

THE STATE OF TEXAS

§

IN THE COUNTY

V.

§

COURT-AT-LAW

SHERYL COLE

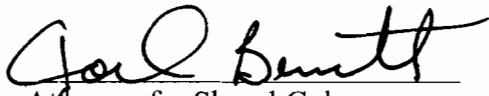
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TRAVIS COUNTY, TEXAS

### COMPLIANCE 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 **Sheryl Cole**.

Sheryl Cole agrees to comply with the terms and conditions specified herein. In return, the State of Texas agrees to defer proceedings.

  
\_\_\_\_\_  
Attorney for Sheryl Cole

  
\_\_\_\_\_  
Sheryl Cole

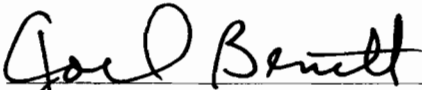
### **Waiver of Statute of Limitation**

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 any alleged commission of said offense, and not afterward. After consulting with my attorney, I, Sheryl Cole, freely, knowingly, and voluntarily waive this right.

For the purposes of this waiver, the relevant date is on or after April 30, 2010 for possible 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 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 Sheryl Cole

  
\_\_\_\_\_  
Sheryl Cole

### **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.” In interpreting this statute, the Federal District Court for the Western District of Texas stated “[t]hus, a meeting of less than a quorum is not a “meeting” within the Act when there is no intent to avoid the Act’s requirements. On the other hand, the Act would apply to meetings of groups of less than a quorum where a quorum or more of the body attempted to avoid the purposes of the Act by deliberately meeting in groups of less than a quorum in closed sessions to discuss and/or deliberate public business, and then ratifying their actions as a quorum in a subsequent public meeting.” *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). Op. Tex. Att’y Gen. No. GA-0326(2005).
- Texas courts and the Attorney General of Texas have ruled 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 ruled 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). Courts have stated that Attorney General Opinions are highly persuasive and are entitled to great weight. However, the ultimate determination of a law’s applicability, meaning, or constitutionality is left to the courts

- 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.”

### **Affirmations**

Sheryl Cole affirms that the following statements are true and accurate:

- Sheryl Cole is a member of the Austin City Council.
- In June 2006, when Sheryl Cole began her term on Austin City Council, there was an existing practice of Council Members systematically scheduling private one-on-one meetings with each of the other 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. 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 the Mayor met with each other City Council member and discussed city business. As an elected member of the City Council Sheryl Cole continued this practice. Between June 2006 and February 2011, Sheryl Cole usually met with each other City Council member in a series of one-on-one meetings to discuss city business before City Council meetings. Beginning in August 2010, Mayor Lee Leffingwell modified his practice of one-on-one meetings with Council Members and began meetings with the other Council Members in a series of longer two-on-one meetings. Leffingwell stated in an e-mail to each council member, “Because we are often rushed in these meetings, and sometimes barely get through even a cursory review of the agenda, I’d like to try moving to 1-hour “2-on-1” meetings with you and another Council member.” The two-on-one meetings continued through February 2011 and were a continuation of the practice of routinely meeting with each other City Council member to discuss city business before City Council meetings.
- The aforementioned meetings or one-on-one’s were on Sheryl Cole’s calendar. There was no attempt to hide them nor keep them a secret.
- On February 8, 2010, Sheryl Cole, Chris Riley, and Mike Martinez met to discuss prioritization of investments in affordable housing. On February 24, 2010, Sheryl Cole met with Mike Martinez and discussed prioritization of the remaining funds from the General Obligation Housing Bond. On February 25, 2010, a City

Council meeting day, Sheryl Cole e-mailed Chris Riley at 4:35 p.m. about asking if he had ever found out how much of the GO Housing Bond money the city had spent on 0-30%. Riley replied including his exchange with a city staff member. Sheryl Cole cc'ed Randi Shade when she replied to Chris Riley's e-mail. Randi Shade replied to Sheryl Cole and Chris Riley. At 5:21 p.m., Sheryl Cole forwarded an e-mail to Chris Riley and Randi Shade concerning the amount of City GO Bond dollars that had benefitted families with income 30% or less than the median family income. An Assistant City Manager had initially communicated the information to Cole by e-mail. Riley and Cole exchanged three e-mails between 5:21 p.m. and 6:45 p.m. about the information provided by staff, and they copied Shade on all but one of those e-mails. At 7:40 p.m. during a public hearing on the GO Bonds, Bill Spelman sent an e-mail to all members of the City Council with an attached spreadsheet with calculations supporting his proposed prioritization of the remaining GO Housing Bond money. Sheryl Cole responded by e-mail only to Bill Spelman asking what he thought the split should be. Spelman did not respond to Cole's e-mail. Mike Martinez and Randi Shade "replied all" to the e-mail and acknowledged receipt of Spelman's e-mail and attachment. Thus, all City Council Members received Martinez and Shade's e-mail acknowledgements to Spelman. At the conclusion of the public hearing, City Council voted to close the public hearing and then adjourned its meeting at approximately 10:01 p.m. without taking any other action on Item 86.

