

Affiliated Employee Agreement
Between
The City of Austin
And
The City of Austin Employees Retirement System
For Participation in the City of Austin 457(b)
Deferred Compensation Plan

This Agreement (the “Agreement”) is made by and between the City of Austin Employees Retirement System (COAERS) and the City of Austin, a Texas home rule city (the “City”) (each a “Party” or collectively the “Parties”), and is made with reference to the following facts:

- A.** City of Austin Employees Retirement System (COAERS) is the public pension system for regular full-time employees of the City of Austin working 30 or more hours per week, excluding the mayor, members of the City Council, and commissioned civil service police officers and firefighters. Originally established in 1941 by City ordinance, COAERS has been governed by state law (Article 6243n, Vernon's Texas Civil Statutes) since 1991.
- B.** The City is the sponsor of a 457(b) Deferred Compensation Plan for City employees that is further described in Parts 1-7 of Ordinance No. 20221103-003 (the “Plan”).
- C.** COAERS desires to ensure its employees are eligible (or continue to be eligible) to participate in the Plan for the purpose of providing a deferred compensation retirement benefit for its employee workforce in an efficient and cost-effective manner.
- D.** The City desires to allow COAERS employees to participate in the Plan under the terms of this Agreement in a manner that is cost-neutral to the City with no overall negative expense to the City as a result of such participation.
- E.** COAERS and the City each desire to commemorate the terms of their agreement set out below.

In light of these facts and in consideration of their mutual undertakings set out below, the Parties agree to the following terms and conditions:

- 1. Purposes of this Agreement.** The purposes of this Agreement are: (a) to memorialize the means by which COAERS provides a suitable deferred compensation retirement benefit for its employees in order to attract and retain the high-quality workforce needed to carry out its purposes; (b) to provide access by COAERS employees to the Plan on the terms and conditions of this Agreement; and (c) to create an administrative reimbursement system that fairly compensates the City for the costs associated with participation of COAERS employees in the Plan (if any).
- 2. Definitions.** Unless otherwise indicated, terms used in this Agreement shall have the meaning ascribed in 26 C.F.R. § 1.457-2 (Definitions). In addition, in this Agreement:

 - A. “Recordkeeper”** means a person or entity designated by the City that tracks participant accounts, including contributions, withdrawals, balances, transactions (e.g. fund transfers), and other activities associated with the Plan.
 - B. “Deferred Compensation Plan Committee”** means the City committee described in Parts 4-7 of Ordinance No. 20221103-003.
 - C. “Governing Documents”** means, collectively, the Plan Document, Adoption Agreement, and Master Services Agreement between the City and the Recordkeeper.
- 3. Authority to Perform This Agreement.** Each Party certifies (to the extent applicable) that: (a) it has authority to enter into this Agreement and to perform its obligations under this Agreement; (b) this Agreement has been approved by the Austin City Council; and (c) the individual signing this Agreement on its behalf is authorized to execute this Agreement.
- 4. Current Funds.** The City acknowledges and agrees that all payment obligations of COAERS to the City under this Agreement (if any) shall be payable from current funds available to COAERS.
- 5. Rights and Duties of the City Under This Agreement.** Under this Agreement:

 - A. Enrollment of COAERS Employees.** The City shall permit and cooperate with COAERS to facilitate the enrollment of eligible COAERS employees in the Plan.

Individuals who become employed by COAERS in the future will be eligible to enroll in the Plan subject to any limitations applicable to new City employees. For the avoidance of doubt, to the extent any COAERS employees are participants in the Plan as of the effective date of this Agreement, such employees shall remain participants in the Plan.

B. Participation by COAERS Employees and Retirees. COAERS employees and retirees will be eligible to participate in the Plan under the same terms and conditions as City employees and retirees who participate in the Plan, as set forth in the Plan Document, Adoption Agreement, and Master Services Agreement between the City and the Recordkeeper, as amended (the “MSA”, and collectively with the Plan Document and the Adoption Agreement, the “Governing Documents”), a copy of which have been provided to COAERS.

C. Limitations, Modifications, and Additions to the Plan. Participation by COAERS employees and retirees in the Plan is expressly subject to the terms and limitations set forth in the Governing Documents, which may change from time to time. The City remains solely responsible for determining all changes or modifications to eligibility standards and benefit levels under the Plan. Nothing in this Agreement limits the City’s authority to change or modify the eligibility standards or benefit levels for any part of the Plan, or to eliminate all or any part of the Plan, so long as such modification or elimination does not distinguish between COAERS employees and comparable City employees. Furthermore, this Agreement shall not impair, limit, or otherwise affect the City’s authority to alter or terminate the MSA. Nor shall this Agreement affect the City’s authority to enter into an agreement similar to the MSA with a different Recordkeeper.

D. Material Changes or Amendments. The City shall provide a written copy or description of any material changes or amendments to the Governing Documents to COAERS at least thirty (30) days in advance of the effective date of such change or amendment, or as soon as administratively practicable.

