

**Texas Municipal Retirement System
City Portal Use Agreement**

This City Portal Use Agreement (the “Agreement”) is entered into by and among the Texas Municipal Retirement System, the City of _____, and the City Portal Administrator (defined below), to be effective as set forth below.

RECITALS

WHEREAS, the Texas Municipal Retirement System (“TMRS”) is offering access to a web-based, online portal (the “City Portal”) for cities that are participating members of TMRS to access information and provide certain functionality to participating municipalities as necessary for its official governmental functions; and

WHEREAS, the City of _____ (the “City”) is a municipality that participates in TMRS and desires access to the TMRS City Portal for official City business purposes; and

WHEREAS, _____ is an individual employee of the City, is an authorized contact for the City with the Texas Municipal Retirement System, and will be the main contact and administrator for the purposes of the TMRS City Portal, as further described herein (the “City Portal Administrator”); and

WHEREAS, the City Portal Administrator will have the authority to grant access and permissions to the City Portal to other City employees and officers who are TMRS authorized City contacts (“City Portal User(s)”, including the City Portal Administrator, where applicable); and

WHEREAS, TMRS will grant City Portal Users the authority to access TMRS data relating to City employees and retirees via the City Portal in a form identifiable with a specific individual pursuant to Section 855.115(a)(1)(C) of the Texas Government Code, which information TMRS must protect pursuant to Sections 552.101 and 855.115 of the Texas Government Code (attached as Exhibit B, and incorporated by reference); and

WHEREAS, the City, the City Portal Administrator, and the City Portal Users understand that they may violate provisions of and be subject to potential civil and criminal penalties under the Texas Public Information Act for failure to comply with the terms of this Agreement or any applicable provisions of the Texas Public Information Act with respect to any Confidential Information; and

WHEREAS, TMRS is willing to disclose such information only upon acknowledgement and agreement of the City and the City Portal Administrator of the terms and conditions required for access to the information:

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TMRS, the City, and the City Portal Administrator hereby agree to the terms and conditions below:

1. The City and City Portal Administrator represent and warrant that all information requested by any City Portal User will be information that is reasonably necessary to the performance of the duties

of the City Portal User requesting such information. The City Portal Administrator hereby attests that he/she has attended and completed training by TMRS on the City Portal. The City Portal Administrator hereby agrees that only persons meeting the following criteria may be trained to become a City Portal User: (i) a contributing TMRS member, and (ii) job duties require access to the Confidential Information. The City and the City Portal Administrator agree that all City Portal Users shall be trained by the City Portal Administrator on the obligations and responsibilities set forth in this Agreement and shall ensure that any City Portal User shall agree in writing to be bound by the same terms and conditions contained in this Agreement prior to such City Portal User's access to the City Portal.

2. The City and the City Portal Administrator each represents, warrants, and covenants that any City Portal User, or any City employee, officer, representative, contractor or agent (collectively, "Representatives") who will receive any Confidential Information (defined below), shall, prior to receiving such information, be given a copy of this Agreement and shall **sign** an acknowledgement agreement, in the form attached hereto as Exhibit A, in which such person agrees to be bound by all terms and conditions contained in this Agreement regarding the use and protection of the Confidential Information. Each City Portal User is responsible for maintaining the confidentiality of his or her password. City Portal Users shall not share passwords, or allow any unauthorized person or groups of persons to use one password to access the City Portal. The City Portal Administrator shall promptly terminate the access rights of any City Portal User that is no longer employed by the City, or who is no longer authorized by the City to have access or no longer requires access to the City Portal for the performance of such persons' duties, or who violates the terms and conditions set forth in this Agreement. The City and the City Portal Administrator each agrees to use its reasonable best efforts to cause all City Portal Users and any Representatives who receive any Confidential Information to observe the terms and conditions of this Agreement, and agrees that the City will be responsible for any breach of any terms of this Agreement by any of its City Portal Users or Representatives.

3. The City, the City Portal Administrator, the City Portal Users and the Representatives each agree that all Confidential Information (a) shall be maintained in accordance with Section 855.115 of the Texas Government Code, as amended from time to time (a current copy of which is attached hereto as Exhibit B), and in strict confidence except as required by an order of a court of competent jurisdiction or other legal process; (b) shall not be disclosed to any third party other than the authorized employees or agents of the City who have a need to know the information in connection with the performance of their official duties for the City; (c) shall not be used for any purpose other than for the purpose of, and only to the extent it is reasonably necessary to, the performance of his/her official duties for the City, and (d) shall, at the City's option and expense, be returned to TMRS or be destroyed by the City (in either case, including all originals and copies of all Confidential Information) upon completion of the set task for which it is required or at the end of an appropriate record retention period. The City must notify TMRS if it chooses to destroy or return the Confidential Information and will confirm the completion of such destruction to TMRS in writing, if it chooses to destroy the Confidential Information.