- Sheryl Cole, Laura Morrison, and Chris Riley were the co-sponsors of a draft resolution, item #40 on the May 13, 2010 City Council Agenda. The resolution sought to direct the City Manager to prepare and present to the City Council's Audit & Finance Sub-Committee a financial analysis regarding the impact on property tax rates of the various potential city bond elections being publicly discussed for November 2010, 2011, and 2013. On May 10, 2010, Sheryl Cole sent a text message to Laura Morrison saying, "Lee wants to postpone bond item per Chris. He wants to let him. What do you think?" Laura Morrison and Sheryl Cole exchange more text messages about this possibility. Sheryl Cole told Chris Riley that she would not agree to postpone based on the item being submitted late but would agree to postpone to work on the language. At the May 13, 2010 Council Meeting, Lee Leffingwell asked that Item 40 be postponed so that he could work with Council Members on language that would be acceptable to everyone and not inconsistent with Council's March 25, 2010 resolution. In response to Leffingwell's request, and in that open meeting, Mike Martinez made a motion to postpone and Randi Shade seconded the motion. Sheryl Cole then explained the need for the resolution and her willingness to work with Leffingwell on acceptable language for the resolution that would be posted for consideration on the May 27, 2010 City Council Agenda. The motion passed unanimously. On May 18, 2010 Lee Leffingwell met with Sheryl Cole, City Manager Marc Ott, and Greg Canally to work on language for a replacement resolution. Randi Shade was also present but was not invited to the meeting by Cole. The agenda package for the May 27, 2010 Council Meeting included a posting for an Item 53. The backup for Item 53 was the exact same draft resolution as Item 40 from the May 13, 2010

council agenda showing the sponsors as being Sheryl Cole, Laura Morrison and Chris Riley. On May 24, 2010, City Staff forwarded by e-mail to Leffingwell, Cole, and Shade a revised replacement resolution and required that additional information be provided no later than December 15, 2010. Members of the Audit & Finance Subcommittee wanted the information made public sooner. Staff's revised replacement resolution was never used as backup for Item 53 on the May 27, 2010 Council agenda. At the May 27, 2010, City Council Meeting, Cole withdrew Item 53 from the agenda with no objection.

- On May 24, 2010, the City Manager's staff sent to Sheryl Cole, Lee Leffingwell, Randi Shade, and copied to others, a draft of a replacement resolution along with an e-mail that stated: "you had asked city manager to put together; it has been crafted based on the discussion that occurred at last week's meeting." On May 27, 2010, Sheryl Cole forwarded the staff's draft replacement resolution to Bill Spelman and Laura Morrison, asked for their thoughts, and said her assistant would try to set up a meeting for the three of them. On May 29, 2010, Laura Morrison sent a text to Sheryl Cole saying she could not make the meeting but would review the draft and get back to Sheryl Cole with comments. On May 30, 2010, Sheryl Cole texts Laura Morrison that once she and Bill Spelman approve, the bond item is a go. On June 4, 2010, Cole e-mailed Lee Leffingwell with a Revised Bond Resolution attachment. At its June 24, 2010 Council Meeting a resolution sponsored by Leffingwell, Cole, and Morrison, Item 88, passed on consent.
- On May 27<sup>th</sup>, 2010, the Austin City Council conducted City Manager Marc Ott's yearly performance review in Executive Session. On June 27, 2010, Sheryl Cole sent a text message to Laura Morrison asking Morrison to call her and stating "got some ideas on how to handle marc that can get us to 7." On June 28, 2010, Sheryl Cole sent a text to Laura Morrison asking how her meeting with Randi Shade went and said she also talked to Randi Shade but not Bill Spelman. Laura Morrison responds that she had a phone conversation with Randi Shade and talked to Bill Spelman and Bill Spelman said no specific deal had been given. Phone records indicate that Sheryl Cole called Bill Spelman, Laura Morrison, and Randi Shade on June 27, 2010.
- Sheryl Cole's August 5, 2010 City Council Meeting Agenda has notes that show that Sheryl Cole talked to Mike Martinez, Laura Morrison, and Bill Spelman about the Historic Landmark Resolution set for that meeting.
- On September 2, 2010, Sheryl Cole met with Randi Shade to discuss the Budget for FY 2010-2011. The same day, Sheryl Cole met with Laura Morrison to discuss budget details. On September 3, 2010, Sheryl Cole and Laura Morrison discussed the budget further over text messages. In the text messages, Laura Morrison told Cole that Chris Riley and Bill Spelman were good with cutting ERGSO Austin Energy funding. In addition Laura Morrison told Sheryl Cole that Chris Riley, Bill Spelman, and Randi Shade were good with \$1 million for Health

