CAUSE NO. D-1-GN-11-000639

THE AUSTIN BULLDOG	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	
	§	
LEE LEFFINGWELL, MAYOR,	§	
CHRIS RILEY, COUNCIL MEMBER	§	
PLACE 1, MIKE MARTINEZ, MAYOR	§	
PRO TEM, PLACE 2, RANDI SHADE,	§	250 th JUDICIAL DISTRICT
COUNCIL MEMBER, PLACE 3, LAURA	§	
MORRISON, COUNCIL MEMBER,	§	
PLACE 4, BILL SPELMAN, COUNCIL	§	
MEMBER, PLACE 5, SHERYL COLE,	§	
COUNCIL MEMBER, PLACE 6, and the	§	
CITY OF AUSTIN	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

PLAINTIFF'S REQUEST FOR ADMISSIONS TO DEFENDANT CITY OF AUSTIN

TO: Defendant City of Austin by and through its attorney of record, James E. Cousar, Thompson & Knight, LLP, 98 San Jacinto Blvd., Suite #1900, Austin, Texas 78701-4238.

Plaintiff serves this Request for Admissions under TRCP 198. Defendant is requested to admit or deny each request for admission within 30 days after service as required by the TRCP to Bill Aleshire, Riggs Aleshire & Ray, P.C., 700 Lavaca, Suite 920, Austin, Texas 78701.

Definitions

- 1. "You" or "Your" means the Defendant to whom this request is addressed, and other persons acting on behalf of the Defendant.
- 2. "Open Records Request No. 1" means the request submitted to the Defendants by the Austin Bulldog on January 19, 2011 and supplemented on January 27, 2011 and referenced in Plaintiff's Second Amended Petition.
- 3. "Open Records Request No. 2" means the request submitted to the Defendants by the Austin Bulldog on May 1, 2011 and referenced in Plaintiff's Second Amended Petition.
- 4. "Personal email address" means an email address used by Council Members or the City Manager to create or receive written communications other than an email address hosted by the City of Austin.
- 5. The terms "And" as well as "Or" shall be construed either disjunctively or conjunctively to bring within the scope of these Requests any information which might otherwise be construed to be outside their scope.
- 6. The terms "Concerning" or "Referring To" or "Relating To" or "Regarding" and their

- derivations shall mean reflecting, having a relationship to, pertaining to, evidencing, or constituting, in whole or in part, the subject matter of the particular request.
- 7. "The Austin Bulldog" means the Plaintiff.
- 8. The term "written communication" means any written utterance, transfer or exchange of information, notation or statement of any nature whatsoever, by or to whomever made, including, but not limited to correspondence, electronic mail, text messages transmitted by cellular telephone, instant messaging, and/or any other understandings, transmitted from Austin Council Members or City Manager or received by Austin Council Members or City Manager.
- 9. "Lawsuit" refers to all of the claims, whether now asserted or asserted hereafter by amendment, supplement, or otherwise, in the above-styled and numbered cause.
- 10. The term "Petition" refers to the live petition at the time these Requests are served upon You and every amended or supplemental petition served thereafter.
- 11. The term "Person" means every natural person, association, firm, partnership, corporation, board, committee, agency, commission, legal entity of any form or type, and every other organization or entity, whether public or private.
- 12. "Plaintiff' or "Defendant," as well as a party's full or abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates, or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.
- 13. The plural includes the singular and vice versa.
- 14. The masculine includes the feminine and vice versa.

REQUEST FOR ADMISSIONS

Admit or deny the truth of the following statements:

REQUEST FOR ADMISSION 1: In the copies of written communication provided to the Austin Bulldog in response to Open Records Request No. 1, the Personal Email Address of one or more Austin Council members was redacted (concealed).

REQUEST FOR ADMISSION 2: One or more of the written communication referenced in Request for Admission 1 (in which the Personal Email Address of one or more Austin Council members was redacted) was a communication related City of Austin business.

REQUEST FOR ADMISSION 3: In the copies of written communication provided to the Austin Bulldog in response to Open Records Request No. 1, the Personal Email Address of City Manager Marc Ott was redacted (concealed).

REQUEST FOR ADMISSION 4: One or more of the written communication referenced in Request for Admission 3 (in which the Personal Email Address of City Manager Marc Ott was redacted) was a communication related City of Austin business.

REQUEST FOR ADMISSION 5: Each member of the Austin City Council is the custodian of the records of that Council member's office, including written communication between the

Austin Bulldog's Request for Admissions Page 2 of 4 Council member and others relating to City of Austin business.

REQUEST FOR ADMISSION 6: On one or more occasions between January 1, 2009 and January 27, 2011, Council Members and the City Manager transmitted or received written communication relating to City of Austin business using the Council Members' or City Manager's Personal Email Address.

REQUEST FOR ADMISSION 7: On one or more occasions between January 1, 2009 and January 19, 2011, Council Members sent or received a written communication using the "SPARK" program (see Exhibit P-1 to Plaintiff's Second Amended Petition).

REQUEST FOR ADMISSION 8: Written communications using the "SPARK" program between January 1, 2009 and January 27, 2011 were not retained and cannot be provided in response to Open Records Requests No. 1 or No. 2.

REQUEST FOR ADMISSION 9: After the Austin City Council adopted its resolution on April 7, 2011 regarding conduct of city business through written communication on personal communication devices, all Austin City Council members did not forward to a city email account from their personal email account(s) all written communication dated since January 1, 2009 related to City of Austin business.

Respectfully submitted,

Bill Aleshire

State Bar No. 24031810

Jason Ray

State Bar No. 24000511

RIGGS ALESHIRE & RAY, P.C.

700 Lavaca St., Suite 920

Austin, Texas 78701

512 457-9806

512 457-9066 facsimile

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on the parties, through counsel of record, via e-service on August 27, 2012.

James E. Cousar Thompson & Knight, LLP 98 San Jacinto Blvd., Suite #1900 Austin, Texas 78701-4238

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512 469-6112 **512 469-6180**

James.Cousar@tklaw.com

Bill Aleshire

Bill aleshire.