

We received some written inquiries regarding the request for proposals for investment consulting services. The questions and responses are included below from the City of El Paso Employees Retirement Trust “CEPERT” or “the Trust”.

**1. Are Board Meetings and Investment Committee meetings held on the same day?**

No, Investment Committee meetings are currently held the day before the Board meetings at 12:30 P.M. MDT/MST. The Board normally meets on the third Wednesday of each month at 8:30 A.M. MDT/MST with some exceptions. Please see Section II: Background, page 4.

**2. Under Section V, Scope of Services Required, page 6, the RFP states “. . . accompany Board Members and staff on due diligence and other investment-related trips on an as-needed basis.” Will CEPERT reimburse actual travel expenses separately (e.g.—airfare, hotel, meals, etc.), or are these potential costs to be embedded in the annual retainer fee?**

These potential costs should be embedded in the fixed fee.

**3. How many due diligence and other investment-related trips should be assumed if the related costs are to be included within the retainer as opposed to billed if / when incurred?**

The Trust has not taken any due diligence trips in the past five years. Very few trips are anticipated. An exact number is not known.

**4. How many due diligence trips do you expect to take annually?**

An exact number is unknown. In recent years, due diligence trips have not occurred but may be required in the future.

**5. Can you disclose what you are currently paying the incumbent on an annual basis?**

The scope of written questions should be related to the RFP. For payments made by the Trust, please refer to our website at [www.eppension.org](http://www.eppension.org).

**6. How many meetings do you expect to have in person on an annual basis (presuming travel restrictions are lifted)?**

Please refer to the response to question number one above.

12 (monthly) Board meetings per year in El Paso, Texas

12 (monthly) Investment Committee meetings per year in El Paso, Texas.

Please see Section V: Scope of Services Required, page 6.

**7. Would CEPERT consider holding fewer in-person meetings and have some meetings held virtually through video conferencing at a lower fee?**

Not at this time as meetings using video conferencing will not be permitted in Texas after September 1, 2021.

**8. Please provide the current investment line-up and a copy of the IPS if not already provided.**

Please refer to Attachment A, Portfolio Details, page 18 for “investment line-up”. The Investment Policy Statement “IPS” is available online at [www.eppension.org](http://www.eppension.org) on the “Fund Overview” page.

**9. What is the current pacing plan for private equity and real estate?**

Current pacing plan attached. An updated pacing analysis will be performed in the next few months.

**10. How many private equity and real estate funds are currently in your portfolio?**

2 – Real Estate Funds  
1 – Private Equity Fund

**11. Over the last three years, how many private equity and real estate managers have you committed to annually?**

2 – Real Estate  
1 – Private Equity

**12. What is the size of your senior staff? Do you have any dedicated staff to private equity? To real estate?**

4 – Senior Staff Members  
0 – Dedicated Staff to Private Equity  
0 – Dedicated Staff to Real Estate

**13. Under Section V, Scope of Services, D. Performance Measurement and Reporting on page 7 of the RFP, the listed services specify only quarterly performance measurement reporting. However, in Section VIII, Technical Proposal Requirements, item D.2, page 14 requests “... sample monthly and quarterly performance reports.” Will the selected firm be expected to produce and present monthly ‘flash’ reports, or will monthly reporting not be required?**

The selected firm is expected to produce and present monthly and quarterly performance reports to the Investment Committee and Board of Trustees.

- 14. Does CEPERT anticipate that it will conduct a service evaluation of the incumbent custodian during the term of the consulting services agreement? Does CEPERT anticipate that a custodian search will be conducted during the term of the consulting services agreement?**

CEPERT conducts service evaluations and searches on an as-needed basis. While a custodial search is not currently scheduled or planned, the Board through its Investment Committee may request a search or service evaluation at any time.

- 15. In Section VIII: Technical Proposal Requirements, item A.5, page 11 of the RFP an employee count by function is requested. For individuals who may have responsibilities in two (or more) categories, should that individual be counted just once, or should that individual be counted as a full-time equivalent in each relevant functional category (i.e.—can a single individual be counted more than once)?**

Please count individuals assigned to our account only once.

- 16. In Section VIII, Technical Proposal Requirements, item A.9, page 11 of the RFP do you require audited financial statements? If not, what type of document(s) will be deemed as responsive regarding “details on the financial condition of your firm”?**

Audited financial statements are acceptable.

- 17. In Section VIII, Technical Proposal Requirements, item B.2, page 13 would a representative list of clients be deemed responsive in the event a firm has a large number of clients (e.g. hundreds), or must all clients be included?**

We prefer a complete listing of clients.

- 18. In Section VIII, Technical Proposal Requirements, item C.11, page 14, the RFP asks for a description of “your firm's views on the structure of equity portfolios”. Does CEPERT want separate responses regarding the structure of listed domestic equity, listed non-US equity, and private equity, or will one response covering all three suffice?**

One response will suffice.

- 19. In Section VIII, Technical Proposal Requirements, item H.1, page 16, does CEPERT want proposers to disclose estimated travel costs to attend monthly Investment Committee and Board meetings?**

Costs to attend monthly Board and Investment Committee meetings should be included in the fixed fee and do not need to be individually disclosed.



**20. Will CEPERT agree to an annual fee escalation after year one of the investment consulting services agreement, or is a flat annual fee expected over the life of the agreement?**

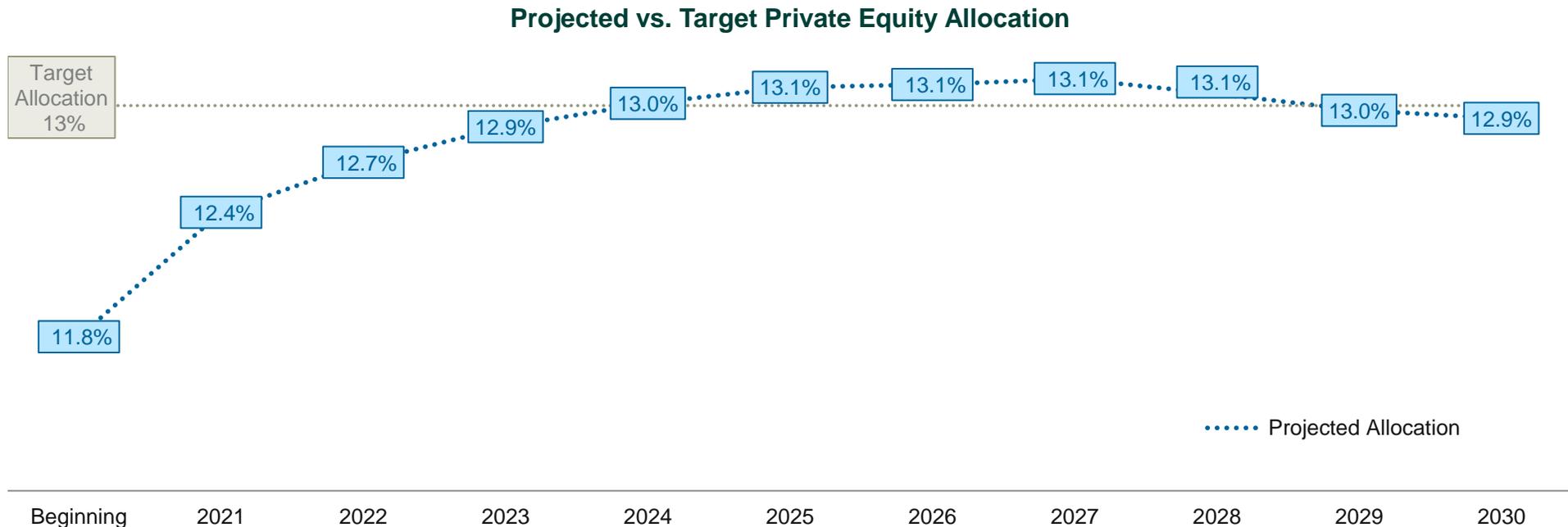
An all-inclusive fixed fee is required without any provisions for fee escalations.

**21. Under SECTION IV: Questions and Correspondence, the following statement appears on page 5: "If your firm decides not to submit a proposal, please notify our office by August 2, 2021." Is this RFP by invitation only, or is it open to all potential candidates?**

The RFP was sent to eight firms. However, the RFP was also made available on the Trust's website.

# Private Equity Commitment Pacing

## Net Asset Value (NAV) vs. Target Allocation



- Capital calls (cash outflows) and distributions (cash in-flows) don't necessarily match over time and thus create variation between the Private Equity Target and Private Equity NAV.
- Additionally the variation in plan benefits paid and uncertainty over what proportion of a capital commitment will be called from new and existing managers adds another layer of uncertainty.
- Private equity pacing seeks to assess reasonable assumptions to arrive at how much to commit to private equity to reach and maintain a private equity target allocation. The analysis includes assumptions regarding total fund growth rate, plan liability growth, capital calls and distributions among other variables.



July 1, 2021

The City of El Paso Employees Retirement Trust "CEPERT" in El Paso, Texas is conducting a search for a qualified firm to perform investment consulting services. Attached please find a request for proposals. We encourage you to respond. The completed proposal must be received no later than August 2, 2021.

We look forward to receiving your proposal in the near future. Firms that intend on submitting a proposal should not contact any of CEPERT Staff or Trustees, other than to submit written questions to Karina Chavez, Administrative Assistant. Please see SECTION IV, **QUESTIONS AND CORRESPONDENCE**, of the request for proposals for more information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Ash".

Robert Ash  
Executive Director

Attachments



**REQUEST FOR PROPOSALS  
FOR  
INVESTMENT CONSULTING SERVICES**

*Issuer:*

City of El Paso Employees Retirement Trust  
1039 Chelsea Street  
El Paso, Texas 79903

July 1, 2021

**CITY OF EL PASO EMPLOYEES RETIREMENT TRUST  
INVESTMENT CONSULTING SERVICES**

**TABLE OF CONTENTS**

<b>SECTION I:</b>	<b><u>INTRODUCTION</u></b>	<b>4</b>
<b>SECTION II:</b>	<b><u>BACKGROUND</u></b>	<b>4</b>
<b>SECTION III:</b>	<b><u>TENTATIVE TIMETABLE</u></b>	<b>5</b>
<b>SECTION IV:</b>	<b><u>QUESTIONS AND CORRESPONDENCE</u></b>	<b>5</b>
<b>SECTION V:</b>	<b><u>SCOPE OF SERVICES</u></b>	<b>5</b>
	A. Policy	6
	B. Asset Allocation And Portfolio Design	6
	C. Investment Manager Oversight	6
	D. Performance Measurement And Reporting	7
	E. Education And Client Services	7
	F. Other Services	7
<b>SECTION VI:</b>	<b><u>PROPOSAL ORGANIZATION AND SUBMISSION PROCEDURES</u></b>	<b>8</b>
	A. Organization of Responses	8
	B. RFP Response Submission	8
	C. Terms and Conditions	8
<b>SECTION VII:</b>	<b><u>MINIMUM QUALIFICATIONS AND CERTIFICATION</u></b>	<b>10</b>
<b>SECTION VIII:</b>	<b><u>TECHNICAL PROPOSAL REQUIREMENTS</u></b>	<b>10</b>
	A. Firm’s Background and History	10
	B. Assets Advised	13
	C. Investment Consulting Philosophy and Process	13
	D. Performance Measurement and Reporting	14
	E. Research	15
	F. Manager Searches and Evaluation	15
	G. Other Information	15
	H. Fee Proposal	16
<b>SECTION IX:</b>	<b><u>INSURANCE REQUIREMENTS</u></b>	<b>16</b>
<b>SECTION X:</b>	<b><u>PROPOSAL EVALUATION CRITERIA</u></b>	<b>17</b>

<b>ATTACHMENT A</b>	<b><u>Portfolio Details at May 31, 2021</u></b>	<b>18</b>
<b>ATTACHMENT B</b>	<b><u>Minimum Requirements Certification</u></b>	<b>19</b>
<b>ATTACHMENT C</b>	<b><u>Fee Proposal</u></b>	<b>20</b>
<b>ATTACHMENT D</b>	<b><u>Submission Checklist</u></b>	<b>21</b>
<b>ATTACHMENT E</b>	<b><u>Sample Agreement</u></b>	<b>22</b>
<b>ATTACHMENT F</b>	<b><u>Code of Ethics</u></b>	<b>40</b>

## **SECTION I: INTRODUCTION**

The City of El Paso Employees Retirement Trust, hereinafter referred to as “ the Trust” or “CEPERT” is seeking proposals from qualified firms interested in providing investment consulting services to the Trust. The Trust seeks a professional firm that is able to advise the Trust, through its Board and Investment Committee, of investment related issues which may arise in the operation of the Trust. Such advice will include, but not be limited to, asset allocation studies, asset liability studies, investment performance, due diligence, investment manager searches, investment manager structure analysis, monitoring of investment managers, investment policy updates and compliance, allocations and monitoring of alternate assets, research and recommendations regarding market conditions, performance measurement to include peer comparisons, fees analysis and commission costs, as well as assisting with strategic planning and risk management.

The scope of services is for investment consulting services and the selected firm should be familiar and able to provide advice regarding all the different types of investments which the Trust may invest as well as third parties with whom the Trust has relationships. The Trust currently has a diversified asset allocation which includes private equity and real estate. However, the selected consultant will be expected to offer advice, not only for current investments, but the broad array of all possible investments.

The Trust currently employs Callan LLC as its investment consultant. Callan LLC has provided investment consulting for the past eleven years. The Trust is issuing this RFP as part of its due diligence in the regular operation of the Trust.

## **SECTION II: BACKGROUND**

The Trust is located in El Paso, Texas. The Trust is a tax qualified governmental defined benefit retirement plan. The Trust is governed by provisions of the Charter of the City of El Paso and by ordinance as defined in Section 2.64 of the El Paso Municipal Code. The majority of participants in the Trust are most civil service employees of the City of El Paso except for uniformed employees. The Trust has approximately four thousand contributing participants and approximately three thousand five hundred retirees receiving benefits. The Trust offers different types of retirement benefits pursuant to the plan documents. The Trust currently has approximately nine hundred eighty million dollars (\$980,000,000.00) in assets. Further information about the Trust may be found on the Trust’s website located at [www.eppension.org](http://www.eppension.org).

Pursuant to Section 2.64 of the El Paso Municipal Code the Trust is managed by a Board of Trustees. The Board has established an Investment Committee that makes recommendations to the Board. The Board also hires staff members who assist in the operation of the Trust. The Board and Investment Committee meet monthly. The selected investment consulting firm is expected to attend and participate in the monthly Investment Committee and Board meetings. Investment Committee meetings are currently held the day before the Board meetings. The Board normally meets on the third Wednesday of each month at 8:30 A.M. MDT/MST. The Trust’s investment consultants are expected to participate in the monthly Investment Committee and Board meetings.

### SECTION III: TENTATIVE TIMETABLE

The following is the tentative time schedule applicable to this RFP. All dates are subject to modification by CEPERT.

