

CAUSE NO. C-1-CR- 12-999901

THE STATE OF TEXAS	§	IN THE COUNTY
v.	§	COURT-AT-LAW # _____
RANDI SHADE	§	TRAVIS COUNTY, TEXAS

DEFERRED PROSECUTION AGREEMENT

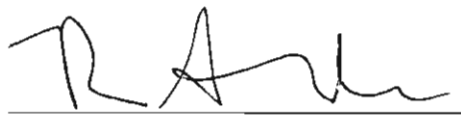
The parties to this agreement are the State of Texas, which is represented by the Travis County Attorney or his designated Assistant Travis County Attorney, and **Randi Shade**, whose date of birth is May 3, 1966.

Randi Shade agrees to waive certain rights and to comply with the terms and conditions specified herein. In return, the State of Texas agrees to conditionally defer prosecution of the offense(s) described below.

Waiver of Certain Rights

I understand that I have the right to a speedy trial, the right to a trial by jury, and the right to confront and cross-examine the witnesses against me. I have the right to secure the appearance at trial of witnesses in my favor. I have the right to remain silent and not make any statement at all. Any statement that I make may be used against me at my trial and in court. I have a right to have a lawyer present to advise me prior to and during any questioning. If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning. I have the right to terminate this questioning at any time. **I knowingly and voluntarily waive these rights.**


Attorney for Defendant


Defendant

00000081
State Bar Number

Waiver of Statute of Limitation

Article 12.02 of the Texas Code of Criminal Procedure provides that presentment of an indictment or information for Misdemeanor offenses may be made within two years from the date of the commission of said offense, and not afterward. After consulting with my attorney, I, Randi Shade, freely, knowingly, and voluntarily waive this right.


For the purposes of this waiver, said commission date is on or after May 4, 2010 and for acts that could constitute violations under Chapter 551 or 552 of the Texas Government Code for which I am under investigation by the Travis County Attorney's Office.

This waiver is intended to remain in effect for the duration of this deferred prosecution agreement. If no charge has been filed against me within 30 days after this agreement ends, this waiver will expire.

I can read and write the English language; I have read this document and discussed it fully with my attorneys; I understand this document completely; and I am aware of the consequences of my waiver. This waiver is not to be considered an admission of guilt to the above-mentioned conduct under investigation. My attorney has discussed with me the law and the facts applicable to this waiver, and I am satisfied that I have been effectively represented.



Attorney for Defendant



Defendant



State Bar Number

Acknowledgement of Law

- The Austin City Council is a municipal governing body in Austin, Texas and therefore subject to the Texas Open Meetings Act (Tx. Govt. Code Chapter 551)(hereinafter TOMA).
- The Austin City Council, as a governmental body, is required by law to have every regular, special or called meeting open to the public, unless a closed meeting is otherwise authorized by the TOMA (Tx. Govt. Code § 551.002).
- A quorum of the Austin City Council consists of four (4) or more members.
- TOMA defines a meeting as “[a] deliberation between a *quorum* of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action;...”
- TOMA defines deliberation as “a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.”
- Tx. Govt. Code § 551.143 states that “A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.”
- Texas courts and the Attorney General of Texas have stated that a governmental body can violate TOMA when it “deliberates through a series of closed meetings of members of less than a quorum.” Op. Tex. Att’y Gen. No. DM-95 (1992); See also *Esperanza Peace & Justice Ctr. v. City of San Antonio*, 316 F. Supp. 2d 433, 472 (W.D. Tex. 2001) and Op. Tex. Att’y Gen. No. GA-0326 (2005).
- The Attorney General has stated that electronic communications can, “depending on the facts of a particular case, constitute a deliberation and a meeting for purposes of the Texas Open Meetings Act.” Op. Tex. Att’y Gen. No. GA-0896 (2011).
- Tx. Govt. Code § 551.144 states that “A member of a governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly: (1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting; (2) closes or aids in closing the meeting to the public, if it is a regular meeting; or (3) participates in the closed meeting, whether it is a regular, special, or called meeting.”