4. The City, the City Portal Administrator, the City Portal Users, and the Representatives shall not publish any report, press release, data or other information regarding or derived from such Confidential Information to the extent the report, press release, data or other information includes individual participant or retiree data in a form identifiable with a specific individual and whose release would be prohibited by Section 855.115 of the Texas Government Code, unless otherwise required by applicable law.

5. The parties agree that if a breach of this Agreement occurs with respect to the Confidential Information, TMRS shall suffer irreparable harm and significant injury and loss to a degree which would be difficult to ascertain and which would not be fully compensable by damages alone, and that TMRS shall have the right to invoke the jurisdiction of the courts to seek immediate temporary or permanent

injunctive relief, specific performance or other equitable relief, without bond, and without prejudice to any other rights and remedies available to TMRS. The City shall indemnify and hold harmless TMRS from all damages, losses, expenses and costs whatsoever, including but not limited to attorney's fees, resulting from breach of this Agreement by the City, the City Portal Administrator, a City Portal User.

6. For the purposes of this Agreement, "Confidential Information" shall mean all TMRS data which is subject to Section 855.115 of the Texas Government Code, including, but not limited to, any information concerning an individual member, retiree, annuitant, or beneficiary, whether in electronic or written form, provided by TMRS to the City, the City Portal Administrator or any City Portal User during the term of this Agreement. Confidential Information will not include any information which (i) is or becomes publicly available other than as a result of a disclosure by the City, the City Portal Administrator, a City Portal User, or any Representative, (ii) is already in the City Portal Administrator's or City's possession prior to its disclosure through the use of the City Portal, as demonstrated by written or documented evidence, and not otherwise subject to the confidentiality provisions of Section 855.115 of the Texas Government Code; (iii) is or becomes available to the City Portal Administrator or City on a non-confidential basis from a source other than TMRS, provided that such source is not subject to any legal, contractual, or fiduciary obligation to keep such information confidential, or (iv) is independently developed by the City Portal Administrator on the City's behalf, as demonstrated by written or documented evidence, without violating any of the obligations hereunder.

7. TMRS reserves the right to deny access to the City Portal for any City Portal User for any reason, and may require any City Portal User to change a password for any reason.

8. TMRS, MyTMRS and the TMRS "Star Design" logo are trademarks and service marks of TMRS and are used and registered in the United States. Use of these trademarks and service marks without permission is prohibited, and the City and City Portal Administrator agree that no City Portal User will use any of these trademarks and service marks without the prior written consent of TMRS to the specific intended use.

9. The information and materials contained in the City Portal, and the terms, conditions, and descriptions that appear, are subject to change at any time. Estimates provided through the City Portal are subject to the limitations stated on the City Portal website and the terms and conditions listed thereon. The City, the City Portal Administrator, and the City Portal Users are not agents of TMRS and shall not represent that they have authority to represent or certify information on behalf of TMRS.

10. Unauthorized use of the City Portal or any of the TMRS systems, or misuse of any information posted on the City Portal is strictly prohibited. Use of the City Portal or any Confidential Information (i) for any purpose other than as reasonably necessary for the performance of duties of a City employee or official, (ii) for any illegal activity, or (iii) to engage in conduct that is defamatory, libelous, threatening or harassing or that infringes on a third party's intellectual property or other proprietary rights, is prohibited.

11. This Agreement is to be governed by, construed and interpreted in accordance with the laws of the State of Texas without regard to its conflicts of laws principles. It is agreed that venue shall be in the District Court of Travis County, Texas. Each party hereto hereby irrevocably submits, for itself and its property, to the jurisdiction of the courts of Travis County, Texas in any action, suit, or proceeding brought against it related to or in connection with this Agreement.

12. If any third person or entity requests or seeks to compel the City or any City Portal User to disclose or produce any information provided to the City or any City Portal User by TMRS, through the City Portal or otherwise, under this Agreement which is subject to Section 855.115 of the Texas Government Code, or

claims an entitlement to any such information on the grounds that such information is alleged or claimed to be generally available to the public or to constitute in whole or in part a public record, document or report under applicable law, the City agrees to file a timely request for an opinion of the Texas attorney general seeking to withhold the information under the Texas Public Information Act. In addition, the City agrees to use its best efforts to notify TMRS within two (2) business days of its receipt of such a request, but in no case later than is reasonably necessary to provide TMRS an adequate opportunity to request a legal opinion or to consent to or seek to prevent such disclosure through protective order or other appropriate remedy.