E. Computation and Payment of Costs. The Parties agree that costs for the Plan are borne by Plan participants as described in the MSA and other Governing Documents. Should the City incur any additional costs related to the administration of the Plan for COAERS employees, the City will notify COAERS of such costs, and the Parties agree that they will confer regarding an amendment to this Agreement to fairly compensate the City for those costs. The Parties further agree that COAERS shall be

solely responsible for any administrative or other costs that COAERS may incur in connection with performing the duties required by COAERS under this Agreement.

- F. **Benefit Assistance.** The City will be responsible for providing benefit assistance to COAERS employees and retirees concerning their participation in the Plan.

6. Rights and Duties of COAERS Under This Agreement. Under this Agreement:

- A. COAERS employees may enroll in the Plan as provided in Section 5.A. of this Agreement.
- B. COAERS employees and retirees may participate in the Plan as provided in Section 5.B. of this Agreement.
- C. COAERS shall cooperate reasonably with the City to facilitate the enrollment and participation of its employees and retirees in the Plan.
- D. If available, COAERS shall use the Recordkeeper's online payroll submission process to submit payroll information, payroll contribution payments, and provide relevant participant information.
- E. COAERS shall cooperate with the annual audits of the Plan, including providing W-2 & W-3 data, and other documentation related to COAERS employees and retirees as may be reasonably requested by the Plan's Auditor, the City Auditor, or both.
- F. The individual signing this Agreement on behalf of COAERS shall be designated as the individual with the authority to administer this Agreement on behalf of COAERS, unless such signatory designates in writing another individual to serve in such role.

7. Other Terms and Conditions.

- A. **Effective Date.** This Agreement shall become effective upon approval by both Parties and the subsequent execution of this Agreement through the signature below of an authorized representative of each Party.
- B. **Term.** Once effective, this Agreement will be in effect until December 31, 2031 ("Initial Term"), unless either Party provides notice of termination to the other Party in accordance with Section 7.C. of this Agreement within the Initial Term. This

Agreement shall be automatically renewed at the end of the Initial Term (and each subsequent term) for an additional 5-year period, unless either Party provides notice of termination to the other Party in accordance with Section 7.C. of this Agreement before such renewal date (“Renewal Term”).

- C. Termination.** Either Party may terminate this Agreement for any reason during the Initial Term or the Renewal Term, as applicable, by providing at least 120 days advance notice in writing to the other Party of its intent to terminate this Agreement, provided that such notice of termination shall not be effective earlier than the end of the then-current plan year. COAERS employees and retirees who are participating in the Plan at the time of the termination of this Agreement may retain their current Plan assets but may not continue to defer funds into the Plan.
- D. Amendments.** Revisions to this Agreement will take effect as agreed upon by the Parties in an authorized writing.
- E. Preservation of Immunities.** Each Party retains all legal immunities from liability and immunities from suit to which such Party is otherwise entitled at law. Nothing in this Agreement is intended to waive any such immunities or to grant or transfer any such immunities to the other Party.
- F. No Indemnification.** Recognizing the prohibition against contractual indemnification in Tex. Constitution Art. XI, Section 5, the Parties expressly confirm that nothing in this Agreement is intended to or does require either Party to indemnify the other Party for any claims or liabilities asserted by a third party on any basis whatsoever. This disclaimer includes claimed liabilities arising from contract, tort, statute or regulation, administrative fine or penalty, judgment, or otherwise. This disclaimer also includes claims for attorney’s fees or costs associated with any such liability.
- G. Notices.** Any notice required or permitted by this Agreement shall be made in writing sent by either electronic mail or postal mail to the following identified

representatives of the Parties (or their successors) at the indicated addresses:

Notice to COAERS:

Christopher Hanson (or successor)
Executive Director
City of Austin Employees Retirement
System
4700 Mueller Blvd, Suite 100
Austin, TX 78723
chris.hanson@coaers.org

Notice to the City:

Diana Thomas (or successor)
Plan Administrator
City of Austin
P.O Box 1088
Austin, TX 78767
diana.thomas@austintexas.gov

With a copy to:

Paige Saenz
General Counsel
223 W. Anderson, Suite A-105
Austin, TX 78752
paige@cityattorneytexas.com

With a copy to:

Deborah Thomas (or successor)
City Attorney
City of Austin
P.O Box 1088
Austin, TX 78767
deborah.thomas@austintexas.gov

H. Texas Public Information Act. Notwithstanding anything herein to the contrary (except for Section 7.L.), this Agreement is subject to the “Texas Public Information Act,” Texas Gov’t Code, Chapter 552. Each Party will endeavor to provide the other Party with advance notice if COAERS employee information covered by this Agreement is the subject of a Texas Public Information Act request it receives prior to providing the information to the public. Neither Party shall release the requested information if the information is confidential by law and does not require the City or COAERS to seek a Texas Attorney General ruling to withhold the information, or one of the Parties seeks a Texas Attorney General ruling and obtains a ruling that the information may be withheld. The City shall provide COAERS notice pursuant to the Texas Public Information Act of an open records request for information that is confidential under Section 7.L.