<b>July 1, 2021</b>	RFP released
<b>July 15, 2021</b>	Question Deadline
<b>August 2, 2021</b>	Proposal Due Date/Deadline
<b>August 31, 2021</b>	Determination of semi-finalists by Investment Committee (with support from Staff)
<b>September 20, 2021</b>	Conduct Semi-finalist interviews by Investment Committee if desired
<b>October 15, 2021</b>	Recommendation by Investment Committee to the Board and Selection of Consultant by the full Board of Trustees

### SECTION IV: QUESTIONS AND CORRESPONDENCE

Direct all questions and correspondence regarding this RFP IN WRITING ONLY to:

**Karina Chavez, Administrative Assistant**  
**City of El Paso Employees Retirement Trust**  
**1039 Chelsea Street**  
**El Paso, Texas 79903**  
**Phone: (915) 212-0112**  
**FAX: (915) 212-0429**  
[chavezkx2@elpasotexas.gov](mailto:chavezkx2@elpasotexas.gov)

Only written questions submitted by **July 15, 2021** will be accepted. All written inquiries and answers will be provided to all parties that have expressed an interest in responding to this request for proposal (RFP). Only written responses will be binding upon CEPERT.

Commencing on **July 1, 2021**, firms that intend on submitting a proposal should not contact any of CEPERT Staff or Trustees, other than to submit written questions to Karina Chavez, Administrative Assistant. An exception to this rule applies to any firm that currently does business with CEPERT, but any contact made by such firm should be limited to ongoing business and should not relate to this RFP. Any attempt by a potential Proposer to initiate contact with any member of the Investment Committee, CEPERT Board, or CEPERT Staff other than the contact designated above, may be disqualified from further consideration. If your firm decides not to submit a proposal, please notify our office by **August 2, 2021**.

No Proposer shall issue a news release regarding any aspect of this RFP without prior written approval from CEPERT's Executive Director.

### SECTION V: SCOPE OF SERVICES REQUIRED

The City of El Paso Employees Retirement Trust is seeking an investment consulting firm to provide investment consulting and related support services for the period of December 1, 2021 through November 30, 2026 with two additional one-year optional years.

CEPERT's investment consultant serves the Board and the Trust's Investment Committee and works closely with the staff. The selected investment consultant should provide independent, comprehensive, objective, and creative input to assist the Board in fulfilling its fiduciary responsibility as to the investing of CEPERT's assets, to maintain benchmark returns or goals, and to report and provide investment analysis.

The investment consultant is expected to attend 12 (monthly) Board meetings per year in El Paso, Texas and to attend 12 (monthly) Investment Committee meetings per year in El Paso, Texas. The successful respondent may also be requested to accompany Board Members and staff on due diligence and other investment related trips on an as-needed basis.

See **ATTACHMENT A** for a recap of the Trust's portfolio as of May 31, 2021. Also, for greater details regarding the Trust's portfolio and performance history, see the Trust's website at [www.eppension.org](http://www.eppension.org).

The selected consulting firm is expected to provide, but not be limited to, the following services:

**A. Policy**

- Provide recommendations concerning its strategic investment policy and investment objectives and strategy.
- Provide ongoing policy reviews.
- Provide recommendations regarding investment guidelines on specific mandates.
- Provide recommendations concerning risk management strategies.
- Provide recommendations regarding appropriate policy benchmarks.
- Advise on rebalancing policies.
- Provide recommendations regarding alternative asset classes.

**B. Asset Allocation and Portfolio Design**

- Conduct an annual asset allocation review.
- Conduct an asset allocation study at least every 4 to 5 years or sooner as circumstances may warrant.
- Conduct structure studies at least every year.
- Provide asset class research, analysis, and recommendations.
- Conduct an asset liability study at least every 4 years.
- Conduct reviews of alternative assets to include, but not limited to, real estate and private equity.

**C. Investment Manager Oversight**

- Provide ongoing monitoring of institutional investment managers' compliance and performance including pacing analysis for private equity.
- Provide research and analysis of CEPERT's investment managers.
- Provide investment manager evaluation services and recommendations.
- Provide manager due diligence for investment searches.
- Provide recommendations concerning investment manager allocation and structure, manager investment guidelines, and benchmark identification.
- Provide investment manager fee negotiation services, as needed.
- Provide recommendations for investment manager transitions, as needed.
- Conduct transition manager searches as deemed desirable by the Investment Committee.
- Provide recommendations regarding alternative asset classes including but not limited to private equity and real estate.
- Provide due diligence for alternative assets to which the Trust has investments.

It should be noted that the Board of Trustees retains its discretion in selecting investment managers using its due diligence process, described in the Trust's Statement of Investment Policy, to determine who is best suited to fill the asset allocation role. When selecting a new investment manager, the

consultant may be asked to include a manager(s) which the Investment Committee has deemed a viable candidate. If the Investment Committee includes a manager, said managers shall be compared with the consultant's proposed manager selections without prejudice.

#### **D. Performance Measurement and Reporting**

- Evaluate total portfolio investment performance to any approved custom policy benchmark.
- Evaluate investment manager performance to policy benchmarks and appropriate peer groups.
- Provide quarterly performance measurement reporting.
- Provide quarterly performance review and commentary to the Board.
- Provide manager fee analysis versus peers.
- Provide annual evaluation and attribution analysis.
- Provide benchmark evaluation, implementation, and analysis.
- Provide review of portfolio risk.
- Provide assistance to any firm employed by the Board to review the Trust's Investment Policies and Practices.

#### **E. Education and Client Services**

- Attend Board meetings and any other meetings as necessary. Board meetings are normally on the third Wednesday of each month considering holidays and other meeting conflicts. A calendar of meetings is provided at the beginning of each fiscal year. The Fund's fiscal year runs from September 1 through August 31.
- Provide investment education to staff and the Board as appropriate. (Some training must meet the requirements of the Texas State Pension Review Board to receive state mandated education.)
- Develop educational materials.
- Assist with special projects as needed.
- Communicate regularly with staff about workflow and any other operational issues between meetings.
- Respond to inquiries in an appropriate and timely manner.
- Share all firm research, including white papers, and provide access to research staff.
- Make no changes in the assigned consultant team without the explicit approval of the CEPERT.
- Promptly notify the staff in writing in the event of any investigation commenced or lawsuit filed against the consultant or in the event of proposed changes in the assigned consultant team or changes in the consultant's senior management.

#### **F. Other Services**

- Provide access to analytical software and tools.
- Provide recommendations concerning securities lending strategies.
- Provide compliance monitoring of the securities lending program.
- Provide recommendations concerning custodial banking arrangements.
- Provide feedback and input to the external auditors and actuaries as needed.
- Assist with State required investment practices review.
- Provide input regarding requests from the State Pension Review Board.
- Assist in conducting custodial searches.
- Conduct and assist in investment manager transitions.
- Assist in providing return information for surveys in which the Trust participates.

## SECTION VI: PROPOSAL ORGANIZATION AND SUBMISSION PROCEDURES

### A. Organization of Responses (Investment Consultant Firm's Proposal)

To simplify the review process and enable the maximum degree of comparison, the responses to this RFP should be organized specifically in the following manner:

1. A dated title page indicating the RFP subject, your firm's name, address, phone number, the name, title, contact phone number, and email address for the individual who will be authorized to represent and, if necessary, negotiate on behalf of the investment consulting firm. Please include the address of the office that will service this account.
2. The name, title or position, email, and telephone number of the primary contact and/or account administrator, if different from the individual indicated on the title page referenced in #1 above.
3. Table of Contents, which includes a clear identification of the material by section and by page number.
4. Transmittal Letter or Executive Summary, which briefly states that your firm understands the work to be completed and a positive binding commitment to perform the work within the required time period, if your firm is selected to perform the outlined services. It will also state that the response to the RFP is a firm and irrevocable offer good through November 30, 2026 or as may later be extended by written agreement.
5. Detailed responses from SECTION VIII.
6. **Detailed responses that follow the order set forth in ATTACHMENT D.**
7. **Nonconformance with these submission requirements may result in rejection of the proposal.**
8. The RFP and response to the RFP will become an Exhibit to any resulting contract for investment consulting services.

### B. RFP Response Submission

The proposing firm shall submit an electronic version plus one (1) unbound and five (5) bound hardcopies of the written proposal in a sealed package labeled "Proposal for Investment Consulting Services" bearing the name and address of the Proposer (or bidder) and signed by an authorized official.

The hard copy submission shall be sent to:

**Karina Chavez, Administrative Assistant**  
**City of El Paso Employees Retirement Trust**  
**1039 Chelsea Street**  
**El Paso, Texas 79903**  
[chavezkx2@elpasotexas.gov](mailto:chavezkx2@elpasotexas.gov)

Proposals must be received on or before **August 2, 2021 at 5 P.M. MDT**. Failure to meet the due date/deadline will result in a rejection of the proposal.

All proposals shall be considered valid for acceptance through December 31, 2021, or until awarded, whichever is sooner.

### C. Terms and Conditions

CEPERT makes no representations or warranties, expressed or implied, as to the accuracy or completeness of the information in the RFP and nothing contained herein is or shall be relied upon as a

promise or representation, whether as to the past or the future. The RFP does not purport to contain all of the information that may be required to evaluate the RFP and any recipient hereof should conduct its own independent analysis of CEPERT and the data contained or referenced herein. CEPERT does not anticipate updating or otherwise revising the RFP. However, this RFP may be withdrawn, modified, or re-circulated at any time at the sole discretion of CEPERT.

CEPERT reserves the right, at its sole discretion and without giving reasons or notice, at any time and in any respect, to alter these procedures, to change and alter any and all criteria, to terminate discussions, to accept or reject any Response, in whole or in part, to negotiate modifications or revisions to a Response and to negotiate with any one or more respondents to the RFP.

CEPERT is not and will not be under any obligation to accept, review or consider any Response to the RFP, and is not and will not be under any obligation to accept the lowest offer submitted or any offer at all. CEPERT is not and will not be under any obligation to any recipient of, or any respondent to, the RFP except as expressly stated in any binding agreement ultimately entered into with one or more parties, either as part of this RFP process, or otherwise.

This RFP is not an offer but a request to receive qualifications and proposals of potential firms. Respondents agree that the contents of their Responses are valid for one year from the date of submission. CEPERT will not be liable for any cost incurred in the preparation of a Response and will not reimburse any respondents for their submission. Expenses related to the production of a Response to this RFP are the sole responsibility of the Respondent.

Any Response submitted will become the property of CEPERT. CEPERT reserves the right to retain all Responses submitted, and to use any information contained in a Response except as otherwise prohibited by law. All Responses and the contents thereof will be deemed to be public record open to public inspection after the conclusion of the RFP process and award and execution of a contract, if any; provided that all proprietary information, "trade secret", if clearly marked as such, will not be disclosed except as required by law.

## SECTION VII: MINIMUM QUALIFICATIONS AND CERTIFICATION

**Minimum Qualifications** (The Proposer must meet all of the following minimum qualifications and timely submit all required information to be given further consideration. A signed acknowledgement is required as identified in **ATTACHMENT B**.)

1. Have at least three (3) current investment consulting U.S. tax-exempt public pension clients each with total defined benefit plan assets of at least \$1 billion as of December 31, 2020.
2. Your firm must have at least five (5) years of experience providing investment consulting services to U.S. tax-exempt public pension clients each with total defined benefit plan assets of at least \$1 billion as of December 31, 2020.
3. The individual(s) assigned to the CEPERT account as the primary consultant must have a minimum of ten (10) years of experience with public defined benefit pension plans.
4. Agree to act as fiduciary to the City of El Paso Employees Retirement Trust.
5. Agree that a contract with CEPERT will be governed by and construed in accordance with the laws of the State of Texas, and to be subject to the laws of the State of Texas with jurisdiction for any legal action to be brought in federal or state court of appropriate jurisdiction in the State of Texas, El Paso County.
6. Currently registered as an investment adviser under the Investment Adviser Act of 1940.
7. Certify that any information obtained from the Trust will not be reproduced, sold, distributed, published, or made available to any person or entity except as necessary to perform the services required by this RFP or by applicable law.

## SECTION VIII: TECHNICAL PROPOSAL REQUIREMENTS

Please be as clear, accurate, and complete as possible in your responses. To facilitate an efficient review and evaluation process, the responses to each of the following questions **should be no more than five hundred (500) words in length**. Providing misleading data may lead to disqualification of the proposal and elimination of your firm from the search process. Also please follow the organizational requirements as noted in SECTION VI. above and **ATTACHMENT D** attaching related exhibits to your firm's proposal. Label your responses accordingly.

### A. Firm's Background and History

1. Please provide a brief history of your firm including the year organized, the year your firm began providing investment consulting services to U.S. tax-exempt defined benefit clients.
2. Please provide details of your firm's ownership (including any changes in the last five years) and specific details with regard to any affiliated companies or joint ventures.
3. Does your organization receive revenue from investment management firms? Revenues within this request would include, among others, strategic consulting fees, conference fees, education fees, or fees from research including databases. Please identify the percent of your firm's total revenues that are received from investment management firms.
4. Provide a breakdown of revenue by line of business in the table below. If your firm is an affiliate or subsidiary of an organization, state the percentage of the parent firm's total revenue generated by your firm:

	% of Firm-wide Revenue in last fiscal year	# of Clients
Revenue from investment consulting		
Revenue from discretionary consulting		
Revenue from asset class specialty consulting		
Revenue from investment management		
Revenue from risk services		
Other revenue sources (specify)		
<b>Total</b>	100%	

5. Please provide an organization chart and list the total number of firm professionals, broken down by consultants, research professionals, and staff.
6. Please provide the location and function of each of your firm’s offices, including the number of professionals at each office and what services are provided by each office.
7. Please indicate which office would service the CEPERT account, the names of the team members who would be assigned to this account, and their contact information. Attach as **Exhibit A** biographies for these team members.
8. Complete the following table as it pertains to the team who would be assigned to this account:

Investment professionals assigned to the team	# years of asset investment consulting experience	# years tenure with your firm	# of years consulting professionals have worked together as a team	# of clients assigned

9. Please provide details on the financial condition of your firm. Most recent reports filed (for the last two years) with the SEC will be acceptable, but any recent material changes should be included.
10. Are you registered with the SEC or a state securities regulator as an investment adviser? If so, provide as **Exhibit B** all disclosures required under those laws in the past two years (including Part I and II of Form ADV).
11. Has your firm ever been censured or fined by the SEC or any regulatory body? If so, please describe.
12. Has your firm been subject to or is currently being reviewed/audited by the SEC or other regulatory agencies? If yes, please describe the nature of the investigation including any findings or recommendations.