Admissions and Affirmations

Randi Shade affirms that the following statements are true and accurate:

- Randi Shade was an elected member of the Austin City Council from June 2008 until June of 2011.
- In June 2008, when Randi Shade began her term on Austin City Council, there was an existing practice of systematically scheduling weekly private one-on-one meetings between the six members of the City Council and the Mayor for the purpose of discussing items on that week's City Council agenda, as well as other city business. These meetings occurred in weeks with and without Council Meetings scheduled. By attending three or more of these one-on-one meetings in the days before an Austin City Council meeting, all members of the Austin City Council and Mayor Lee Leffingwell routinely met with a quorum of other City Council members and discussed city business. After being elected to the City Council, Randi Shade continued this practice, and between May 2010 and February 2011 routinely met with a quorum of other City Council members to discuss city business before City Council meetings. In November of 2008, Randi Shade began posting her meeting schedule on the City's public website. She continued this practice throughout her term of service, listing meetings she had with Council colleagues, City staff and citizens.
- Randi Shade co-sponsored a resolution with Mike Martinez and Bill Spelman regarding historic landmark designations, item 29 on the June 10, 2010 City Council Agenda. The three co-sponsors exchanged e-mails about the content and language of the resolution on June 4, June 7, and June 8. In a June 8th e-mail to her aide Glen Coleman, cc'ing the co-sponsors and their aides, Shade says she was hoping to have a final draft of the resolution in time for the week's one-on-one meetings. Randi Shade also discussed the resolution with Chris Riley in their one-on-one meeting on June 9, 2010, and exchanged e-mails with Chris Riley on June 10, 2010 about the language of the resolution. In an e-mail from Randi Shade to Chris Riley on June 10, 2010, Shade cc's her aide Glen Coleman and asks him to vet Riley's changes with Martinez and Spelman. Riley responds to this e-mail suggesting substantive changes to the language of the resolution. Shade responds to Riley's e-mail again asking Glen Coleman to talk to Martinez and Spelman about the changes. Chris Riley's suggested changes were presented in public and discussed on the dais before any vote was taken.
- On June 21, 2010, Randi Shade participated in an e-mail exchange with Mike Martinez and Mayor Lee Leffingwell discussing how to handle an incident involving City Manager Marc Ott. All e-mails in this exchange were sent to and from non-city accounts. On June 23, 2010, Randi Shade e-mailed Mayor Lee Leffingwell about their strategy for a meeting with Marc Ott and Bill Spelman. Randi Shade wrote a confidential memorandum to Marc Ott from herself, cc'ing Mayor Leffingwell and Bill Spelman. Randi Shade e-mailed the memorandum to

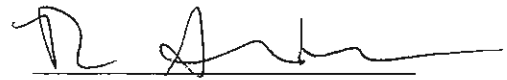
Bill Spelman at his UT account on June 27th and tells Spelman that she will share it with Laura Morrison to get her feedback. A text message from Randi Shade to Laura Morrison on June 27, 2010 said that Shade dropped off the memorandum at Morrison's house and asked Morrison to call to discuss the memorandum. In a June 28, 2010 text message exchange between Sheryl Cole and Laura Morrison, both Morrison and Cole indicated that they spoke to Shade on June 28, 2010. Randi Shade spoke to Sheryl Cole on June 28, 2010 at 1:58 p.m. Laura Morrison and Randi Shade spoke at 6:02 p.m. the same day for twenty-five minutes.

- On August 1, 2010, Randi Shade participated in an e-mail conversation with Mayor Leffingwell and Mike Martinez and discussed the public's perception of a settlement versus a trial in *Nathaniel Sanders, Sr., et al. v. Leonardo Quintana and the City of Austin*, No. A09-CA-00426 SS, in the United States District Court for the Western District of Texas, Austin Division. Randi Shade also e-mailed Chris Riley on August 1, 2010 and discussed the same topic. The Sanders Settlement was discussed in a public meeting on July 29, 2010 prior to any vote being taken. There was continued public discussion about the Council's majority vote against the Sanders Settlement for many months to come; however, no vote was taken with respect to the Sanders Settlement until after Randi Shade's term of office ended.
- On September 1, 2010, Randi Shade met with Bill Spelman and Mike Martinez and discussed the Budget for Fiscal Year 2010-2011. On September 3, 2010, Randi Shade called Laura Morrison via cell phone at 10:13 a.m. At 2:45 p.m. on September 3, 2010, Laura Morrison sends a text message to Sheryl Cole saying that Randi Shade is "good w \$1M for HHS" (Health and Human Services). In addition, Bill Spelman's Budget Spreadsheet for FY 2010-2011 has handwritten notes indicating that he also spoke to Randi Shade about Health and Human Services Contracts. In other notes, Bill Spelman indicates that he spoke to Randi Shade about the budget for the Trail of Lights.
- On September 30, 2010, Randi Shade sent an e-mail from her non-city account to Lee Leffingwell, Chris Riley, and Mike Martinez on their non-city accounts. Her e-mail discussed how the city ought to respond publically to Adam Loewy, the attorney for Nathaniel Sanders in *Nathaniel Sanders, Sr., et al. v. Leonardo Quintana and the City of Austin*, No. A09-CA-00426 SS, in the United States District Court for the Western District of Texas, Austin Division. Lee Leffingwell replies all to the e-mail on September 30th to add his viewpoint. Randi Shade replies all to Leffingwell's e-mail on September 30th continuing the discussion. Lee Leffingwell and Mike Martinez both reply all to the e-mail chain on October 1st adding to the discussion. Chris Riley received all of the e-mails debating how the city should respond to Loewy. The Sanders Settlement was discussed in a public meeting on July 29, 2010 prior to any vote being taken. There was continued public discussion about the Council's majority vote against the Sanders Settlement for many months to come; however, no vote was taken with respect to the Sanders Settlement until after Randi Shade's term of office ended.

