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## SAME-SEX MARRIAGE BENEFITS

### **FOR THE TRAVIS COUNTY ESD #6 FIREFIGHTERS' RELIEF AND RETIREMENT FUND**

As of September 16, 2013, the IRS issued new rules that required qualified retirement plans to recognize same-sex spouses, regardless of whether the state recognized same-sex marriage. The new rules extended federal benefits and protection to same-sex spouses that were previously offered only to opposite-sex spouses. Please note, rules only apply to legal marriages, the decision does not apply to same-sex couples who have entered into civil unions or domestic partnerships. The qualified retirement plans:

1. Must treat a same-sex spouse as a spouse for purposes of satisfying plan-related federal tax law requirements; and
2. Must recognize a same-sex marriage that was validly entered into in a jurisdiction whose laws authorize the marriage, even if the couple lives in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages (e.g., Texas).

*“Texas does not recognize same-sex marriages – the Texas Defense of Marriage Act, signed by Governor Perry in 2003, mirrors DOMA and stipulates that Texas does not recognize a marriage or civil union between persons of the same sex, regardless of the jurisdiction in which it is created. Further, the Texas Constitution defines marriage as a union between a man and a woman.”*

Currently, The Travis County ESD #6 Firefighters' Relief and Retirement Fund amended and restated plan document effective August 14, 2019 defines:

Surviving Spouse as an individual who is the spouse of a Member or Retiree through a **formal marriage recognized by the State of Texas and who is married** to a Member or Retiree on the date of death and remains unmarried following such date of death.

Eligible Beneficiary as a Surviving Spouse or, if no Surviving Spouse exists on the date of death of a Member or Retiree, a Dependent Child or Children.

A Distributee as an Eligible Beneficiary of a deceased Member to the extent permitted in Code Section 402(c)(11), and a Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code section 414(p).

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Therefore:

1. If legally married to same-sex partner in Texas, the Pension Fund will honor and respect a formal same-sex marriage.
2. If legally married to same-sex partner after retirement, a surviving spouse is not entitled to receive a survivor benefit.
3. Only parties that are legally married are treated as the spouse. Civil unions are not considered legal marriages.
4. Same-sex married under common law will be treated the same as married under the common law rules and regulations provided a declaration is filed as the marriage in a court of law.
5. If legally married to same-sex partner and then divorced through a valid Qualified Domestic Relations Order, the pension fund will honor the QDRO.
6. If legally married as same-sex marriage with children, children are entitled to death benefit in the same manner as with any other marriage. Other rules and regulations from the plan document may apply.