13. Over the last five (5) years has your firm, the primary consultant being proposed for the CEPERT account, or any principal or officer of your firm been involved in any business litigation, regulatory, or other legal proceedings or government investigation involving allegations of fraud, negligence, criminal activity or breach of fiduciary duty? If so, please describe.
14. Will your firm acknowledge fiduciary status and accept fiduciary responsibility for recommendations to CEPERT?
15. State whether or not your employees comply with the Code of Ethics and Standards of Professional Conduct of the CFA Institute. If not, does your firm maintain a Code of Ethics? Attach as **Exhibit C** a copy of your firm's Code of Ethics.
16. Please disclose the nature of any relationship you now have or have had in the past five years with any CEPERT Board member, staff member, or investment manager.
17. List the dollar amounts of fiduciary liability insurance, errors and omissions insurance, and bonding insurance carried by your firm, as follows:

Insurance carrier providing coverage	Type of coverage	Dollar amount

18. Please discuss the overall business objectives of your firm with respect to future growth. Comment on any present or planned areas of emphasis over the near future. Be sure to include in your response:
  - a. Total assets or client relationships that will be accepted.
  - b. Maximum limits on asset amounts or number of clients per consultant.
  - c. Plans to develop and expand resources, merge or acquire other firms, spin off subsidiaries.
19. Complete the following table regarding consulting staff who left or joined your firm within the last three (3) years. Include anticipated personnel changes for the next year.

Name and title	Date terminated or hired	Reason
Left:		
Joined:		

20. Briefly describe your firm's compensation system for principal staff, and indicate what specific incentives are utilized to ensure key professionals do not leave your firm either as a group or individually. How does your firm tie client performance and satisfaction to a consultant's performance?

21. Describe your firm’s disaster preparedness and recovery plan.

**B. Assets Advised**

1. Complete the following table by providing the number of clients, assets under advisement for your firm’s full-service retainer investment consulting relationships, and the number of clients that have renewed their contract with or were lost by your firm over each of the last three years.

Please provide the data as of December 31<sup>st</sup> for all years.

	2020	2019	2018
Number of clients			
Assets under advisement			
Number of clients to renew contract			
Number of clients lost			

2. Provide as **Exhibit D** a table listing your firm’s current (12/31/20) investment consulting clients along with the following information:
  - a. Name/Type of client (public plan, corporate plan, endowment, etc.)
  - b. Total size of each relationship
  - c. Assets on which you provide consulting services, by asset type and \$
  - d. Length of service of the relationship
  - e. One sentence description of the type of services you provide for each client
  - f. Nature of the relationship (retainer or project-based)
3. Please list all clients your firm has gained in the last three (3) years and the clients who have terminated your services during that time. For those who have terminated your service, please indicate the reason for terminating service.
4. Please provide as **Exhibit E** the name, address, telephone number, and contact person for three (3) current clients to serve as references for your firm, preferably public pension plans. Please detail name, primary contact, telephone number, email address, asset values, number of years the client has retained your firm and the product(s) or service(s) the client uses.

**C. Investment Consulting Philosophy and Process**

1. Briefly describe your firm’s philosophy with respect to investment consulting engagements, and the nature of the service that you provide. What key strengths and competitive advantages does your firm possess that generate superior performance and service for your clients?
2. Describe your firm’s experience in developing and reviewing investment policies and strategies for clients.
3. How frequently does your firm recommend reviewing asset allocation, asset/liability reviews, and manager structure reviews, and describe your firm’s methodology. Please provide samples of an Asset Allocation Review and Asset/Liability Study as **Exhibit F**.
4. Provide your firm’s most recent five (5) years of capital market assumptions (projected returns, volatilities, and correlations) in table format as **Exhibit G**.

5. What is the process your firm goes through to develop your capital market assumptions?
6. What is the range of target allocations that you are currently recommending to your public fund clients?
7. Describe your firm's views on the use of active and passive strategies.
8. Describe your firm's views on liquidity and what you recommend for a diversified public pension plan.
9. How does your firm assess risk in client's portfolios? What are the appropriate metrics to review?
10. In your view, how should a client measure its investment consulting firm's performance? How does your firm measure its own performance?
11. Describe your firm's views on the structure of equity portfolios.
12. Describe your firm's views on performance-based fees.
13. Does your firm assist in fee negotiations with asset managers?
14. Does your firm assist with asset transitions?
15. What is the typical asset allocation for D.B. Public Fund clients?

**D. Performance Measurement and Reporting**

1. How does your firm monitor and analyze investment performance? Please describe any databases used by your firm. How do you determine appropriate benchmarks?
2. Please provide sample monthly and quarterly performance reports as **Exhibit H**.
3. Can the performance reports be customized?
4. What is the anticipated turnaround time to produce a performance report?
5. Describe how your firm obtains data from the client's Custodian. How does your firm verify the accuracy of the data received from the Custodian?
6. Describe the process and data needed to input historical Fund performance into your firm's system?
7. What is your firm's process for manager return reconciliation? How will discrepancies be handled?
8. What process does your firm use to monitor and communicate performance issues to investment managers?
9. Is your firm prepared to generate a report containing attribution analysis at the total fund, asset class, and investment manager level?
10. Please describe your firm's risk management philosophy. How does your firm define risk(s)? What are the biggest risks your firm sees as it relates to public pension plans?
11. Please describe your firm's risk analytic platform and how clients are able to access and utilize the risk data and resources.

12. What does your firm view as the most relevant focus of evaluation when analyzing total fund performance?

**E. Research**

1. Provide a listing of research generated by your firm during 2019 and 2020 with **Exhibit I**.
2. List notable publications that have included your firm's research during 2019 and 2020.
3. Does your firm prepare white papers on relevant investment topics? Please provide a sample as **Exhibit I**.
4. Describe in detail the type and frequency of research that would be available to CEPERT. Through what media is it available? Does your firm make available research reports other than those specifically requested by the client? If so, please describe.
5. What research and analytical resources (including databases) does your firm possess?
6. Provide a sample of your firm's annual outlook, including attractive themes and "best ideas" with **Exhibit I**.

**F. Manager Searches and Evaluation**

1. Describe in detail your manager database and search process. Include the criteria used to make manager recommendations.
2. Describe your approach to working with client staff on investment manager searches, due diligence and final manager selection.
3. Describe the process and how new investment managers are added into your database.
4. Please provide a sample of investment manager research or due diligence reports as **Exhibit J**.
5. How often are on-site due diligence visits conducted, on average, with your client's managers?
6. Provide as **Exhibit K** a sample of a "finals" report, or process memo, for a recently completed public markets search.
7. What metrics are used to identify "watch list" worthy managers? What process is employed to make specific investment hiring or firing recommendations to your clients?
8. Do you monitor your success in selecting managers? Explain how you measure the level of success of existing managers.

**G. Other Information**

1. Describe your firm's capabilities in providing educational opportunities for trustees and staff. Does your firm hold an annual investment conference for its clients? If so, describe.
2. Describe your firm's experience and ability to support client requirements relating to securities lending and custodial services.
3. Describe your custodial bank search process. Please include details such as criteria used for evaluating and ranking custodians.
4. Does your firm maintain an in-house database of custodial banks? How many banks are

contained in the database? How often are custodial banks in the database reviewed?

5. Describe your transition manager search process. Please include details such as criteria used for evaluating and ranking transition managers.
6. Being effective at educating Board Trustees on new investment opportunities, products, and risks can be challenging. If your firm believed that adding a new investment idea would be beneficial to the portfolio, how would you approach getting the Board sufficiently comfortable with the investment recommendation?
7. Does your firm provide a web portal/access for clients? Please describe what functions are available via your portal including performance reporting, manager diligence, risk analytics, portfolio modeling, and exposure reporting.

**H. Fee Proposal**

**(See ATTACHMENT C for a fee template and include in your response as Exhibit L.)**

1. Fees for the services related to the annual investment consultant should be quoted on a fixed-fee, all-inclusive basis, including travel, lodging, meals, and other out-of-pocket expenses. Include in the quote expenses for at least twelve (12) Board of Trustees meetings and twelve (12) Investment Committee meetings in El Paso as well as any other travel that may be required.
2. Are you willing to guarantee your fees for the term of the contract?

**SECTION IX: INSURANCE REQUIREMENTS**

The selected firm shall provide evidence of Professional Liability insurance with contractual liability coverage covering the Proposer’s liability arising from errors and omissions made directly or indirectly during the duration of the contract. The selected firm shall provide coverage for the total limits actually arranged by the selected firm but not less than \$5 million combined single limit.

The selected firm shall maintain a Fidelity Bond covering employee dishonesty, in an amount arranged by the selected firm, but not less than \$3 million, per occurrence. In addition, the selected firm shall maintain workers’ compensation coverage.

The selected firm shall provide evidence of and maintain coverage for each of the following:

Professional Liability	≥ \$5,000,000
Commercial General Liability	
Blanket and Personal Injury	≥ \$1,000,000 per occurrence &
	≥ \$2,000,000 annual aggregate
Workers' Compensation	≥ \$1,000,000 per accident

## **SECTION X: PROPOSAL EVALUATION CRITERIA**

CEPERT has determined the selection criteria will be as follows:

1. Stability and experience of the consulting firm's personnel assigned to CEPERT (25% of final score).
2. Depth of knowledge, experience, and firm resources to provide required services (25% of final score).
3. Independence of judgment and avoidance of conflicts of interest in providing services (10% of final score).
4. Proposed fixed fee (40% of final score).

Fees will be an important factor in the evaluation of investment consulting proposals. However, CEPERT is not required to choose the lowest cost bidder. CEPERT will select your firm that, in the Board's sole discretion, best serves the overall needs of the plan participants and beneficiaries based upon the above criteria.

## ATTACHMENT A

### PORTFOLIO DETAILS @ MAY 31, 2021

<u>Asset Class</u>	<u>Dollars Actual</u>	<u>Percent Actual</u>	<u>Percent Target</u>
Domestic Equity	348,100,136	35.6%	31.0%
International Equity	238,380,525	24.4%	21.0%
Private Equity	96,494,044	9.9%	13.0%
Domestic Fixed Income	213,822,909	21.9%	24.0%
Real Estate	74,432,895	7.6%	10.0%
Cash	6,057,929	0.6%	1.0%
<u>Total</u>	<u>977,288,436</u>	<u>100.0%</u>	<u>100.0%</u>

See the City of El Paso Employees Retirement Trust website at [www.eppension.org](http://www.eppension.org) for additional portfolio details.

**ATTACHMENT B**

**MINIMUM REQUIREMENTS CERTIFICATION**

The undersigned Proposer hereby represents and warrants to CEPERT as follows:

**Investment Consulting**

1. Proposer currently provides investment consulting services to at least three (3) public retirement system defined benefit clients each with assets of at least \$1 billion as of December 31, 2020.
2. Proposer has a minimum of five (5) years of experience providing investment consulting services to U.S. tax-exempt clients with total defined benefit plan assets of at least \$1 billion as of December 31, 2020.

Name(s) of client(s): \_\_\_\_\_

3. The primary consultant assigned to the CEPERT account has a minimum of ten (10) years of experience providing investment consulting services to public defined benefit pension plans.

Name of the primary consultant: \_\_\_\_\_

Number of years of experience: \_\_\_\_\_

4. The Proposer agrees to comply with all applicable Texas laws and to be subject to the laws of Texas and the jurisdiction of its court system in the administration and interpretation of the contract governing this business relationship.
5. The Proposer is registered as an investment adviser under the Investment Adviser Act of 1940.
6. The Proposer will serve as a "fiduciary" with respect to CEPERT.
7. The Proposer certifies that any information obtained from the Trust will not be reproduced, sold, distributed, published, or made available to any person or entity except as necessary to perform the services required by this RFP or by applicable law.

PROPOSER'S NAME: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**PLEASE RETURN WITH TRANSMITTAL LETTER**

## **ATTACHMENT C**

### **FEE PROPOSAL**

The contract term is expected to be five (5) years with two (2) possible one-year extensions issued at the discretion of CEPERT. Proposed fees must include travel and all other expenses.

Proposer should submit an annual fee for all services - denoted by investment consulting as follows:

- 1) All-inclusive fees December 1, 2021 through November 30, 2026:  
\$ \_\_\_\_\_ per annum

The fee will represent the only compensation received by the consultant for services provided to CEPERT. There should not be any other benefit, monetary or otherwise, that results from this relationship between the consultant and CEPERT.

#### **Applicable Contract Terms:**

Consultant shall present a quarterly invoice to the Executive Director for its services performed in the previous quarter. The Executive Director shall authorize payment of such invoice according to the Board's authorization instructions within sixty (60) days following receipt thereof. Upon termination of this Agreement, the appropriate fee for any partial quarter will be determined by applying the ratio of days elapsed in the calendar quarter to the total number of days in the quarter multiplied by the regularly computed full quarterly fee.

***PLEASE RETURN AS EXHIBIT L***

**ATTACHMENT D**  
**SUBMISSION CHECKLIST**

<b>Item</b>	<b>Included in RFP Response</b>
<b>Transmittal Letter or Executive Summary and Minimum Qualifications Certification</b>	
<b>Answers to all Questions in Technical Proposal</b>	
<b>Exhibit A – Biographies of Proposed Team Members</b>	
<b>Exhibit B – Form ADV (Part I &amp; II)</b>	
<b>Exhibit C – Copy of Proposing Firm’s Code of Ethics Policy</b>	
<b>Exhibit D – List of Current Clients - Please list D.B. Public Fund clients only.</b>	
<b>Exhibit E – Public Fund References (three) With Full Contact Information.</b>	
<b>Exhibit F – Copy of a Sample Asset Allocation Review and Asset/Liability Study</b>	
<b>Exhibit G – Five Years of Your Firm’s Latest Capital Market Assumptions</b>	
<b>Exhibit H – Sample Performance Report Both Monthly and Quarterly</b>	
<b>Exhibit I – Sample White Paper/Research Report &amp; List of Research Generated in 2019 &amp; 2020 Sample deal pipeline, pacing &amp; liquidity calendar reports. Sample of firm’s annual outlook &amp; best ideas.</b>	
<b>Exhibit J – Sample of Investment Manager Research/Due Diligence Report</b>	
<b>Exhibit K – Sample of “Finals” Report/Search Process Memo for Recent Public Markets. AND/OR sample limited partnership recommendation memo.</b>	
<b>Exhibit L – Fee Proposal – Include ATTACHMENT C</b>	

## ATTACHMENT E

### AGREEMENT FOR INVESTMENT EVALUATION CONSULTANT SERVICES

This agreement is made by and between the CITY OF EL PASO EMPLOYEES RETIREMENT TRUST (“**the Trust**”) by its BOARD OF TRUSTEES (“**Board**”) and SUCCESSFUL Consultants (hereinafter referred to as “**Consultant**”) (together the Trust, the Board and the Consultant are sometimes collectively referred to as the “**Parties**”) (the “**Agreement**”).