- On November 16th and 17th, 2010, Randi Shade, Mike Martinez, and Mayor Lee Leffingwell participated in an ongoing e-mail exchange in which they discussed the need to talk to Chris Riley and Sheryl Cole in an attempt to prevent a postponement of the vote on the Water Treatment Plant #4 items on the November 18th City Council agenda. This e-mail exchange happened exclusively on non-city e-mail accounts. On November 16, 2010, Randi Shade sent a text message to Chris Riley forwarding him a link to an Austin American Statesman article about Water Treatment Plant #4. She also sent another text message to Chris Riley to set up a meeting with him and city manager Marc Ott the next morning, November 17, 2010, at 9:00 am. On November 16, 2010, within one hour of sending the text to Riley, Randi Shade sent an email to Lee Leffingwell, cc'ing Mike Martinez, and Mark Nathan stating that she would not support a postponement and further stating "we are all working on Sheryl." On November 17, 2010 between 5:30 p.m. and 11:24 p.m., Randi Shade talked to the following City Council members on her cell phone: Sheryl Cole, Chris Riley, Mayor Lee Leffingwell, and Mike Martinez. During the City Council Meeting the next day, November 18th, Sheryl Cole and Mike Martinez had an e-mail exchange negotiating adding oversight in the form of quarterly reports on the financial status of Water Treatment Plant 4. Randi Shade also received a copy of this exchange by e-mail and responded back to Mike Martinez thanking him for working with Sheryl Cole to prevent the postponement of the vote. At the November 18, 2010 Council Meeting there were public speakers advocating for postponement of that day's WTP4 items, as well as speakers calling for no further postponement. No motion for postponement was offered by anyone on the Council.
- Randi Shade affirms that, to the best of her knowledge and belief, she complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.
- Randi Shade affirms that, to the best of her knowledge and belief, she complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.
- Randi Shade affirms that, to the best of her knowledge and belief, she has completed and filed with the Clerk all required personal financial statements, or will file them within 60 days of the date of this agreement.
- Randi Shade swears that, to the best of her knowledge and belief, she has turned over to the City of Austin all city owned records and documents inclusive of electronic communications conducted on non-city accounts that concern city business.

I understand the allegations against me. I hereby affirm that the foregoing statements are true and correct. Had this case been presented in a court of law, I would have submitted as my defense, and I still so maintain, that it was never my intention to circumvent the Texas Open Meetings Act.


Attorney for Defendant


Defendant

00000081
State Bar Number

Recognition of Facts Considered by the County Attorney's Office

In addition to considering information discovered during the course of the County Attorney's investigation into violations of the Texas Open Meetings Act committed by the City of Austin and individual members of Austin City Council, the County Attorney takes the following into consideration:

- The Austin City Council deals with topics of high public interest and engages in numerous hours of public debate and discussion covered by the media. Regularly scheduled City Council meetings are posted and broadcast live. Council Meeting agendas and items for City Council consideration are available at City Hall and are posted online in advance of what is required by state law. On November 19, 2009 Randi Shade co-sponsored Resolution 20091119-060 to double the time for public review of Council Meeting Agendas. In many controversial and contested cases, advocates for and against are present and are usually afforded a limited opportunity to be heard. Austin City Council Members hold regular office hours to meet with constituents about agenda items in advance of Council Meetings.
- On January 26, 2011, Randi Shade completed the Attorney General's Open Meetings Act training video and subsequently filed the certificate of completion with the City Clerk's Office.
- Randi Shade discontinued the practice of one-on-one meetings and on February 9, 2011 the Austin City Council began holding public work sessions prior to City Council meetings.
- On April 7, 2011, Randi Shade voted in favor of Resolution 20110407-014, requiring all future city business to be conducted on city accounts. In addition, the resolution required council members to promptly forward

electronic communications regarding city business received on non-city accounts to the city account.