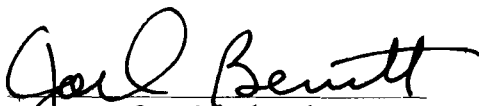
and Human Services. The September 3, 2010 text message specifically states “[c]hris good w cutting EGRSO ae funding. Bill too. You 3 plus rs good w \$1M for HHS. Left msgs for ll and mm.” Bill Spelman and Sheryl Cole talked about EGRSO. On September 9, 2010, Sheryl Cole met separately with both Laura Morrison and Lee Leffingwell and called Randi Shade. Mike Martinez talked to Cole about the details of the budget.

- On October 15, 2010, Sheryl Cole e-mailed out an invitation on behalf of herself and Randi Shade to an event on October 29, 2010 at the State of Texas Facilities Commission regarding the State’s planning for its redevelopment of the Capitol Complex.. On October 18, Cole forwarded the invitation to Chris Riley as he, together with Cole had previously visited with state employees from the Texas Facilities Commission regarding their redevelopment plans. On October 22, 2010, Sheryl Cole forwarded the same invitation to Lee Leffingwell asking him to come to the event and telling him that she would come and talk to him about it later. Despite Cole’s invitations, a quorum of City Council Members did not attend the October 29, 2010 event at the Texas Facilities Commission.
- On October 28, 2010, Sheryl Cole forwarded an e-mail from a citizen to to Lee Leffingwell, Randi Shade, and Chris Riley who were the three Council Members who were tasked with recommending the citizens who served on the Council appointed Citizens Task Force for the proposed November 2010 bond election. The original e-mail was sent to a number of people including Laura Morrison, Chris Riley, Lee Leffingwell, and Cole. Attached to the original e-mail was a report on new rail systems, gentrification, and reduced ridership. When forwarding the e-mail and report, Cole wrote the following: “These comments and articles set forth my basic concern with the financial and political feasibility of rail.” No Council Member responded by e-mail to Cole.
- On November 9, 2010, Randi Shade forwarded an e-mail with information regarding Water Treatment Plant #4 items to be heard by the City’s Water/Wastewater Commission on November 10, 2010 and City Council on November 18, 2010. On November 17, 2010 , Randi Shade sent a text message to Sheryl Cole at 4:29 p.m. and Sheryl Cole called her back at 5:30 p.m. Randi Shade sent another text to Sheryl Cole at 6:53 p.m. At 8:25 p.m. Mike Martinez called Sheryl Cole. Sheryl Cole called Randi Shade later that night at 11:23 p.m. During the City Council meeting the next day, November 18, 2010, Sheryl Cole and Mike Martinez left the dais together and returned several minutes later. At 10:27 a.m. Sheryl Cole e-mailed Mike Martinez from the dais and thanked him for calling her the night before. At 11:23 a.m. during the City Council meeting Mike Martinez and Sheryl Cole exchanged e-mails about adding oversight in the form of quarterly reports to the Water/Wastewater Commission on the financial status of Water Treatment Plant #4. Cole cc’ed Leffingwell on one of her e-mails to Martinez.
- On July 28, 2010, Mike Martinez forwarded an e-mail he received from Fred Hawkins to Chris Riley, Sheryl Cole, Bill Spelman, Laura Morrison, Lee

Leffingwell, and Randi Shade. Mr. Hawkins is a former city attorney and the e-mail was his argument as to why the city should not settle in *Nathaniel Sanders, Sr., et al. v. Leonardo Quintana and the City of Austin*, No. A09-CA-00426 SS. Cole did not respond by e-mail to Martinez' e-mail.

- Sheryl Cole affirms that she complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.
- Sheryl Cole affirms that she complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.
- Sheryl Cole affirms that 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 hereby affirm that the foregoing statements are true and correct. I maintain that I never violated or conspired to violate the Texas Open Meetings Act. This compliance agreement is the result of an honest disagreement between the County Attorney's Office and Sheryl Cole as to both the law governing the Texas Open Meetings Act and facts as applicable to the County Attorney's Office investigation to determine whether any violations of the Act have occurred. It does not constitute an admission of guilt by Sheryl Cole to any alleged offense. It is a good faith effort by both parties to resolve the County Attorney's Office investigation, and in consideration of the County Attorney's legitimate effort to enforce the Open Meetings Act and Sheryl Cole's efforts to ensure that even the potential for appearance of impropriety is avoided by implementing best practices related to transparency and open government.