WHEREAS, the Trust is a Texas Governmental Pension singularly situated in El Paso, Texas, and

WHEREAS, the Trust issued a request for proposals to which the Consultant responded in 2021, which are attached as **Exhibit B**; and

WHEREAS, Consultant is an investment adviser registered with the Securities and Exchange Commission; and

WHEREAS, Consultant, holding itself out as having highly educated and trained professionals experienced in providing investment evaluation and consulting services to large public and governmental pension plans, is desirous of providing those services for the Board; and

WHEREAS the Board wishes to hire the Consultant under the terms of and effective upon the mutual execution of this Agreement to provide investment consulting services to the Board for a period commencing \_\_\_\_\_, 2021 and ending \_\_\_\_\_, 2026, all as more fully described herein and as the scope of Consultant’s services at Section 1 below and as more fully described in the attached **Exhibit A**.

NOW, THEREFORE, in consideration of the above recitals, which are considered part of this Agreement and the promises and mutual covenants contained in this Agreement, the Parties agree as follows:

1. The Consultant shall from time to time, as set forth below, allocate such experienced personnel and devote such professional efforts as are necessary for it to carry out its duties under this Agreement in its review and analysis of the investment performance of all current and any proposed investment adviser or investment managers, which may, but need not be registered under the Investment Advisers Act of 1940 (collectively hereafter referred to as “Manager/Advisor”), for the Trust as follows:
  - a. Review and analyze each Manager/Advisor’s rates of return, their staffing, including staff’s training, expertise and experience, their turnover and stability of workforce, their company’s growth and succession planning, their business interruption contingency and continuation plan, their contract terms, and other pertinent information for a retrospective period not to exceed five (5) prior years.
  - b. Monthly and quarterly review, analyze and provide a summary written report on the Trust’s stocks, bonds and all other types of investment performance, and to attend and present at least twelve (12) in-person monthly reviews at Board meetings of the investment performance of the Trust portfolio and or as to the Consultants recommendations as to continuation, “watch list”, addition or termination of any Manager/Advisor. Attend twelve (12) monthly meetings of the Investment Committee.
  - c. Provide monthly and quarterly reports detailing the beginning and ending balance of each Manager/Advisor’s portfolio. The quarterly report shall also contain a more detailed analysis of the Trust as a whole, and separate analyses of common stocks, long-term fixed income, convertible securities, and short-term investments.

- d. Provide a continuing overview of the current investment environment, with comments on the present investment strategy, investment policy, asset allocation, and recent performance, including, but not limited to recommendations regarding whether to retain, place on a watch list, or remove any Manager/Advisor.
- e. Assist the Board in monitoring the Trust investments to make certain that they comply with the Trust's investment guidelines.
- f. Review the performance of each Manager/Advisor's portfolio to determine if it is in current compliance with the investment guidelines as adopted by the Board and to recommend any changes to holdings of any Manager/Advisor.
- g. Assist the Board in performing searches and the selection of additional or substitute Manager/Advisors as may be necessary to maintain the integrity of the investment program. Such assistance shall include due diligence visits as required with Board and staff members to potential or current Manager/Advisors as the Board and Consultant believes desirable.
- h. Promptly notify the Board in writing of (i) any change in the Consultant's representations in this Agreement; (ii) any change in the senior management or key professionals, or material changes in ownership of the Consultant's organization; (iii) any change in the primary consultant(s) assigned to the Trust; (iv) any other material change in the Consultant's business activities or circumstance; (v) any action taken by the Consultant that is contrary to or inconsistent with this Agreement; and (vi) the commencement by any governmental regulatory or law enforcement agency of any investigation, examination or other proceedings directly involving the Consultant, its owners or employees, except such investigations, examinations or other proceedings as are routinely conducted in the ordinary course of the Consultant's business.

- i. Any other duties listed in the attached **Exhibits A** and **B** which are incorporated herein for all purposes. In the event of any conflict between **Exhibits A** and **B**, the language in **Exhibit A** shall supersede **Exhibit B**.
2. Information needed by the Consultant regarding the holdings of the Trust in order for the Consultant to provide the above described evaluations is generally contained in the records of the Trust's custodial bank. Should additional information be needed by the Consultant, the Board shall execute such releases and or instructions to Advisors/Managers as are necessary to secure such information. The Consultant is entitled to reasonably rely on information provided by the Board or its agents and the Consultant will, to the best of its ability, notify the Board of any material discrepancy that it may find.
3. The Board shall pay the Consultant in accordance with **Exhibit C** attached to this Agreement. The fee shall be paid in quarterly installments in arrears.
4. The Consultant certifies that it is professionally qualified as an independent consultant to evaluate the performance of professional managers investing the assets of the Trust.
5. The Trust represents that the services to be rendered hereunder shall inure solely to the benefit of the Trust and that, under the governing instruments of the Trust the services are proper and payment for these services under this Agreement are a permissible expense of the Trust and that the Board is authorized to enter into this Agreement.
6. The Consultant represents that it is an Investment Adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940. Further, the Consultant represents that it has completed, obtained or performed all registrations, filings, approvals, authorizations, consents or examinations required by any governmental or regulatory

authority for the performance of the acts contemplated by this Agreement and that it will deliver documentation of such compliance annually and as the Trust may reasonably request.

7. The Trust assumes all responsibility for ensuring that the Trust complies with all applicable laws with jurisdiction over the Trust.
8. The Parties to this Agreement recognize that while the Board is not governed by ERISA, nevertheless, in all of its relations with the Board, the Consultant acknowledges that it is a fiduciary of the Trust, and it will be held to the fiduciary standards articulated by ERISA and will utilize the skill, care, prudence and diligence under the circumstances that a reasonable skilled nationally recognized investment consultant in like position would use. Further, the Consultant acknowledges that it has been provided a copy of the City of El Paso/Trust's Code of Ethics and that it will abide by its terms.
9. The Consultant recognizes that its obligation under this Agreement is to the Trust, the members of the Trust and the Board, and that Consultant will place the interest of the Trust, its members and the Board above all others and will not enter into any agreement or take any action contrary to that responsibility.
10. The Consultant will protect the confidentiality of certain information it will receive from the Trust, its custodian and the Board and will not disclose any such information that is not already public to the media or any unaffiliated persons without the Trust's express written consent except (i) incident to a permissible subcontract or service contracts entered into by the Consultant to assist in performing services hereunder, provided such relationship(s) are previously disclosed in writing to the Board, (ii) in connection with an audit or regulatory examination, or (iii) as may otherwise be legally required. If the Consultant receives any third-party request for information pertaining to the Trust, unless prohibited by law, it will

promptly relate all such requests to the Trust's Executive Director and await guidance from the Trust before proceeding. The terms of this paragraph shall not be interpreted so as to prevent the Consultant from providing investment advice to other clients who share comparable investment objectives with the Trust, or to prohibit the Consultant from utilizing the Consultant's investment experience on an undisclosed basis for use in composite presentations. The Trust acknowledges that certain services the Consultant offers and/or provides to the Trust and certain of Consultant's other clients require the use and anonymous disclosure and de-identified pooling of Trust data, including portfolio performance and trading data ("Pooled Data"). The Pooled Data may be made available to clients of the Consultant. The Trust agrees that Consultant shall be deemed the owner of any Pooled Data.

The Trust acknowledges and agrees that studies, analyses, reports and other materials and information provided by Consultant pursuant to this Agreement constitute proprietary data of Consultant and are being provided exclusively for use by the Trust. The Consultant however also understands that the Trust may be required by law or for statutory compliance purposes, to disclose certain information in such studies, analyses, reports, and other materials and information as well as in order to cooperate with the goals of any trade association of government pension funds or to keep its members adequately informed as well as to inform the Trust's custodians, auditors, counsel, other authorized representatives. The provisions of this section shall survive the expiration or termination of this Agreement.

11. The Board acknowledges that in the calculation and subsequent reporting of investment performance, Consultant utilizes various statements provided by the Board's custodian(s) and its Managers/Advisors. The Board further acknowledges Consultant may utilize economic, financial, and computer hardware and software packaging supplied by third party vendors and financial services. The Board hereby authorizes Consultant to rely without independent

verification (unless it has reason to believe such data may not be reliable) on such custodian statements or data provided by reputable third party vendors. Furthermore, Consultant will not be responsible for any act or omission to act by any custodian(s) or other third party engaged by the Board and Consultant shall be entitled to rely on information furnished by Managers/Advisors, it being understood that Consultant shall have no liability for the accuracy or completeness of any information furnished or representation made by the Managers/Advisors, provided Consultant conducted due diligence and evaluation of such Managers/Advisors with reasonable care. In the absence of willful misfeasance, bad faith, negligence or gross negligence on the part of Consultant in the discharge of its fiduciary duties, the Board understands and agrees that neither the Consultant nor any of its directors, officers, agents, servants or employees shall be liable for any other act or omission to act by it or its directors, officers, agents, servants or employees in rendering services to the Board; provided, however, that nothing in this Agreement shall constitute a waiver or limitation of any right that the Board may have under the fiduciary standard of care or applicable Federal or state securities laws.

12. The Parties agree that assets with respect to which Consultant shall provide services under this Agreement will consist exclusively of securities that are (i) held in one or more separate account(s) in the Trust's name by a qualified custodian selected from time to time by the Trust upon prior notice to Consultant, and in respect of which the qualified custodian provides to the Trust a statement, at least quarterly, that indicates the amount of funds and of each asset in the account at the end of the period and sets forth all transactions in the account during that period, (ii) shares of open-end investment companies (i.e., mutual funds) registered under the Investment Company Act, or (iii) privately placed, uncertificated securities of issuers that are not controlled by or otherwise affiliated with Consultant and that

are transferable only with the consent of the issuer or its shareholders, and in respect of which the ownership is recorded solely on the books of the issuer or transfer agent thereof and in the Trust's name only (such custodians, issuers or transfer agents acting in such capacity hereinafter referred to as the "Custodians"). The Consultant will not at any time be required or requested to obtain any custody or possession (including transitory possession) of any such securities or of any cash or negotiable instruments transferred or distributed at any time in connection therewith.

Sole responsibility for the safekeeping of the assets in the Trust and for the consummation and settlement of all purchases, sales, deliveries, and investments made pursuant to Consultant's authority under this Agreement shall rest upon the Custodian (s) and shall be subject to any applicable agreements with the Custodian(s). Consultant is entitled to conclusively rely on the information contained in any statements from any Custodian and shall not be liable for any act or omission of the Custodian(s), including, without limitation, the accuracy of any Custodian's records with respect to the assets of the Trust.

The Trust recognizes and acknowledges that Consultant does not have custody of the assets of the Account under rule 206(4)-2 of the Advisers Act.

13. The Trust agrees, to the extent allowed by law, to defend, indemnify, and hold harmless the Consultant and its affiliates, or any of their officers, directors, shareholders, employees or agents, from and against any and all judgments, damages, expenses, settlements, liabilities, costs, losses and other liabilities of any kind (including reasonable attorneys' and experts' fees and disbursements) ("**Losses**") that arise out of or relate to this Agreement except where such Losses result from (a) Consultant's bad faith, negligence or willful misconduct in connection with this Agreement, (b) any breach of this Agreement by Consultant, (c) any breach of Applicable Law by Consultant or (d) the inaccuracy or breach of any representation

or warranty of Consultant contained in this Agreement.

The Consultant shall defend, indemnify and hold harmless Client from and against any and all Losses that result from Consultant's bad faith, negligence, or willful misconduct in connection with this Agreement.

Any indemnified Party seeking indemnification under this Section shall promptly notify the indemnifying Party in writing of any claim, action, suit, litigation, or proceeding (but the failure to do so shall not relieve the indemnifying Party of any liability hereunder except to the extent such Party has been materially prejudiced therefrom) and shall reasonably cooperate in the defense of such claim, action, suit, litigation or proceeding at the indemnifying Party's expense.

The indemnifying Party may elect, by written notice to the indemnified Party within ten (10) days after receiving notice of such claim, action or proceeding from the indemnified Party, to assume the defense thereof with counsel reasonably acceptable to the indemnified Party. If the indemnifying Party does not so elect to assume such defense, or if the indemnified Party reasonably believes that there are conflicts of interest between the Parties or that additional defenses are available to the indemnified Party with respect to such defense, then the indemnified Party shall retain its own counsel to defend such claim, action or proceeding, at the indemnifying Party's reasonable expense. The indemnifying Party shall reimburse the indemnified Party for its reasonable and actual expenses incurred under this Section. The indemnified Party shall have the right, at its expense, to participate in the defense of any claim, action or proceeding against which it is indemnified hereunder and with respect to which the indemnifying Party has elected to assume the defense; provided, however, that the indemnified Party shall have no right to control the defense, consent to judgment, or agree to

settle any such claim, action or proceeding without the written consent of the indemnifying Party unless the indemnified Party waives the right to indemnity hereunder. The indemnifying Party, in the defense of any such claim, action or proceeding, except with the written consent of indemnified Party, shall not consent to entry of any judgment or enter into any settlement which (i) does not include, as an unconditional term, the grant by the claimant to the indemnified Party and all Persons with rights of indemnification hereunder of a release of all liabilities in respect of such claims or (ii) otherwise adversely affects the rights of the indemnified Party and/or any Persons with rights of indemnification hereunder.

The indemnification provisions set forth herein are solely for the benefit of the indemnified Party and all Persons with rights of indemnification hereunder and are not intended to, and do not, create any rights or causes of actions on behalf of any other third party.

Consultant shall not be responsible for any loss incurred by reason of any act or omission of the Trust, Custodians, broker-dealers, or any other third party not hired by or under the control of Consultant. Nothing in this Agreement shall constitute a waiver or limitation of any rights that Trust may have under Applicable Law.

13. Consultant may act as investment consultant or adviser for other clients and receives fees for such services. Nothing in this Agreement shall in any way be deemed to restrict the right of Consultant to perform investment advisory, consulting or other services for any other person or entity, and the performance of such services for others shall not be deemed to violate or give rise to any duty or obligation to the Trust or the Board.
14. Consultant shall be permitted to give advice and take action with respect to the Trust which differs from the advice made or recommended or actions taken with respect to such other accounts and clients even though the investment objectives may be the same or similar.

Consultant shall not be obligated to give the Trust treatment more favorable than or preferential to that provided to such other accounts and clients.

15. Nothing in this Agreement shall limit or restrict Consultant or any of its shareholders, officers, affiliates or employees from buying, selling, or trading in any securities for their own account or accounts. The Trust acknowledges that Consultant and its shareholders, officers, affiliates and employees, and its other clients, may at any time have, acquire, increase, decrease, or dispose of positions in investments which are at the same time being acquired or disposed of for the account of the Trust.
16. The Board acknowledges and agrees that:
  - a. the recommendations made by Consultant pursuant to this Agreement involve Consultant's judgment and that Consultant's views regarding the economy, the securities markets, or other specialized areas, like all predictions of future events, cannot be guaranteed to be accurate. Consultant has not made and cannot make any promise, guarantee, or representation regarding the future investment performance of the Trust's assets;
  - b. for all purposes of this Agreement, Consultant shall be deemed to be an independent contractor and shall have no authority to act for or represent the Trust in any way except as set forth expressly herein and shall not otherwise be deemed to be an agent of the Trust. Nothing in this Agreement may be interpreted or construed to create any employment, partnership, joint venture, or other relationship among Consultant and the Trust; and
  - c. Consultant cannot be and is not responsible for providing advice or services (including with respect to the diversification of assets) with respect to any assets or

investments of the Trust not expressly covered by this Agreement. The Trust agrees that the only responsibility that the Consultant shall have with respect to diversification of the Trust assets shall be to diversify the assets of the Trust covered by the express terms of this Agreement and as required by any investment guidelines communicated to Consultant by the Trust, without regard to, or consideration of, any other assets which may be held by the Trust outside the scope of this Agreement.