- As of the date of this agreement, Randi Shade is no longer a member of the Austin City Council or any other governmental body.
- Randi Shade affirms that, to the best of her knowledge and belief, she complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.
- Randi Shade affirms that, to the best of her knowledge and belief, she complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.
- Randi Shade affirms that, to the best of her knowledge and belief, she has completed and filed with the Clerk all required personal financial statements, or will file them within 60 days of the date of this agreement.
- Randi Shade swears that, to the best of her knowledge and belief, she has turned over to the City of Austin all city owned records and documents inclusive of electronic communications conducted on non-city accounts that concern city business.
- Over the course of this investigation, it has become a concern that the organizational structure, internal culture, and professional development of the City of Austin's management, including the City Manager's Office and City Legal Department, was not conducive to facilitating proper understanding and adequate training to ensure compliance with the Texas Open Meetings Act by members of the Austin City Council.
- As of the date of this agreement, there is pending federal litigation challenging the constitutionality of criminal sanctions for violations of the Texas Open Meetings Act.

Duration of Agreement

This agreement begins when this document is executed in its entirety by all parties and this agreement lasts for one (1) year.

Agreement to Specified Terms and Conditions

Randi Shade must timely provide proof of completion of all terms and conditions, by U.S. postage-prepaid mail, facsimile transmission, email, or hand delivery to:

Street Address
Travis County Attorney's Office
Ned Granger Admin. Bldg.
Austin, Texas 78701

Mailing Address
Travis County Attorney's Office
Attn: Deferred Prosecution
Post Office Box 1748
Austin, Texas 78767-1748

- Randi Shade agrees that she will continue to cooperate with the Travis County Attorney's Office investigation into alleged Texas Open Meetings Act violations by the Austin City Council, by:
 - Meeting with attorneys from the Travis County Attorney's Office within thirty days from the effective date of this agreement, for a minimum total of two hours time, to be conducted at one or two sessions, during which meeting(s) she will fully and truthfully answer questions submitted by the Travis County Attorney's Office regarding violations of the Texas Open Meetings Act alleged to have been committed by past or present Austin City Council members.
 - Randi Shade agrees to testify completely and truthfully before the Grand Jury, the Court and the Jury at any proceeding, hearing, or trial when called upon to do so by an attorney with the County Attorney's Office regarding alleged violations of the Texas Open Meeting Act by past or present Austin City Council members.
- Subsequent to the initiation of this investigation, Randi Shade completed a Texas Open Meetings and Records Retention education course.
- Randi Shade agrees to comply with the City of Austin's Records Retention Rules under Chapter 2-11 of the Austin City Code and Local Government Code § 203.041.
- Randi Shade agrees to comply with the Public Information Act, Texas Government Code Chapter 552 and the Local Government Records Act, Texas Local Government Code Chapter 201 by providing the City of Austin any public information that Randi Shade possesses that the city does not also possess, either immediately or at the time of a relevant public information request.

**Consequences of Non-Compliance with or Violation of
the Terms and Conditions of This Agreement**

If Randi Shade fails to comply with, or violates, any of the specified terms and conditions of this agreement, the Travis County Attorney is no longer subject to the agreement and may file charges alleging that Randi Shade committed a violation under Chapter 551 or 552 of the Texas Government Code and may prosecute the cases to the full extent of the law.

Randi Shade hereby agrees to the following if the Travis County Attorney files the charges:

- Randi Shade agrees to plead no contest to charges under Texas Government Code Section(s) 551.143 and/or 551.144 that are supported by the admissions and affirmations listed herein, and the County Attorney agrees not to seek a sentence that includes confinement in the county jail.
- Randi Shade agrees and stipulates that this agreement, including the written admissions and affirmations that it contains, is admissible against her in court.
- Randi Shade agrees and stipulates that affidavits, written statements of witnesses, and other documentary evidence are admissible against Randi Shade at trial.

The Travis County Attorney's burden of showing Randi Shade's non-compliance with this agreement is by a preponderance of the evidence.


I, Randi Shade, have fully discussed this agreement, the waivers herein, and the allegations against me with my attorney. I am satisfied that she has properly represented me. I have received a copy of this Deferred Prosecution Agreement and understand that this agreement and its contents may be made public. I waive any further time to prepare for trial to which my attorney or I may be entitled.



Attorney for Defendant

00000081

State Bar Number



Assistant County Attorney

Travis County, Texas

24036154

State Bar Number



Defendant

Date: 7-31-12