I. Records Retention. Both Parties shall retain all records related to this Agreement for a minimum of three (3) years to meet the audit requirements referenced in Section 6.E. Additionally, records related to this Agreement shall be maintained in accordance with each Party’s records retention policy. This Section shall survive termination of this Agreement.

- J. No Joint Enterprise Created.** This Agreement does not change the legal status or relationship between COAERS and the City, and does not create a joint venture, partnership, or any other joint business enterprise between COAERS and the City. The relationship between COAERS and the City shall continue to be governed by the applicable provisions of Texas state law, and any separate and applicable agreements made by the Parties.
- K. No Third-Party Beneficiaries.** No person or entity (including but not limited to any COAERS employee or retiree) shall receive, obtain, or otherwise benefit from any rights, obligations or provisions of this Agreement. By way of example and without limiting the application of this provision, no COAERS employee or retiree shall, except as provided above, gain any rights or privileges enforceable by law or by contract on account of any provision in this Agreement.
- L. Confidentiality.** Each Party agrees that neither it nor its employees shall use, divulge or communicate to any person (other than those whose province it is to know the same or with authority from COAERS) any COAERS employee data, including Personally Identifiable Information, Health Insurance Portability and Accountability Act of 1996 (HIPAA) information, or any other confidential information (collectively, the “Confidential Information”), which that Party may have received or obtained under this Agreement during the term of this Agreement, except as may be required in order to carry out the purposes of this Agreement. This restriction shall continue to apply after the termination of this Agreement for whatever cause without limit in point in time but shall cease to apply to information or knowledge that may come into the public domain otherwise than through the unauthorized disclosure by or the fault of the disclosing Party and/or its employees.
- M. Severability.** If any provision of this Agreement is invalid, illegal or unenforceable, that provision will, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the Parties hereto as expressed herein. If such a modification is not possible, the Parties hereto shall negotiate in good faith a modification of such provision that reflects as closely as possible the economic purpose of the invalid, illegal or unenforceable provision. If no agreement with respect to such modification is reached, the invalid, illegal or unenforceable provision will be severed from this Agreement. In any case, the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby for so long as the economic or legal

substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

- N. Venue and Choice of Law.** This Agreement is made under and shall be governed by the laws of the State of Texas without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The state courts of Texas shall have exclusive jurisdiction of any dispute arising out of or concerning this Agreement, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County, Texas.
- O. Limitation of Liability.** To the extent allowed by Texas law, the Parties agree that each Party is responsible for its own proportionate share of any liability for the negligent or grossly negligent acts or omissions of its employees, agents, contractors, or subcontractors arising out of, connected with, or as a consequence of its performance under this Agreement. Neither Party shall be liable to the other for any indirect, special, incidental, punitive, or consequential damages (including, but not limited to loss of business, revenues, profits, or other economic advantage) however it arises, whether in an action of contract, negligence or gross negligence, tort or other action, arising out of or in connection with this Agreement, even if advised of the possibility thereof.
- P. Audit Rights.** Subject to applicable legal restrictions on the confidentiality of individual employee protected information, the Parties shall have the mutual right to review any information used by the Parties relevant to this Agreement. The Parties shall cooperate reasonably with any such request by the other Party with the goal of ensuring that both Parties have full and clear understanding of all information and documentation related to this Agreement.
- Q. Resolution of Disputes.** Upon request of either Party, an informal attempt shall be made to negotiate a resolution of any dispute arising under this Agreement. Such request shall be in writing and shall seek a meeting between representatives of each Party within 14 calendar days after receipt of the request or such later period as agreed by the Parties. Each Party shall provide for the meeting, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a

written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.

- i. The mediation shall take place in Austin, Travis County, Texas. The Parties shall select a mediator within 30 calendar days of the written waiver, or within sixty 60 calendar days of the informal negotiation meeting. The Parties agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this Agreement prevents the Parties from relying on the skills of a person who is trained in the subject matter of the dispute. If the time period for selecting the mediator has expired with no agreement on the mediator, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The Parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The Parties will share the costs of mediation equally.
- ii. Nothing in this Section shall limit either Party's right to terminate this Agreement for or without cause or pursuant to Section 7.C.; provided, however, this Section shall survive termination of this Agreement.

R. Complete Agreement; Amendments. This Agreement constitutes the entire agreement and understanding between the Parties concerning the subject matter addressed herein, and supersedes all discussions, proposals, understandings, and representations concerning its subject matter. This Agreement may not be amended in whole or in part except in a written amendment authorized and properly executed by both Parties in accordance with Section 7.D.

[SIGNATURES ON FOLLOWING PAGE]

**CITY OF AUSTIN EMPLOYEES
RETIREMENT SYSTEM**

THE CITY OF AUSTIN, TEXAS

By:  _____
8F120E06F5EF40D...
Christopher Hanson
Executive Director

By: _____
Ed Van Eenoo
Chief Financial Officer

Date: May 1 _____, 2026

Date: _____, 2026