17. This Agreement shall commence on the date it has been signed by both Parties. The Board may terminate this Agreement upon thirty (30) days' written notice, with or without cause. The Consultant may terminate this Agreement upon ninety (90) days' written notice, with or without cause. Upon termination of this Agreement Consultant will deliver to the Trust all property and documents of the Trust then in the custody of the Consultant along with a portfolio status record of all assets in the Trust on a computer disc, thumb drive or other hard data media format to be retained by the Trust and or transferred to any subsequent investment consultant.
18. No assignment of this Agreement shall be made by the Consultant without the prior written consent of the Board.
19. The Trust may identify the Consultant as providing consulting services in its reporting to any governmental entity, to any trade association, on its website and to its members and the public. The Consultant may identify the Trust as a client of Consultant and may disclose fees paid by the Trust in respect of inquiries from government agencies and from existing or prospective clients.
20. All representations set forth in this Agreement shall be continuing during the term of this Agreement and any agreed upon extension periods, and if at any time any event shall occur

that could make any of the foregoing representations incomplete or inaccurate, the Party whose representations are no longer complete or accurate shall promptly notify the other Party of the occurrence of the event causing such incompleteness or inaccuracy.

21. The Parties represent and warrant that they each are duly organized, validly existing and in good standing under the laws of the jurisdiction of their formation and each has full power, authority and capacity, without consent, approval, authorization or order of, or declaration or filing with, any other government, governmental instrumentality or court or other person, to execute and deliver this Agreement and to perform their respective obligations under this Agreement, and that this Agreement has been duly executed and delivered by the Parties and constitutes a legal, valid, and binding obligation of the Parties, and is enforceable against the Parties in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium, and other laws, including but not limited to those affecting the enforcement of creditors' rights.
22. All representations made survive termination or expiration of this Agreement and the termination or expiration of this Agreement, for any reason or no reason, shall not represent a waiver of any rights or remedies previously accrued.
23. This Agreement represents the entire agreement among the Parties, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors.
24. This Agreement shall not be amended nor shall any provision of this Agreement be considered modified or waived, unless evidenced by a writing signed by the Party to be charged with such amendment, waiver, or modification.
25. In the interest of facilitating Consultant's services under this Agreement, Consultant and the Trust may communicate or exchange data by Internet, e-mail, facsimile transmission, or other

electronic method. Consultant and the Trust will use their best efforts to keep such communications and transmissions secure in accordance with each Party's obligations under applicable laws and professional standards, however, both Parties recognize and accept that neither Consultant nor the Trust has control over the unauthorized interception of these communications or transmissions once they have been sent, and each Party consents to the other's use of electronic devices during the term of this Agreement. If either Party discovers a data security breach involving confidential data of the other, the Party discovering the breach will promptly notify the other Party of the breach and the Parties will work cooperatively to remedy the breach.

Without limiting the generality of the foregoing, the Trust hereby agrees and consents to the receipt of electronic communications related to or in connection with this Agreement, including without limitation the electronic delivery of required regulatory communications and any financial or other reports (e.g. ADV Part 2A, quarterly and annual financial reports, statement updates), as applicable. The consent to electronic delivery is effective immediately upon the acceptance of this Agreement and remains in effect unless withdrawn by the Trust. The Trust is not required to consent to electronic delivery of documents and may withdraw the consent at any time or request a paper copy of any relevant documents by contacting the Consultant.

26. All notices and other communications under this Agreement shall be in writing, and, shall be:
- (i) delivered by hand (with receipt confirmed in writing),
  - (ii) by electronic mail with electronic receipt of confirmed delivery) or
  - (iii) by registered or certified mail (return receipt requested), to the address or email address set forth below the Parties' signatures herein or to such other address as either Party shall specify by written notice to the other; and shall be deemed given upon receipt.

27. A Party's performance hereunder shall be excused without liability in the event of any event or contingency beyond such Party's control (force majeure), including but not limited to: foreign or domestic embargoes; acts of God; terrorist acts; the adoption or enactment of any law, ordinance, regulation, ruling, or order directly or indirectly interfering with performance hereunder; technological failure; fires; floods; explosions; strikes; earthquakes and the like.
28. This Agreement shall be governed by the laws of the State of Texas, excepting however any conflicts of law provisions or principals which are expressly waived. Further, Consultant agrees and consents that the venue for resolution of any dispute under the terms of this Agreement shall be in the State or if applicable, Federal Courts, in the County of El Paso, Texas and in so doing waives any defense to such jurisdiction including but not limited to any claim of forum non-conveniens.
29. In the event of any legal action arising out of the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover its costs and attorneys' fees.
30. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, such provision shall be deemed to be rescinded or modified in accordance with such law, ruling, rule or regulation, and the remainder of this Agreement or the application of such provision shall not be affected thereby.
31. This Agreement may be signed in any number of counterparts. Any single counterpart or a set of counterparts signed in either case by the Parties hereto shall constitute a full and original agreement for all purposes.

IN WITNESS WHEREOF, the Parties here have duly executed this Agreement on

\_\_\_\_\_, 2021.

CITY OF EL PASO EMPLOYEES RETIREMENT TRUST'S

BOARD OF TRUSTEES

By: \_\_\_\_\_

Its: Chairperson \_\_\_\_\_

Date: \_\_\_\_\_

(Consultant)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

SAMPLE

## EXHIBIT A

<u>Strategic Investment Advice Fund Coordination</u>	<u>Fund Coordination</u>
Investment Policy	Manager Fee Negotiations
Strategic Asset Allocation	Supervising Manager Transitions
Manager Selection, Evaluation & Monitoring	Transition Manager Searches
Performance & Fund Evaluations	Cash Flow Coordination
Risk Monitoring	Asset Transfer Coordination
Manager Guidelines	Crisis Response Planning
Manager Searches as requested	Custodian Selection & Evaluation
Quarterly Meeting Attendance	
Monthly and Quarterly Performance Reporting	
Management Fee Study	
Asset /Liability Study	
Invitation to Consultant's annual client conference	
Private equity pacing analysis	
Attendance at monthly Investment Committee meetings in person or via teleconference as determined by CEPERT.	

## EXHIBIT C

The Trust shall pay Consultant in arrears, \$\_\_\_\_\_ on an annualized basis through \_\_\_\_\_, 20\_\_, for these consulting services. Each quarterly invoice will be for 25% of the total annual fee herein and will be due upon receipt of such invoice. Consultant will be responsible for any and all taxes that may be imposed upon it for the fees paid. If the Agreement is terminated before the end of the term of the Agreement, then any work done during a partial calendar quarter shall be billed only on a pro-rata basis.

The annual fee shall include all expenses incurred by Consultant in performance of its services, and accordingly, the Trust will not be obligated to pay expense reimbursements to Consultant relating to routine, out-of-pocket expenses, or overhead charges, including twelve (12) trips per calendar year to El Paso, Texas to present at Investment Committee and Board meetings.

In the event the Trust intends to extend this Agreement beyond November 30, 2026, it shall give written notice of such intent, not less than sixty days prior to the otherwise applicable expiration date and such extension shall be for up to two (2) one-year periods and the new annual fee shall be the above annual fee increased by the lesser of (i) the November 2026 reported CPI-U or (ii) 3%.

# **ATTACHMENT F**

## **CODE OF ETHICS**

### **Article I. - Code of Ethics**

#### **2.92.010 - Policy and purpose.**

- A. All city officers and employees have a fiduciary duty to the citizens of the city to be ethical in fulfilling the responsibilities of their positions. At the very least, being ethical includes being disposed to comply with all laws that apply to one's position.
- B. Ethical conduct is motivated by sources inside and outside the law. The Texas Local Government, Election, and Penal Codes regulate aspects of the conduct of city officers and employees. However, as ethical conduct is more than complying with state codes, the city strongly encourages all of its officers and employees to maintain the highest personal values and standards. While it is impossible to establish specific and exhaustive standards for all situations, the standards established in this chapter are minimum standards below which no city officer or employee's conduct should fall. This chapter has the following purposes:
  - 1. To establish an ethics review commission;
  - 2. To maintain and improve standards of public service;
  - 3. To improve public confidence in the integrity of city government;
  - 4. To provide a process by which officers and employees may identify and resolve ethical issues;
  - 5. To avoid conflicts between the personal interest and the public responsibilities of city officers and employees;
  - 6. To establish minimum standards of conduct to be adhered to by city officers and employees;
  - 7. To require disclosure of private financial interests by certain individuals;
  - 8. To require reporting of certain gifts received by certain individuals;
  - 9. To provide for complaints and resolution of ethical issues and concerns; and
  - 10. To provide penalties for failure to adhere to the minimum standards set forth in this chapter.
- C. This chapter is cumulative of and supplemental to all applicable provisions of the City Charter, other city ordinances, and state and federal laws and regulations. Compliance with this chapter does not excuse or relieve any person from any obligation imposed by the City Charter, other city ordinances, or state or federal laws or regulations. The filing of an ethics complaint pursuant to this chapter does not prohibit a person from availing themselves of the various remedies available to them under state or federal laws.

- D. To ensure and enhance public confidence in the city government, each city official and employee must not only adhere to the principles of ethical conduct set forth in this Code and compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times. This section shall not be used for the basis of an ethical complaint.

( [Ord. No. 19139](#), § 1, 2-16-2021)

**2.92.020 - Definitions.**

- A. For the purposes of this chapter, the following definitions shall apply. This section shall not be used for the basis of an ethical complaint. Terms not defined in this chapter, but defined in the Texas Election Code, shall have the meanings assigned to them in the Texas Election Code.
1. "Affinity" means that two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual (by marriage). The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives. An individual's relatives within the third degree by affinity are anyone related by consanguinity to the individual's spouse in one of the ways named in the definition of consanguinity in this section; and the spouse of anyone related to the individual by consanguinity in one of the ways named in the definition of consanguinity in this section.
  2. "Board" means a board, commission, or committee:
    - a. Which is established to participate in some manner in the conduct of city government, including participation which is merely advisory, whether established by city ordinance or City Charter, interlocal contract, state law or any other lawful means; and
    - b. Any part of whose membership is appointed by the city council, but does not include a board, commission, or committee, which is the governing body of a separate subdivision of the state.
  3. "Candidate" means a candidate for an elected office of the City of El Paso. All references to candidate shall include the candidate's principal campaign committee, whether or not the candidate acts as treasurer for reporting purposes. Candidate shall not include a city official or employee who is a candidate for any other elected office.
  4. "City" means the City of El Paso, Texas.
  5. "City resources" means any city asset, including but not limited to facilities, equipment, supplies, software, and personnel services.
  6. "Clear and convincing" means a measure or degree of proof that produces in a person's mind a firm belief or conviction as to the truth of the allegations sought to be established.

7. "Conducting business with the city" means any natural person who provides goods and services or seeks to provide goods and services to the city, or received or seeks to receive services from the city. This excludes natural persons seeking open records requests.
8. "Confidential information" includes: (a) all information held by the city that is not available to the public under Chapter 552 of the Texas Government Code (Public Information Act); (b) any information from a meeting closed to the public pursuant to Chapter 551 of the Texas Government Code (Open Meetings Act); or (c) any information protected by attorney-client, attorney work product, or other applicable legal privilege.
9. "Consanguinity" means that two individuals are related to each other if one is a descendant of the other, or they share a common ancestor (by blood). An adopted child is considered to be a child of the adoptive parent for this purpose. An individual's relatives within the third degree by consanguinity are the individual's parent or child (relatives in the first degree); brother, sister, grandparent, or grandchild (relatives in the second degree); and great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).
10. "Contribution" means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit. The term does not include an expenditure required to be reported under Section 35.006(b), Texas Government Code. In-kind expenses, as defined in this section, is not a contribution.
11. "Contributor" means a person making a contribution, including the contributor's spouse.
12. "Days" means calendar days excluding city holidays.
13. "Designated employee" for purposes under this section, means the city manager, deputy city managers, all city department heads or directors, and the executive assistants to the mayor.
14. "Employee" means a person employed and paid a salary by the city whether under civil service or not, including those individuals on a part-time basis and including those officially selected for employment but not yet serving; but does not include an independent contractor or city council member. For purposes of this chapter and for no other purpose, the term employee includes volunteers.
15. "Ex parte communications" means a communication made at a time other than during a public meeting of the ethics review commission, a commission panel, or the city council, excluding documents or information submitted pursuant to the requirements of this chapter and any correspondence or other communications sent to the city attorney.

16. "Frivolous complaint" means a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.
17. "Gift" means any gift, benefit or other economic gain or economic advantage to an officer or employee or to a relative of an officer or employee.
18. "Honorarium" shall mean a payment, other than reimbursement for meals, travel or lodging expenses, for services provided in connection with addressing an audience or engaging in a seminar.
19. "In-kind expenses" means the value of personal services provided without compensation by any individual who volunteers on behalf of a candidate or political committee and incidental vehicular travel expenses incurred in conjunction with the provision of the personal services.
20. "Mailbox rule" means that a document sent to another person or party by mail is considered served, and a period of limitations begins to run, on the day it is placed, with proper postage and a correct address, into the mailbox. As used in this chapter, the mailbox rule shall apply to the triggering of limitation periods and the calculation of deadlines for providing and responding to written notices.
21. "Ministerial act" means an act performed in a prescribed manner and does not require the exercise of any judgement or discretion.
22. "Newly discovered evidence" means evidence that was in existence at the time of the hearing, but was unknown to the parties involved and could not have been discovered with reasonable diligence before the hearing.
23. "Officeholder" means the incumbent holding an elected city office.
24. "Officer" means a member of the city council any member of a board appointed by the city council, and municipal court judges. It includes any member of a board that functions only in an advisory or study capacity.
25. "Official city business" means a purpose or function related to the duties or activities of office or employment.
26. "Political committee" means a specific purpose political committee or a general purpose political committee as those terms are defined in the Texas Election Code.
27. "Public event, appearances or ceremonies" means those functions, activities and ceremonies conducted by or for the benefit of any governmental entity; a function, activity or ceremony conducted by a non-profit corporation or similar organization formed for educational, scientific, community-betterment or economic development purposes which relates to the purpose for which the non-profit corporation or organization was formed; or a function, activity or ceremony which honors or recognizes the accomplishments of a political, prominent or public figure.