  
Attorney for Sheryl Cole

  
Sheryl Cole

#### **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.



- Sheryl Cole completed the Attorney General's Open Meetings Act training video and subsequently filed the certificate of completion with the City Clerk's Office.
- Despite the fact that individual one-on-one meetings not otherwise prohibited under TOMA §551.143 are not per se illegal, to avoid any potential appearance of impropriety Sheryl Cole discontinued the practice of scheduling 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, Sheryl Cole 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.
- Sheryl Cole affirms that she complied fully with the Travis County Attorney's February 2, 2011 Open Records Request.
- Sheryl Cole affirms that she complied fully with the Grand Jury Subpoena issued by the Travis County Attorney's Office on August 16, 2011.
- Sheryl Cole affirms that 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.

### **The City of Austin's New Initiatives in Open Government**

- The Austin City Council requested that the City Manager implement a policy similar to Resolution 20110407-014 regarding the use of non-city accounts. Subsequently, the City Manager issued Administrative Bulletin 08-06 requiring all city employees to follow a policy that is substantially similar to the one created by the city council.
- The City of Austin created a team of senior advisors to review the City's practices regarding ethical and legal obligations. This team made recommendations that would enhance compliance and oversight, and streamline the process for public information requests. Additionally, the

City created a single point of contact in each council member's office on open government issues.

- The City of Austin's Ethics and Integrity office became a part of the City's law department with a newly created executive level position to oversee and ensure compliance with the Texas Public Information Act and the Texas Open Meetings Act.
- The City of Austin has hired a full time records analyst to work with the Austin City Council on records management.

### **Duration of Agreement**

This agreement begins when this document is executed in its entirety by all parties and this agreement lasts for two (2) years.

### **Agreement to Specified Terms and Conditions**

Sheryl Cole 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: Mack Martinez, Assistant County  
Attorney  
Post Office Box 1748  
Austin, Texas 78767-1748

- Sheryl Cole 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.
- Sheryl Cole agrees to testify completely and truthfully before any Grand Jury, Court and/or Jury at any proceeding, hearing, or trial if called upon to do so by an attorney with the County Attorney's Office regarding alleged violations of the Texas Open Meetings Act by past or present Austin City Council members.
- Sheryl Cole shall provide proof that she has completed a Texas Open Meetings Act training course and a Public Information Act training course, both available through the Texas State Attorney General's Office, within twelve months of the date this agreement is signed.
- Sheryl Cole shall direct all members of her staff to complete a Texas Open Meetings Act training course and a Public Information Act training course, both

available through the Texas State Attorney General's Office, within twelve months of the date this agreement is signed.

- Sheryl Cole agrees to continue 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.
- Sheryl Cole agrees to continue 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 Sheryl Cole possesses that the city does not also possess, either immediately or at the time of a relevant public information request.
- Sheryl Cole agrees to continue to comply with City Council Resolution 20110407-014, requiring all future city business to be conducted on city accounts and requiring council members to promptly forward electronic communications regarding city business received on non-city accounts to the city account.
- Sheryl Cole agrees to direct her staff to comply with the requirements of City Council Resolution 20110407-014.

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

If Sheryl Cole 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 proceed with charges alleging that Sheryl Cole 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.


Sheryl Cole hereby agrees to the following if the Travis County Attorney files the charges:

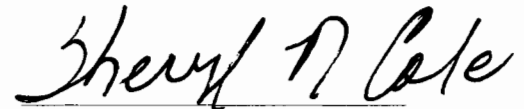
Sheryl Cole agrees and stipulates that this agreement, including the written affirmations that it contains, is admissible against her in court.

Sheryl Cole agrees and stipulates that all business records affidavits, documents, and electronic communications provided to the Travis County Attorney's office by Sheryl Cole or by the City of Austin on behalf of Sheryl Cole are admissible against Sheryl Cole at trial and in court.

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

I, Sheryl Cole, have fully discussed this agreement, the waivers herein, and the allegations against me with my attorney. I am satisfied that he has properly represented me. I have received a copy of this Compliance Agreement and I understand that this agreement and its contents may be made public.

  
Attorney for Sheryl Cole

  
Sheryl Cole

Date: 10 / 22 / 2012

  
Assistant County Attorney  
Travis County, Texas