fund, and three (3) firemen [~~other than the chief or assistant chief,~~] to be elected by members of the

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firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen and Policemen Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. [~~The three policemen and the three firemen named above shall be elected to a term of four (4) years. The term for a citizen designated by the mayor is four (4) years.~~] The board shall be known as the Board of Firemen and Policemen Pension Fund, _____, Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

(b) The members of the board of trustees serve four-year terms. [~~Of the first two (2) citizens designated by the mayor to serve on the board of trustees after the effective date of this subsection, one shall serve a four-year term and the other a two-year term. Thereafter all terms shall be for four (4) years. Of the first six (6) firemen and policemen elected after the effective date of this subsection, three (3) of the firemen and policemen shall serve four-year terms and three (3) of the firemen and policemen shall serve two-year terms. The first four-year terms~~

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~~shall not be served by all three members elected from the firemen's fund nor by all three members elected from the policemen's fund. This determination shall be made by lot under the supervision of the board. Thereafter all elected terms shall be for four (4) years.~~]

SECTION 1.02. Section 2, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PARTICIPATION IN FUND; WAGE DEDUCTIONS. Each member fireman and policeman in the employment of such city or town must participate in said fund, except in times of national emergency those persons as are employed during that time shall not be required to participate in the fund, and said city or town shall be authorized to deduct a sum of not less than one per cent (1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen and Policemen Pension Fund, except that the city or town shall deduct a sum less than one per cent (1%) or more than six per cent (6%) of the member's wages each month to form a part of the fund if the board of trustees of that fund increases or decreases the percentage of wages to be contributed to the fund under the provisions of Section 10A <u>or 14A</u> of this Act. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1 of this Act within the minimum and maximum deductions herein provided or as

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otherwise provided under the provisions of Section 10A or 14A of this Act.

SECTION 1.03. Section 3, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. PAYMENTS TO FUND. There shall be deducted for such fund from the wages of each fireman and policeman a sum to be determined by the board of trustees under the provisions of Sections [~~Section~~] 2, [~~or~~] 10A, and 14A of this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

SECTION 1.04. Section 10A, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10A. MODIFICATION OF BENEFITS, MEMBERSHIP QUALIFICATIONS, ELIGIBILITY REQUIREMENTS AND CONTRIBUTIONS; CONDITIONS. (a) Notwithstanding anything to the contrary in other parts of this Act and subject to Subsections (b) and (c) of this section, the Board of Trustees may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications:

(1) modify or change prospectively or retroactively in any manner whatsoever any of the benefits provided by this Act, except that any retroactive change or modification shall only

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increase pensions or benefits;

(2) modify or change prospectively in any manner whatsoever any of the membership qualifications;

(3) modify or change prospectively or retroactively in any manner whatsoever any of the eligibility requirements for pensions or benefits;

(4) increase or decrease prospectively the percentage of wages less than the one per cent (1%) minimum or above the six per cent (6%) maximum provided in Section 2 of this Act to be contributed to the fund; or

(5) provide prospectively for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for a pension.

(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary's approval must be based on an actuarial finding that the change is supported by the existing funding status of the fund; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the actuary, if an actuarial consulting firm, must be established in the business of

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providing actuarial consulting services to pension plans and have experienced personnel able to provide the requested services; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

(2) the change must be approved by a majority of all persons then making contributions to the fund as employees of a department to which the change would directly apply, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent place in every station or substation of a department to which the change would directly apply and in the city hall;

(3) the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the affected departments at the time the change becomes effective and those who enter the departments thereafter; and

(4) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured.

(c) If the Board of Trustees proposes to change benefits under Subdivision (1), Subsection (a), of this section, the change is not effective until the change is finally approved in accordance with this subsection. The Board shall submit the change for approval by the city's or town's governing body. If disapproved by the governing body, or if the governing body fails to act within

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sixty (60) days of presentation to the governing body, the Board, by resolution passed by a majority of the whole Board, plus one, may require the city's or town's governing body to hold an election, as soon as practicable, for approval of the change by the qualified voters of the city or town. Any change proposed and subsequently approved by the voters under this subsection becomes effective as of the beginning of the city's or town's next fiscal year.