28. "Quasi-judicial proceeding" means by hearing or proceeding held by a public administrative Officer, to include but not be limited to a hearing officer, arbitrator or administrative law judge, who is required to hear or investigate facts and to draw conclusions from them as a basis for his or her official action and to exercise discretion of a judicial nature.
29. "Relative" means a person who is related to an officer or employee as spouse or as any of the following, whether by marriage, blood or adoption: parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, step son-in-law, stepdaughter, step daughter-in-law, stepbrother, stepsister, half-brother, half-sister, brother-in-law or sister-in-law.
30. "Resident" means any natural person that resides within the city limits for fourteen or more consecutive days and can provide proof such as a state issued identification card.
31. "Substantial interest in business entity" means the definition provided in Texas Local Government Code Section 171.002 as may be amended.
32. "Volunteer" means an individual who provides services to the city without any expectation of compensation or financial gain and without receiving any compensation or financial gain.

( [Ord. No. 19139](#), § 1, 2-16-2021)

## **Article II. - Standards of Conduct**

### **2.92.030 - General provisions.**

#### **A. Officers or employees:**

1. Shall not use their official positions improperly to secure unwarranted privileges or exemptions for themselves, relatives, or others. This provision does not preclude officers or employees from acting in any manner consistent with their official duties or from zealously providing public services to anyone who is entitled to them;
2. A city officer or employee shall not acquire an interest in, or be affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the city;
3. Shall not participate in making or influencing any city governmental decision or action in which they know that they have any financial interest distinguishable from that of the public generally or from that of other city officers or employees generally;
4. Shall not give reasonable basis by their conduct for the impression that any person can improperly influence, or unduly enjoy their favor in, the performance of their official duties, or that they are unduly affected by the kinship, rank, position or influence of any person;
5. Shall not use his or her position to secure official information about any person or entity for any purpose other than the performance of official responsibilities and duties;

6. Shall not use or disclose, other than in the performance of their official duties or as may be required by law, confidential information gained in the course of or by reason of their positions. This provision applies to former officers and employees as well as to current ones;
7. Shall not utilize city resources or by omission allow city resources to be utilized for personal benefit or the personal benefit of any other person or entity, except to the extent that the benefit received is strictly incidental to the performance of official duties, or to the extent that the person is entitled by law to obtain public services from the city;
8. Shall not transact any business (other than ministerial acts) on behalf of the city with any business entity of which they are officers, agents or members, or in which they have a financial interest. In the event such a circumstance arises, then they shall make known their interest, and:
  - a. In the case of an officer, abstain from voting on the matter and refrain from discussion of the matter at any time with the other members of the body of which he or she is a member and with any other person or body in city government which may consider the matter; and
  - b. In the case of an employee, disclose the matter to an appropriate administrative authority within city government so that reassignment or other suitable action may be taken to remove the employee from any further involvement in the matter;
9. Shall not personally provide services for compensation, directly or indirectly, to a person or organization who is requesting an approval, investigation, or determination from the body or department of which the officer or employee is a member. This restriction does not apply to outside employment of an officer if the employment is the officers primary source of income;
10. Shall not accept other employment or engage in outside activities incompatible with the full and proper discharge of their duties and responsibilities with the city, or which might impair their independent judgment in the performance of their public duty;
11. Shall not personally participate in a decision in a matter if the officer or employee is negotiating or has an arrangement concerning prospective employment with a person or organization that has a financial interest in a matter under consideration by or within the jurisdiction of the city, and in the case of an employee if it has been determined by the city manager that a conflict of interest exists. For purposes of this section, the term "decision" shall mean a decision, approval, disapproval, recommendation, investigation or rendering of advice, and the term "matter" shall include but not be limited to a matter, proceeding, application, request for ruling or determination, contract or claim which involves the city. In such instance, the officer or employee shall:
  - a. In the case of an employee, immediately notify the official responsible for appointment to his or her position of the nature of the negotiation or arrangement and, if the city manager determines that a conflict of interest exists, follow the instructions of the city manager with regard to further involvement in the matter; or
  - b. In the case of a board member, immediately notify the board of which he or she is a member of the nature of the negotiation or arrangement and:
    - i. Refrain from discussing the matter at any time with other board members or members of the city council if the city council will also consider the matter; and
    - ii. Abstain from voting on the matter; or

- c. In the case of a member of the city council, file an affidavit with the city clerk describing the nature of the negotiation or arrangement and:
  - i. Refrain from discussing the matter at any time with other council members or members of a board that will consider the matter; and
  - ii. Abstain from voting on the matter;
- 12. Shall not receive any fee or compensation for their services as officers or employees of the city from any source other than the city, except as may be otherwise provided by law. This shall not prohibit their performing the same or other services for a public or private organization that they perform for the city if there is no conflict with their city duties and responsibilities;
- 13. Shall not recklessly disregard the established practices or policies of the city relating to the duties assigned to the officer or employee;
- 14. Shall not, in the case of a member of the city council or an employee, personally represent or appear in behalf of the private interest of another before the city council, or any city board or department; or, if the represented person's interest is adverse to that of the city, represent any person:
  - a. In any quasi-judicial proceeding involving the city; or
  - b. In any judicial proceeding to which the city is a party; provided that nothing in this subsection shall preclude:
    - i. A city council member from speaking or appearing without compensation before the city council or any board or department on behalf of constituents in the course of his or her duties as an elected official;
    - ii. Any employee from performing the duties of his or her employment;
    - iii. Any employee from appearing before the city council or any city board or department, in a manner consistent with other city policies and rules, to discuss any general city policies or public issues, including the presentation of viewpoints or petitions of other employees; or
    - iv. A city council member or an employee from testifying as a witness under subpoena in a judicial or quasi-judicial proceeding; and
- 15. Shall not, in the case of a board member, personally represent or appear in behalf of the private interests of another:
  - a. Before the board of which he or she is a member;
  - b. Before the city council unless the board member discloses his or her status as a board member to the council and the representation or appearance does not relate to a matter that was heard or decided by the board of which the board member is a member or a board that has appellate jurisdiction over the board of which the board member is a member;
  - c. Before a board which has appellate jurisdiction over the board of which he or she is a member; or
  - d. In a judicial or quasi-judicial proceeding to which the city or an employee of the city is a party, if the interest of the person being represented is adverse to that of the city or an

employee of the city and the subject of the proceeding involves the board on which the board member is serving or the department providing support services to that board.

16. An officer or employee shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate the provisions in this chapter.

( [Ord. No. 19139](#), § 1, 2-16-2021)

#### **2.92.040 - Gifts.**

- A. An officer or employee shall not solicit, accept, or agree to accept for themselves or a relative, the following:
1. Any gift, of which the known or readily apparent value for each separate gift, exceeds seventy-five dollars in value;
  2. Any gift that might reasonably tend to influence them to act improperly in the discharge of official duties, or reasonably tend to improperly reward official conduct; or
  3. Any gift from any lobbyist registered under Chapter 2.94 of this Code, of which the known or readily apparent value for each separate gift exceeds ten dollars in value.
- B. Special applications. Subsection A above does not include:
1. Political contributions made or received and reported in accordance with the Texas Election Code;
  2. Awards, such as plaques, certificates, trophies or personalized mementos, which are reasonable in light of the occasion and publicly presented in recognition of public service;
  3. A gift from a relative or a personal, professional, or business relationship independent of the official status of the recipient;
  4. Gifts or other tokens of recognition presented by representatives of governmental bodies or political subdivisions who are acting in their official capacities which are accepted for the city or in conjunction with the officeholder duties of an elected official;
  5. Commercially reasonable loans made to an officer or employee in the ordinary course of the lender's business;
  6. Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official city business, if furnished by the sponsor of such public event; or in connection with attending seminars or workshops, speaking engagements, teaching, or rendering other public assistance to an organization or another governmental entity;
  7. An honorarium, transportation or lodging, the acceptance of which is not prohibited under Sections 36.07 and 36.08, Texas Penal Code;
  8. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event that is sponsored or conducted by the city;
  9. A ticket or admission pass, regardless of the actual or face value of the ticket or admission pass, to an event in which the officer or employee is participating in connection with official duties or in which the officer or employee is participating in connection with his

spouse's or child's position or duties, provided that the receipt of such ticket is reported as a reportable gift if such reporting is required under Section 2.92.070 B.2. of this Code; and

10. Any solicitation for civil or charitable causes, or admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the officer or employee.
11. Items received that are of nominal value (less than ten dollars).

( [Ord. No. 19139](#), § 1, 2-16-2021)

## **2.92.050 - Reporting requirements.**

### **A. Financial disclosure.**

1. Each officer, excluding elected officials whose financial disclosure requirements are governed by City Charter, and each designated employee, shall file with the city clerk, within ten business days after the date of his appointment, selection or approval by the city council, a statement disclosing:
  - a. Where, by whom and in what specific capacity that person is employed or self-employed;
  - b. Membership on boards of directors of corporations, whether organized for profit or not;
  - c. Partnership interests; and
  - d. The name and address of any business in which the person has a financial investment, and in the case of mutual funds and other similar pooled investments, the name of the fund or investment. For purposes of this subsection, a financial investment shall not include funds on deposit with financial institutions such as checking and savings accounts, investments in United States savings bonds, and similar investments that earn simple, compounded or money-market interest rates; unless the person has previously been appointed to a position that requires the filing of a financial disclosure form and the person already has a current financial disclosure form on file with the city clerk.
2. Each person submitting a statement of financial disclosure required under this section shall utilize a form provided by the city clerk, which shall be signed and submitted in hard copy, or submitted electronically or by facsimile as may be provided by the city clerk. The form or submission process shall provide a means by which the submitter affirms his identity and the accuracy of the statements made therein.
3. No person submitting such a statement of financial disclosure must indicate therein the extent of financial involvement in any investments.
4. The members of the boards and commissions identified below and every designated employee shall thereafter file with the city clerk a financial disclosure statement, between June 1<sup>st</sup> and June 30<sup>th</sup> of each year while in office or employed by the city. Each person subject to this section shall file a revised financial disclosure form at any time in which the person changes his primary employment or has made changes in financial investments which cumulatively total more than thirty-five percent of the person's total investments. Those persons who have no changes to report regarding the information required to be reported, may, in lieu of filing a complete financial disclosure form, file a short form annual

report, provided that they have filed a complete financial disclosure form within the previous five years.

- a. Building and standards commission.
  - b. City plan commission.
  - c. Civil service commission.
  - d. Construction board of appeals.
  - e. Ethics review commission.
  - f. Historic landmark commission.
  - g. Parks and recreation board.
  - h. Public service board.
  - i. Zoning board of adjustment.
5. Each candidate for elective office and each candidate for appointment to the boards and commissions identified or as a designated employee shall be provided with a notice of financial disclosure requirements at the time of application for such office or employment.
  6. Each year, by August 15<sup>th</sup>, the city clerk shall prepare a report noting whether each person, who is required to file a financial disclosure statement has done so as of the date of the city clerk's report. If the person has not filed their required financial disclosure statement upon the time the city clerk finished the report or the person fails to file their financial disclosure statement within fourteen days of their appointment and they do not already have a current financial disclosure statement on file, the city clerk shall send a written notice by certified mail, return receipt requested, with a copy sent by regular mail, to the person to advise them that they have not filed a financial disclosure statement as required by this section and that they have fourteen days from the date of the letter to file his or her financial disclosure statement. If the person is a board member covered under Section 2.92.050(A)(9)(e), the city clerk will also advise the board member that the failure to timely file the financial disclosure statement will result in the automatic removal of that board member from his or her office. In the event of an unforeseen circumstance, including but not limited to, military service or acute illness or leave without pay under the Family Medical Leave Act, the deadline for receipt by the city clerk is extended until such time as the board member or employee resumes his or her city duties.
  7. In the event that a designated employee that reports to the city manager, fails to file a required financial disclosure report, or had filed incomplete or unresponsive information by the deadlines calculated under Section 2.92.050(A)(1) of this section, the city clerk shall notify the individual that the matter is being forwarded to the city manager for appropriate action.
  8. In the event that a board member fails to file his or her financial disclosure statement or has filed incomplete or unresponsive information by the deadlines calculated under Section 2.92.050(A)(1), (4), or (9) of this section, the following actions will be taken:
    - a. In the event that the board member is a member of the civil service commission, the city clerk shall prepare and send a notice of the failure of the civil service commission member to file a financial disclosure statement to each member of the city council for

their review and consideration regarding the possible removal of the civil service commission member from office in accordance with Section 6.1-10 of the City Charter.

- b. In the event that the board member is a member of the zoning board of adjustment, the city clerk shall prepare and send a notice of the failure of the zoning board of adjustment member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the zoning board of adjustment member from office in accordance with Section 211.008, Texas Local Government Code.
  - c. In the event that the board member is a member of the public service board other than the mayor, the city clerk shall prepare and send a notice of the failure of the public service board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the public service board member from office in accordance with the applicable removal provisions contained in any pertinent ordinance adopted by the city for the issuance of water or sewer revenue bonds.
  - d. In the event that the board member is a member of the El Paso Housing Finance Corporation, the industrial development authority, or other similar corporation organized pursuant to state law, the city clerk shall prepare and send a notice of the failure of the board member to file a financial disclosure statement to each member of the city council for their review and consideration regarding the possible removal of the board member from office in accordance with the applicable removal provisions contained in any articles of agreement or bylaws of the corporation or statutory provisions.
  - e. In the event that the board member is a member of any other city board subject to the requirement of this section, that board member shall be deemed removed from office without action or review by the city council. The city clerk shall prepare and send a notice of the removal to the board member and to the city council member who had appointed the board member. The removal shall be effective on the date that the notice is deposited in the United States mail or if not mailed, upon delivery to the board member.
9. The removal provision established in Section 2.92.050(A)(9)(e) of this section for the failure of a board member to file a financial disclosure statement shall be in addition to and shall be controlling over any other city ordinance or city council resolution that establishes procedures for the removal of board members.
10. Financial disclosure reports are open records subject to the Texas Open Records Act, and shall be maintained in accordance with the Local Government Records Act.
- B. Reporting of gifts.
- 1. Each officer and designated employee shall keep a written record of all reportable gifts received during his or her term of office or employment.
  - 2. Such record shall be made for each calendar month. The record shall include a description of the reportable gift received; the name of the person and organization giving the reportable gift; the relationship of the donor to the reporter; the value or estimated value of the reportable gift; and the immediate or intended disposition of the reportable gift. A reportable gift consisting of a certificate or admission ticket or pass to a future event or

activity shall be deemed to have been received on the date on which the certificate or admission ticket or pass was received, and if such certificate or admission ticket or pass must be reported under subsection (B)(4)(d), a statement as to the duties performed.