13. Each party agrees that no failure or delay by any party in exercising or enforcing any right, power, privilege or remedy under this Agreement will constitute a waiver thereof, and a waiver under one circumstance will not constitute a waiver under any other circumstance.

14. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

15. This Agreement may be unilaterally amended by TMRS at any time upon 60 days prior written notice to the City Portal Administrator. No party may assign any of its rights or delegate any of its duties under this Agreement to any other person or entity without the prior written consent of the other parties hereto. A transfer by operation of law, including by merger or consolidation, is an assignment subject to the provisions of this Section.

16. This Agreement may be terminated by either TMRS or the City, for any reason, upon 30 days prior written notice of termination to the other party. Any provision of this Agreement which, by its nature, may become performable by a party after termination of this Agreement will survive termination of this Agreement.

17. In the event of any suit, action, or arbitration proceedings (whether based on contract, tort, or any other theory of liability) to enforce any provision of this Agreement, to recover damages for a breach hereof, or to secure or preserve the rights of any party against any other party to any property which is the subject of this Agreement, the prevailing party will be entitled to recover reasonable attorney fees (other than fees computed on a contingency fee basis), court costs, and expenses of arbitration and litigation expended in the prosecution or defense thereof.

18. The City and the City Portal Administrator each represent and warrant that the City Portal Administrator has the requisite right and authority to execute this Agreement on behalf of the City and to bind the City, the City Portal Administrator, and the City Portal Users to the provisions hereof. The parties further agree that this Agreement contains the entire understanding of the parties with respect to the subject matter hereof and that there are no other agreements or understandings with respect to the subject matter. No party will be liable or bound to any party in any manner by any warranties, representations, or covenants other than those set forth in this Agreement. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

19. This Agreement may be executed by the parties in multiple original counterparts, and each such counterpart will constitute an original hereof.

IN WITNESS WHEREOF, this TMRS City Portal Use Agreement shall be effective for all purposes on the date fully executed, as evidenced by the signatures below.

CITY:

(CITY OF) _____

By: _____

(SIGNATURE)

PRINTED NAME: _____

TITLE: _____

DATE: _____

CITY PORTAL ADMINISTRATOR:

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

CITY OF _____

DATE: _____

TMRS:

TEXAS MUNICIPAL RETIREMENT SYSTEM:

By: _____

(SIGNATURE)

PRINTED NAME: ERIC DAVIS

TITLE: DEPUTY EXECUTIVE DIRECTOR

DATE: _____

EXHIBIT A

**ACKNOWLEDGEMENT AGREEMENT
TO TMRS CITY PORTAL USE AGREEMENT**

I, _____, for the purpose of being designated as a City Portal User under the terms and conditions of that certain Texas Municipal Retirement System City Portal Use Agreement, as amended from time to time (the "Agreement") by and among the Texas Municipal Retirement System ("TMRS"), the City of _____ (the City"), and the City Portal Administrator (as defined in the Agreement), hereby represent, warrant, acknowledge and agree that (i) I have received and read a full and complete copy of the Agreement, and (ii) I agree to comply with and be bound by all terms and conditions of the Agreement, including but not limited to the use and protection of Confidential Information (as defined in the Agreement).

I understand that I may violate provisions of and be subject to potential civil and criminal penalties under the Texas Public Information Act if I fail to comply with the terms of this Agreement or any applicable provisions of the Texas Public Information Act with respect to any Confidential Information.

(Signature)

Name: _____

Date: _____

[CITY PORTAL ADMINISTRATOR: RETAIN THIS AGREEMENT WITH YOUR FILES]

Exhibit B
Section 855.115 of the Texas Government Code

Sec. 855.115. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS, RETIREES, ANNUITANTS, OR BENEFICIARIES. (a) Information contained in records that are in the custody of the retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101, and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the director determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual after the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee after the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information;

or

(2) the information is disclosed pursuant to a subpoena and the director determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.

(c) The director may designate other employees of the retirement system to make the necessary determinations under Subsection (a).

(d) A determination and disclosure under Subsection (a) may be made without notice to the individual member, retiree, annuitant, or beneficiary.