SECTION 1.05. Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is amended by adding Section 14A to read as follows:

Sec. 14A. CONTRIBUTION INCREASES. (a) If at any time a qualified actuary that meets the requirements of Subdivision (1), Subsection (b), Section 10A of this Act, determines that the total contribution rate, expressed as a percentage of wages, is insufficient to amortize the unfunded actuarial accrued liability, as defined under the Governmental Accounting Standards Board Statement No. 25, over a period not to exceed forty (40) years:

(1) the city's or town's governing body may increase the city or town contribution rate; and

(2) to the extent that the city or town contribution rate increases under Subdivision (1) of this subsection, the member contribution rate must increase by an amount equal to the member contribution rate before the increase multiplied by a fraction:

(A) the numerator of which is the increase in the

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amount of city or town contribution rate; and

(B) the denominator of which is the amount of the city or town contribution rate before the increase.

(b) The sum of the city or town contribution rate and the member contribution rate after an increase under this section may not exceed the total contribution rate determined by the qualified actuary to be necessary to amortize the unfunded actuarial accrued liability over a forty (40) year period.

SECTION 1.06. (a) In this section:

(1) "Board of trustees" means a board of trustees constituted under Section 1(a), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes).

(2) "City or town" means a city or town that operates a Firemen and Policemen Pension Fund under Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes).

(b) The two citizen members of the board of trustees who are designated by the mayor of the city or town and who are serving on the board of trustees on the effective date of this article shall continue to serve for the remainder of the members' four-year terms.

(c) The mayor of the city or town or the mayor's authorized representative who is serving on the board of trustees on the effective date of this article shall continue to serve until the

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mayor appoints a third citizen member under this subsection. As soon as practicable after the effective date of this article, the mayor shall appoint a citizen member to serve a four-year term.

(d) The chief of police or the chief's authorized representative and the chief of the fire department or the chief's authorized representative who are serving on the board of trustees on the effective date of this article shall continue to serve until the city manager of the city or town appoints two citizen members to the board of trustees under this subsection. As soon as practicable after the effective date of this article, the city manager shall appoint the two citizen members. The city manager shall designate one citizen member appointed under this subsection to serve a four-year term and, notwithstanding Section 1(b), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), as amended by this article, shall designate one citizen member to serve a two-year term. The successors of the individuals appointed under this subsection shall serve four-year terms in accordance with Section 1(b), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), as amended by this article.

(e) A member of the board of trustees elected by the members of a firemen's pension fund or the members of a policemen's pension fund and serving on the effective date of this article shall continue to serve on the board for the remainder of the member's

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term.

SECTION 1.07. (a) This article is contingent on the deposit, not later than July 31, 2007, of at least $100 million to a Firemen and Policemen Pension Fund by a city or town that operates such a fund under Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes).

(b) If no city or town described by Subsection (a) of this section makes the deposit described by that subsection on or before July 31, 2007, this article has no effect.

(c) A city or town described by Subsection (a) of this section that makes the deposit described by that subsection shall publish notice of the deposit in the Texas Register as soon as practicable after the date of the deposit.

SECTION 1.08. Subject to Section 1.07 of this article, this article takes effect September 1, 2007.

ARTICLE 2. CONTINGENT PROVISIONS EFFECTIVE SEPTEMBER 1, 2009

SECTION 2.01. Section 1(a), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is reenacted to read as follows:

(a) In all incorporated cities and towns containing more than 550,000 inhabitants and less than 600,000 inhabitants, having a fully or partially paid fire department, the mayor or the mayor's authorized representative, two (2) citizens of said city or town to be designated by the mayor, the chief of police or the chief's authorized representative, the chief of the fire department or the

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chief's authorized representative, and the successors of the mayor, chief of police, and chief of the fire department, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund, three (3) firemen other than the chief or assistant chief, to be elected by members of the firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen and Policemen Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The three policemen and the three firemen named above shall be elected to a term of four (4) years. The term for a citizen designated by the mayor is four (4) years. The board shall be known as the Board of Firemen and Policemen Pension Fund, _____, Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

SECTION 2.02. Section 2, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is reenacted to read as follows:

Sec. 2. PARTICIPATION IN FUND; WAGE DEDUCTIONS. Each member

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fireman and policeman in the employment of such city or town must participate in said fund, except in times of national emergency those persons as are employed during that time shall not be required to participate in the fund, and said city or town shall be authorized to deduct a sum of not less than one per cent (1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen and Policemen Pension Fund, except that the city or town shall deduct a sum less than one per cent (1%) or more than six per cent (6%) of the member's wages each month to form a part of the fund if the board of trustees of that fund increases or decreases the percentage of wages to be contributed to the fund under the provisions of Section 10A of this Act. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1 of this Act within the minimum and maximum deductions herein provided or as otherwise provided under the provisions of Section 10A of this Act.

SECTION 2.03. Section 3, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), is reenacted to read as follows:

Sec. 3. PAYMENTS TO FUND. There shall be deducted for such fund from the wages of each fireman and policeman a sum to be determined by the board of trustees under the provisions of Section 2 or 10A of this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds

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received from any source for such fund shall be deposited in like manner to the credit of such fund.

SECTION 2.04. Sections 10A(a) and (b), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), are reenacted to read as follows:

(a) Notwithstanding anything to the contrary in other parts of this Act, the Board of Trustees may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications:

(1) modify or change prospectively or retroactively in any manner whatsoever any of the benefits provided by this Act, except that any retroactive change or modification shall only increase pensions or benefits;

(2) modify or change prospectively in any manner whatsoever any of the membership qualifications;

(3) modify or change prospectively or retroactively in any manner whatsoever any of the eligibility requirements for pensions or benefits;

(4) increase or decrease prospectively the percentage of wages less than the one per cent (1%) minimum or above the six per cent (6%) maximum provided in Section 2 of this Act to be contributed to the fund; or

(5) provide prospectively for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for

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a pension.

(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

(2) the change must be approved by a majority of all persons then making contributions to the fund as employees of a department to which the change would directly apply, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent place in every station or substation of a department to which the change would directly apply and in the city hall;

(3) the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the affected departments at the time the change becomes effective and those who enter the departments thereafter; and

(4) the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits

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which have already become vested and matured.

SECTION 2.05. The following laws are repealed:

(1) Section 1(b), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), as amended by Article 1 of this Act;

(2) Section 10A(c), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), as added by Article 1 of this Act; and

(3) Section 14A, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), as added by Article 1 of this Act.

SECTION 2.06. (a) In this section:

(1) "Board of trustees" means a board of trustees constituted under Section 1(a), Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes).

(2) "City or town" means a city or town that operates a Firemen and Policemen Pension Fund under Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes).

(b) On the effective date of this article, the term of the citizen member of the board of trustees appointed by the mayor of the city or town under Section 1.06(c) of this Act terminates and the mayor or a representative designated by the mayor shall serve as a member of the board of trustees. The two other citizen

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members of the board of trustees who are designated by the mayor of the city or town and who are serving on the board of trustees on the effective date of this article shall continue to serve for the remainder of the members' four-year terms.

(c) On the effective date of this article, the terms of the two citizen members of the board of trustees appointed by the city manager under Section 1.06(d) of this Act terminate and the chief of police or the chief's authorized representative and the chief of the fire department or the chief's authorized representative shall serve as members of the board of trustees.

(d) A member of the board of trustees elected by the members of a firemen's pension fund or the members of a policemen's pension fund and serving on the effective date of this article shall continue to serve on the board for the remainder of the member's term.

SECTION 2.07. (a) This article takes effect only if Article 1 of this Act takes effect in accordance with Section 1.07 of this Act. If Article 1 of this Act does not take effect, this article has no effect.

(b) Subject to Subsection (a) of this section, this article takes effect September 1, 2009, and supersedes Article 1 of this Act unless, not later than July 31, 2009, at least $110 million is deposited to a Firemen and Policemen Pension Fund by a city or town that operates such a fund under Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's

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Texas Civil Statutes).

(c) If a city or town described by Subsection (b) of this section makes the deposit described by that subsection on or before July 31, 2009, this article has no effect.

(d) A city or town described by Subsection (b) of this section that makes the deposit described by that subsection shall publish notice of the deposit in the Texas Register as soon as practicable after the date of the deposit.