3. Such monthly record shall be submitted to the city clerk on the form she provides no later than the tenth day of the following month for each month during which a reportable gift is received.
4. "Reportable gifts" for purposes under this section shall mean the following:
  - a. Any gift that is not covered by the special applications under Section 2.92.040 B of this Code, has a value of more than ten dollars, and was conferred on account of the official status of the recipient or in connection with official city business, except as provided below in subsections b, c and d;
  - b. Any hosting, such as travel and expenses, entertainment, meals or refreshments, that has a value of more than fifty dollars, other than hosting provided on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
  - c. Any award presented in recognition of public service, or an honorarium, with a value of more than fifty dollars; and
  - d. Any tickets or other admission passes to an event with an actual or face value of more than ten dollars for all tickets or admission passes to the same event received at the same time, except for tickets or admission passes provided by the city for an event that is sponsored or conducted by the city.
5. Any gift, benefit, hosting, honorarium or other economic gain or economic advantage that is refused and returned to the sender within seventy-two hours of receipt shall not constitute a reportable gift under this section.
6. Any gift which exceeds seventy-five dollars in value, which is not covered by the special applications under Section 2.92.040 B of this Code and which is turned over to the city manager within seventy-two hours of receipt for acceptance as a gift to the city, shall not constitute the acceptance of a gift in violation of this Code, provided that the disposition of such gift is reported on a timely filed reportable gift form.
7. The manager, on a monthly basis, shall prepare a report which shall be made available to the public of all gifts that have been turned over to his office for acceptance as a gift to the city.

( [Ord. No. 19139](#), § 1, 2-16-2021)

#### **2.92.060 - Restrictions for former city officers and employees.**

- A. All executive staff or salaried professional employees reporting directly to the city manager as described in Section 6.2-2(H), Unclassified Services of the City Charter, are prohibited during the twelve months after leaving the service or employment of the city, to engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any other person or organization in any formal or informal appearance before the city council or a city board or department.

- B. An officer or other employee in a position which involves significant reporting, decision-making, advisory, or supervisory responsibility who leaves the service or employment of the city shall not, during the twenty-four months after leaving the service or employment of the city, engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any other person or organization in any formal or informal appearance before the city council or a city board or department. For purposes of this subsection only the term "Officers" excludes members of boards and commissions of the city.
- C. No former members of the building and standards commission, city plan commission, civil service commission, construction board of appeals, ethics review commission, historic landmark commission, parks and recreation board, public service board, the zoning board of adjustment, or any other board or commission of the city, shall, during the twelve months after leaving the board or commission, engage in lobbying activities as a registered lobbyist as regulated in Chapter 2.94 of this Code, or represent any person or organization in any formal or informal appearance before their former respective board or commission.
- D. Former officers and employees shall not use for their personal benefit and shall not disclose, except as may be required by law, confidential information gained in the course of or by reason of their positions. This provision shall not prohibit the disclosure of any such information to incumbent city officers or employees to whose duties such information may be pertinent.
- E. No person shall, during the twelve months after having served on and left the civil service commission, represent any classified employee of the city before the civil service commission or before a hearing officer appointed by the civil service commission on a disciplinary matter or grievance. Additionally, a person after leaving the civil service commission, shall not represent an employee on any matter before the civil service commission or a hearing officer appointed by the civil service commission that went before the civil service commission during the time that such person served on the civil service commission.
- F. No person shall, during the twelve months after having served on and left the civil service commission, be appointed as a hearing officer for the civil service commission.
- G. No person appointed as a hearing officer for the civil service commission shall, during the time of service and for twelve months after having served, represent any classified employee of the city before the civil service commission or before a hearing officer appointed by the civil service commission on a disciplinary matter or grievance. A former hearing officer appointed by the civil service commission shall not represent a classified employee on any matter before the civil service commission or a hearing officer appointed by the civil service commission that went before such person during the time he or she served as a hearing officer.

( [Ord. No. 19139](#), § 1, 2-16-2021)

#### **2.92.070 - Campaign finances.**

- A. Conformity with Texas Election Code. Pursuant to this chapter, candidates, officeholders and political committees participating in city elections may be required to make additional disclosures, to file additional notices, and to comply with certain restrictions not set out in the Texas Election Code. It is not the intent of the city to enact any provision in conflict with or in derogation of the Texas Election Code. The requirements set out in this section are cumulative of those in the Texas Election Code, and nothing in this section shall be construed to limit obligations imposed by the Texas Election Code.

B. Applicability of section.

1. The provisions of this section pertaining to candidates and officeholders shall apply to all persons who have an active appointment of a campaign treasurer by a candidate form on file with the city clerk.
2. Officeholders are subject to the regulations applied to candidates for the office he or she holds.

C. Campaign contributions.

1. An individual shall not make a contribution in support of, or opposition to, a candidate for city office under a name other than the name by which the individual is identified for legal purposes.
2. A contribution must be made in the name of the individual who owns and is contributing the thing of value, and one individual shall not make a contribution on behalf of another individual.
3. It shall be unlawful for any person who is an adverse party in any pending litigation against the city, or who has an ownership interest of ten percent or more in any entity that is an adverse party to the city in any pending litigation to contribute or donate any funds to any candidate for city office if the litigation seeks recovery of an unspecified amount or of an amount in excess of twenty-five thousand dollars, exclusive of costs of court and attorneys' fees. Such restriction shall not be applicable to attorneys representing a person or entity in pending litigation against the city. It shall be the duty of any candidate to refuse to accept any contribution that may be offered by a person who is known to the candidate to have a litigation interest described in this section. In the event that any candidate unknowingly accepts a contribution in contravention of the foregoing provision, then it shall be the duty of the candidate to return the contribution within ten days after the candidate becomes aware of the litigation.

D. Required filings.

1. Each candidate shall file with his application, consent and affidavit of candidate, a written statement acknowledging that he or she has received a copy of the city's campaign finance regulations.
2. A political committee which makes contributions or expenditures in connection with advocating or opposing a position or issue in a city election must file with the city clerk a copy of each contribution and expenditure report filed with the Texas Ethics Commission. The filing date for filing with the city clerk shall be the date established under the Texas Election Code for filing with the Texas Ethics Commission.
3. The starting and ending dates of reporting periods and the due dates of contribution and expenditure reports by candidates for city elections, officeholders and by political committees shall be governed by the Texas Election Code.
4. Contribution and expenditure reports required to be filed with the city clerk's office under the Texas Election Code must be filed and updated electronically except as provided in Section 2.92.070(D)(4)(b).
  - a. The city will provide access to computer equipment for candidates to file the electronic reports.

- b. A candidate, officeholder, or political committee that is required to file electronic reports under this chapter may apply for an exemption with the city clerk if:
  - i. The candidate, officeholder, or campaign treasurer of the committee files with the city clerk's office an affidavit stating that the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee; and
  - ii. The candidate, officeholder, or committee does not, in a calendar year, accept political contributions that in the aggregate exceed the greater of twenty thousand dollars or the amount stated in Section 254.036(C)(2) of the Texas Election Code, as amended, or make political expenditures that in the aggregate exceed the greater of twenty thousand dollars or the amount stated in Section 254.036(C)(2) of the Texas Election Code, as amended.
- c. The city will post the contribution and expenditure reports through the city's website. A paper copy of any report will be made available, upon written request.
- d. Failing to timely file a report required by this section is a violation hereof, as is the filing of a report with incorrect, misleading, or incomplete information. If an individual inadvertently files an incorrect or incomplete report, it is his or her responsibility to file an amended report as soon as possible, though no later than fourteen days after discovery of the error or after the error should have reasonably been discovered.

E. Complaints.

- 1. Individuals may file a complaint alleging noncompliance with this section by an officeholder by submitting the matter to the ethics review commission in the same manner as provided in Section 2.92.160 of this chapter.
  - 2. If the city clerk receives a written complaint alleging noncompliance with this section or if the city clerk determines that a required report of a candidate, officeholder or political committee has not been filed by the deadline imposed by this section or state law, the city clerk shall forward this information to the city attorney for investigation and appropriate enforcement action or submission to the ethics review commission, if warranted.
- F. Severability. It is the intent of the city that this section shall comply in all respects with applicable provisions of the United States Constitution, the Texas Constitution, and the charter of the city. If any provision of this section is declared by a court of law to be illegal, void, invalid, or unconstitutional or in violation of the City Charter, such holding shall not affect the validity of the remaining portions of this section, and such remaining portions shall remain in full force and effect.

( [Ord. No. 19139](#) , § 1, 2-16-2021)

**2.92.080 - Disclosure of campaign contributions.**

- A. If a member of the city council has received campaign contributions from a contributor totaling five hundred dollars or more subsequent to the date that the member last filed a campaign finance report pursuant to state law, such member shall disclose the receipt of such contribution(s) to the city council before any deliberation or vote of the city council regarding

any matter on a meeting agenda which concerns or relates to the contributor(s), a business entity owned in whole or in part or operated by the contributor(s) or which employs the contributor(s), or any other time that the contributor(s) appears to address the council during the meeting.

- B. This requirement shall apply to all meetings of the city council.
- C. Such disclosure shall be orally made by the member and shall be recorded in the minutes of the meeting.
- D. If a member of the city council accepts a campaign contribution from a contributor of five hundred dollars or more, he shall report the amount and the donor by an item for notation on the consent agenda of a city council meeting within thirty days of the date of such contribution.
- E. No action of the council which is otherwise legal shall be invalidated merely by reason of the disclosure of a campaign contribution by a member of the city council or the failure of a member to disclose a campaign contribution.

( [Ord. No. 19139](#) , § 1, 2-16-2021)

#### **2.92.090 - Ethics training.**

- A. This subsection applies to all city officers.
  - 1. Each officer shall complete the courses of training regarding the regulations and requirements of Chapters 2.92 and 2.94 of the City Code, as provided herein.
  - 2. Each officer shall complete an initial course of training within ninety days after the effective date of this chapter.
  - 3. Each board, committee and commission member shall complete an initial course of training within ninety days after the effective date of this chapter.
  - 4. Each officer taking office for the first time on and after shall complete the course of training within sixty days after taking the oath of office.
  - 5. Each board, committee and commission member who is appointed to any board, committee or commission on and after January 1, 2013, and who has not completed the initial course of training or a refresher training course within the three years prior to the date the person takes the oath of office, shall complete the initial course of training within ninety days after the date the person takes the oath of office.
  - 6. Each officer shall thereafter complete refresher training courses as provided in subsection (C).
- B. This subsection applies to all city employees.
  - 1. Each city employee shall complete the courses of training regarding the regulations and requirements of Chapters 2.92 and 2.94 of the City Code, as provided herein.
  - 2. All employees shall complete an initial course of training as part of each employee's participation in a new employee orientation, as established by the city manager or his designee.
  - 3. Each employee shall thereafter complete refresher training courses as provided in subsection (C), or as otherwise directed by the city manager.
- C. The courses of training required under this section shall be provided and completed as follows:

1. Each officer and employee shall complete the initial course of training as provided in subsections (A) and (B), as applicable.
  2. Each officer shall thereafter complete a refresher training course that will be offered during every third year subsequent to the initial course of training provided during calendar year 2020, with the first refresher course of training to be offered during calendar year 2023.
  3. Each employee shall thereafter complete a refresher training course as provided in subsection (C)(2), or as otherwise directed by the city manager.
  4. An officer or employee who has completed his initial course of training within the twelve months prior to the start of a calendar year in which refresher training is required is not required to complete the refresher training offered during that immediately-following calendar year, but shall be required to complete all subsequent refresher training courses, as provided herein.
- D. The city manager shall ensure that the training required by this section is made available.
1. The training course and refresher training courses shall be developed and provided by the city manager or his designees, and be subject to approval as to form by the city attorney or his designees.
  2. The training courses must include instruction in:
    - a. Requirements relating to the standards of conduct imposed under this chapter, including, but not limited to, the acceptance of gifts;
    - b. State penal and other laws that relate to ethical conduct;
    - c. Reporting and disclosure requirements of the ethics ordinance and state law;
    - d. Basic requirements of the lobbying ordinance and facilitating compliance by others with that chapter;
    - e. Penalties and other consequences for failure to comply with the ethics and lobbying ordinances; and
    - f. The application of the ethics ordinance to unique situations relating to the board, commission or committee that the officer has been appointed to, or the application of the ethics ordinance to unique situations relating to the type of work that an employee does or the department he/she is assigned to.
  3. The courses of training required under this section may be offered through live instruction or through the use of a video-recorded presentation.

( [Ord. No. 19139](#) , § 1, 2-16-2021)

### **Article III. - Ethics Review Commission**

#### **2.92.100 - Purpose and mission.**

- A. In order to assist the city council, an ethics review commission of nine members is hereby established.
- B. The ethics review commission shall serve as an advisory body to the mayor and city council on matters concerning ethics in government of the city.

( [Ord. No. 19139](#), § 1, 2-16-2021)

**2.92.110 - Membership.**

- A. All members of the ethics review commission shall be residents of the city. Members cannot be city employees, hold any city elected office, or be a candidate for any city elected office. A member may contribute to a city political campaign as long as they are compliant with the City Charter.
- B. No member of the ethics review commission shall be related within the third degree of consanguinity or within the third degree of affinity to a member of the city council or the city manager.
- C. Members shall be appointed for a two-year period, except that appointments made to fill vacancies created during a term shall only serve for the remainder of the term. The term of each appointee shall commence on February 21<sup>st</sup> and shall terminate on February 20<sup>th</sup> at the conclusion of the respective term. Terms shall be staggered in the following manner:

Mayor's appointee      Terms expire in even numbered years

District 1 appointee:    Terms expire in even-numbered years

District 2 appointee:    Terms expire in odd-numbered years

District 3 appointee:    Terms expire in even-numbered years

District 4 appointee:    Terms expire in odd-numbered years

District 5 appointee:    Terms expire in odd-numbered years

District 6 appointee:    Terms expire in even-numbered years

District 7 appointee    Terms expire in even-numbered years

District 8 appointee    Terms expire in odd-numbered years

( [Ord. No. 19139](#), § 1, 2-16-2021)

**2.92.120 - Jurisdiction.**

The ethics review commission shall have jurisdiction to review alleged violations of Article II (Standards of conduct) of this chapter by officers that occurred within two years of the complaint being filed.

( [Ord. No. 19139](#), § 1, 2-16-2021)

### **2.92.130 - Duties.**

- A. The ethics review commission shall meet as necessary to accomplish the following duties. In order to conduct a meeting there must be a quorum of five members of the ethics review commission.
1. Review, evaluate and provide recommendations on issues as requested by the city council.
  2. Provide recommendations for the city council regarding orientation programs or procedures for officers and volunteers focusing on education of the importance of ethics in city government and on the provisions of this chapter.
  3. Provide information to the community on ethics in city government, as may be necessary for the promotion of the public trust.
  4. Issue advisory opinions in the manner set forth in Section 2.92.150 below.
  5. Review, evaluate and issue determinations, impose sanctions and provide recommendations to the city council on complaints regarding officers.
  6. Provide information on the disposition of specific issues by referring to minutes of commission meetings and ethics review commission reports.
  7. Periodically review and propose changes to this chapter and the forms utilized pursuant thereto.
  8. Develop guidelines and procedures to promote compliance with this chapter.
  9. Prepare written annual reports for the city council. Submit additional reports as needed.
  10. Any other duties or assignments that may be directed by city council.

( [Ord. No. 19139](#), § 1, 2-16-2021)

### **2.92.140 - Procedures.**

- A. The ethics commission will hold their first meeting every year on or about the first business day after April 1<sup>st</sup>. At this meeting, they will select a chair and vice chair and adopt rules for their proceedings, which shall be subject to approval by city council. The rules that are adopted must be consistent with the City Charter, city ordinances, and the ethics code, and shall, to the extent possible, be like the rules set up by city council for its own meetings.
- B. The chair of the ethics review commission shall make appointments to the advisory opinion panel as needed to issue advisory opinions to officers upon written request. The advisory opinion panel shall never have less than three members of the ethics review commission.
- C. The ethics review commission shall be assigned staff by the city manager to assist in its duties, as the city manager and city council deems necessary. In the case that the ethics review commission is hearing a complaint against a member of city council or the city manager, outside legal counsel may be retained when requested by the city attorney at any time during the ethics proceedings to perform his or her duties under Section 2.92.170 of this Code and any other duties for the remainder of the ethics proceeding.
- D. The ethics review commission may consolidate into one complaint the following:
1. Multiple complaints against the same officer that involve the same incident; or

2. Multiple complaints against the same officer that involve the same alleged misconduct.

( [Ord. No. 19139](#), § 1, 2-16-2021)

#### **2.92.150 - Advisory opinions.**

- A. By written request to the city attorney, any officer may request an advisory opinion regarding whether his or her proposed conduct would violate this chapter. Within thirty days of receiving the written request, the city attorney shall call a meeting of the advisory opinion panel to review the request. The panel shall meet to confer and issue an advisory opinion. The panel, however, showing a good cause, may decline to issue an advisory opinion or refer the matter to the whole ethics review commission.
- B. The city manager may request an advisory opinion regarding the proposed action or conduct of one or more employees by submitting a written request to the city attorney. The city will issue an opinion within thirty days of receiving the advisory opinion request, unless the city attorney, showing good cause, declined to issue an advisory opinion.
- C. A person who in good faith acts in accordance with a written advisory opinion issued by the advisory opinion panel or ethics review commission cannot be found to have violated this chapter by engaging in conduct approved in the advisory opinion if:
  1. The person requested the issuance of the opinion; or
  2. The request for an opinion fairly and accurately disclosed all relevant facts necessary to render an opinion.

( [Ord. No. 19139](#), § 1, 2-16-2021)

#### **2.92.160 - Filing a complaint.**

- A. Any resident of the city (including a member of the ethics review commission), or natural person conducting business with a city who believes a city employee has violated Article II of this chapter may file a sworn complaint to the city's human resources department or to the employee's supervisor.
- B. Any resident of the city (including a member of the ethics review commission) or natural person conducting business with the city who believes an officer has violated Article II of this chapter may file a sworn complaint with the city clerk.
- C. Any resident of the city (including a member of the ethics review commission) or natural person conducting business with the city who believes the city attorney or the city manager has violated Article II of this chapter may file a sworn complaint with the mayor and the mayor pro temp.
- D. A complaint filed under this section must be in writing and under oath and must include:
  1. The name of the complainant;
  2. The telephone number and the mailing address and/or electronic mail address of the complainant;
  3. Proof of residence or that the complainant is conducting business with the city;
  4. The name of each person complained about;

5. The position or title of each person complained about;
6. The nature of the alleged violation, including the specific provisions of this chapter alleged to have been violated;
7. A statement of the facts explaining the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
8. All other documents or material relating to the alleged violation that the complainant can provide; a list of the documents or materials that are relevant to the alleged violation but are not in possession of the complainant or are unavailable to the complainant, including the location of such documents or materials;
9. An affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts constitute a violation of this chapter. If the complaint is based on information and belief, the complainant shall state the source and basis of the information and belief. Each complainant, other than a member of the ethics review commission, shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury. The complaint must state on its face an allegation that, if true, constitutes a violation of this chapter that is administered and enforced by the commission.

( [Ord. No. 19139](#) , § 1, 2-16-2021)

#### **2.92.170 - Complaint review.**

- A. The city clerk will review a filed complaint to ensure it is properly sworn and complete. If the complaint is missing required information, the city clerk will send the complaint back to the complainant through regular mail and/or electronic mail, and the complainant will have twenty-one days to correct the complaint and refile it otherwise the city clerk may reject the complaint. If the complaint is complete the city clerk will forward the complaint to the city attorney and the respondent within seven days. Respondent has fourteen days from receipt of the complaint to file a response with the city clerk.
- B. Within twenty-one days of receiving the complaint from the city clerk, the city attorney will either:
  1. Dismiss the complaint because it falls outside the ethics review commission's jurisdiction. If a complaint is dismissed in this manner the decision of the city attorney will be final. The city attorney shall provide a copy of the dismissal to the ethics review commission and to the complainant through regular mail or electronic mail; or
  2. Refer the complaint to the ethics review commission. Once this occurs, the city attorney may confer with the chair of the ethics review commission and vice-versa about any procedural matters regarding the complaint.

( [Ord. No. 19139](#) , § 1, 2-16-2021)

### **2.92.180 - Ex parte communications.**

- A. It shall be unlawful to engage in any of the following ex parte communications regarding a complaint that has been filed pursuant to this chapter:
  - 1. For the complainant, the respondent, or any person acting on their behalf, to engage or attempt to engage directly or indirectly about the subject matter or merits of a complaint in ex parte communication with a member of the ethics review commission, a member of the city council, or any known witness to the complaint; or
  - 2. For a member of the ethics review commission, to knowingly entertain an ex parte communication prohibited by subsection (A)(1) above, or to communicate about any issue of fact or law relating to the complaint directly or indirectly with any person other than a member of the ethics review commission.
- B. The city attorney or his/her designee conferring with the chair or members of the ethics review commission on procedural matters regarding a complaint shall not be considered prohibited ex parte communications.
- C. If a member of the ethics review commission violates this section of the chapter, they shall recuse themselves from any further proceedings regarding the complaint. Should the commission not reach a quorum because members recused themselves, then the city council shall appoint temporary members to the commission to hear the complaint or the chair of the ethics review commission shall appoint a panel with the remaining eligible members to complete the hearing and disposition process. Temporary membership to the ethics review commission expires upon the disposition of a complaint and may only be reinstated by city council if the complaint is to be reconsidered pursuant to the provisions in this chapter.

( [Ord. No. 19139](#), § 1, 2-16-2021)

### **2.92.190 - Hearing.**

- A. If a complaint is referred to the ethics review commission, the commission must schedule a hearing and provide copies of all relevant documentation to the members of the commission, the complainant, and the respondent within thirty days of being referred the complaint. While the complaint is pending members of the ethics review commission are prohibited from discussing the complaint or matters of the hearing with any officer, the city manager, or other employees of the city, or any other person whether that person is associated with the complaint or not.
- B. For all hearings, the person submitting the complaint and any persons named in the complaint will be sent written notice of the date, time, and place of the hearing by the ethics review commission through regular mail and/or electronic mail so each party may attend.
- C. If either the complainant or the respondent, or their attorneys, if any, are unable to attend any scheduled hearing, they may request a continuance of the hearing by submitting a written request for continuance to the ethics review commission through regular mail and/or electronic mail at least five days before the scheduled hearing. The complainant and the respondent, including their attorneys, shall receive one automatic continuance. Any other requests for continuance shall be delivered in writing to the ethics review commission through regular mail and/or electronic mail, and the chair will determine if a continuance will be granted at the next scheduled meeting. The request for continuance must be received at least five days before the scheduled hearing. The commission shall consider if granting continuance promotes fairness to all parties and if there is good cause shown in the request for continuance.

- D. The complainant, respondent, either of their attorneys, or any witnesses that have been requested to appear at the hearing may raise questions regarding the proceedings before the ethics review commission or any preliminary issues regarding the scheduled hearing to the attention of the city attorney. The city attorney or his or her designee shall resolve the matters to the extent possible, and if necessary, consult with the commission to determine the appropriate resolution at the commission's scheduled meeting.
- E. Only eligible commissioners of the ethics review commission will hear matters referred to the commission as a whole. If a commissioner recuses himself or herself, they will refrain from voting on the matter and from discussing the matter at any time with other commissioners of the ethics review commission. A commissioner shall not be eligible to hear issues under this chapter and shall recuse himself or herself in the following situations:
1. Where, because of familial relationship, employment, investments, or otherwise, his or her impartiality might be questioned;
  2. When the commissioner issued the complaint;
  3. When the complaint involved the member of city council who nominated him or her for a seat on the ethics review commission;
  4. When the commissioner is not present during any portion of the hearing of the complaint. The commissioner shall recuse himself or herself from further hearing and matters regarding the complaint and will no longer be eligible to participate in the disposition of the complaint; or
  5. When the complaint involved the member of the city council in whose campaign the commissioner, if during the last twelve months substantially participated by acting as a fundraiser or leader in the campaign, or contributing five hundred dollars or more.
- F. General rules for the hearing.
1. The ethics review commission may establish time limits and other rules relating to the participation of any person in the hearing for the purpose of establishing an orderly and fair hearing process for all participants. Such rules shall include determining parameters for opening and closing statements, the roles of the complainant and the respondent, limitations regarding testimony for non-relevant or cumulative witnesses, and the presentation and direct questioning of witnesses by the respondent, complainant, or their attorneys.
  2. The respondent and the complainant have the right to attend the hearing, the right to make a statement and present witnesses pursuant to the rules set by the commission for the hearing, and the right to be accompanied by legal counsel or advisor. The respondent and the complainant may be advised by their legal counsel or advisor during the course of the hearing. The legal counsel or advisor of the complainant may not speak on behalf of the complainant, except to represent the complainant while testifying. The respondent, the complainant, or their legal counsel or advisor, may not personally question or cross-examine witnesses, except if the commission has granted them permission to do so.
  3. As provided by the City Charter, the ethics review commission shall have the authority to request witness testimony and production. The commission chair or his/her designee on behalf of the commission, shall have the authority to request any and all necessary assistance from city council for the purpose of compelling testimony, including subpoenaing witnesses in accordance with the procedures set out by the City Charter and city ordinances. The commission will have the authority to bring matters to city council through agenda items properly drafted by the city attorney or his/her designee.

4. The city attorney and his/her designee will disclose any information or evidence actually known to them that would validate and/or negate the alleged violation of this chapter to the ethics review commission and to the respondent.
5. The ethics review commission is not bound by the rules of evidence, but will rely on evidence that a reasonably prudent person commonly relies on in the conduct of their personal affairs. The commission shall hear relevant evidence, but shall not rely on hearsay.

( [Ord. No. 19139](#), § 1, 2-16-2021)

#### **2.92.200 - Disposition.**

- A. After hearing the complaint, the ethics review commission will issue a decision within thirty days based on the information available to the commission through the hearing process. The ethics review commission will:
  1. Dismiss a complaint because no violation of this chapter has occurred; or
  2. Find that a violation of this chapter has occurred and either find that a sanction is not appropriate, or issue a sanction.
- B. If after hearing the issues, the ethics review commission dismisses the complaint or finds that no violation of the ordinance occurred, the commission shall create a written report of their findings or dismissal, and such report shall be filed with the minutes of the meeting in the office of the city clerk, and a copy of the report shall be sent to the parties associated with the complaint by regular mail and/or electronic mail.
- C. At this time, the commission may determine if the complaint was frivolous. If the commission determines that a complaint is frivolous, they may issue a sanction provided in subsection D below. If within one year, a complainant is found to have filed more than one frivolous complaint, the complainant will not be able to file further complaints for the following two years. If a complainant who is banned from filing a complaint does so within their prohibited period, the city clerk may refuse to accept the complaint and will notify the commission so an additional two years can be added to the current prohibition.
- D. If after hearing the issues, the ethics review commission determines through clear and convincing evidence that a violation of this chapter has occurred, then the ethics review commission may issue one of the following sanctions:
  1. Letter of notification. A letter of notification may be issued when the ethics review commission finds that a violation of this chapter was clearly unintentional. A letter of notification may advise the person to whom the letter is directed of any steps to be taken to avoid future violations.
  2. Letter of admonition. A letter of admonition may be issued when the ethics review commission finds that the violation of this chapter was minor and/or may have been unintentional, but where the circumstances call for a more substantial response than a letter of notification.
  3. Letter of reprimand. A reprimand may be issued when the ethics review commission finds that a violation of this chapter was committed intentionally or through disregard of this chapter.
  4. Recommend removal from office. In addition to a letter of reprimand, removal from office may be recommended to the city council for action when the ethics review commission finds that a serious or repeated violation of this chapter was committed by an officer intentionally or through culpable disregard of this chapter.

- E. If the ethics review commission votes to impose a sanction of a letter of notification, a letter of admonition, or a letter of reprimand, the commission shall prepare a written report of their findings, which shall be filed with the minutes of the meeting in the office of the city clerk. The city attorney shall draft the letter of sanction per the direction of the commission, file a copy of the letter in the employment file of the person receiving the sanctions where it shall remain as a permanent record, and send a copy of the letter to said person by both regular mail and certified mail, return receipt requested, and/or by electronic mail.
- F. If the ethics review commission recommends the imposition of the sanction of removal from office, it shall prepare a written report containing its recommendation. The report will be sent to the city clerk who shall, within fourteen days of receipt, place the matter on the city council agenda for discussion and action by the city council regarding the recommendation of the ethics review commission. The final authority to carry out a recommendation for removal from office shall be with the city council and shall take place in conformity with any other law or requirements for such removal. The recommendation(s) of the ethics review commission may be accepted, rejected, modified or recommitted to the commission for further action or clarification by city council. The city clerk shall, within fourteen days of the date of any city council action taken on a complaint, forward a copy of such action to the chair of the ethics review commission.

( [Ord. No. 19139](#), § 1, 2-16-2021)

#### **2.92.210 - Reconsideration.**

If the ethics review commission determines a violation of this chapter has occurred and imposes sanctions, the person who has received the sanctions may petition the ethics review commission to reconsider the matter only if there is newly discovered evidence which was not presented to the ethics review commission during the original proceedings. The person who was sanctioned may request the reconsideration by providing written notice to the city clerk within fourteen days of the date on the ethics review commission's written notice regarding the sanctions. If the sanctioned party does not provide written notice to the city clerk on or before the expiration of the 14<sup>th</sup> day following the date of the written notice of the sanctions, the decision of the ethics review commission shall be final and no longer eligible for reconsideration.

( [Ord. No. 19139](#), § 1, 2-16-2021)