



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/26/15		
Department:		Legal		
Department Head		Paige Mims		
Agenda Coordinator (include phone #): Betsy Allen # 7545				
CAPTION				
A Resolution of the City of Plano, Texas, approving the terms and conditions of an Employment Agreement by and between Paige Mims and the City of Plano for City Attorney services; authorizing its execution by the Mayor or his authorized designee; and providing an effective date.				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input checked="" type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2015-16	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget		0	0	0
Encumbered/Expended Amount		0	0	0
This Item		0	0	0
BALANCE		0	0	0
FUND(s): GENERAL FUND				
COMMENTS: Funding for this item is included in the 2015-16 Budget.				
STRATEGIC PLAN GOAL: Approval of this item relates to the City's goal of Financially Strong City with Service Excellence.				
SUMMARY OF ITEM				
A Resolution of the City of Plano approving Employment Agreement for Paige Mims for City Attorney services.				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
City Attorney Employment Agreement				

A Resolution of the City of Plano, Texas, approving the terms and conditions of an Employment Agreement by and between Paige Mims and the City of Plano for City Attorney services; authorizing its execution by the Mayor or his authorized designee; and providing an effective date.

WHEREAS, the City Council has been presented a proposed Employment Agreement between the City of Plano, Texas and Paige Mims for City Attorney services, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions of the Agreement should be approved, and that the Mayor shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The Mayor or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 26th day of October, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

Exhibit "A"

CITY ATTORNEY EMPLOYMENT AGREEMENT

This Agreement ("Agreement") is made and entered into by and between the City of Plano, Texas, a municipal corporation (hereinafter called the "Employer") and Paige Mims (hereinafter called the "Employee") (each a "Party" or collectively the "Parties"), both of whom understand and agree as follows:

Recitals

WHEREAS, the City Council for the City of Plano, Texas ("City Council") previously appointed Paige Mims as the City Attorney of the City of Plano, Texas ("City Attorney") as provided in the Charter of the City of Plano, Texas ("Charter") to begin duties on January 20, 2014; and

WHEREAS, the Employer desires to provide certain benefits, establish certain conditions of employment and to set certain working conditions for the Employee;

NOW THEREFORE, for and in consideration of mutual promises and covenants set forth herein, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1: Duties

- A. Employer employs the Employee as City Attorney to perform the duties specified in the Charter, the job description for such position, and to legally perform other legally permissible and proper duties and functions of the position of City Attorney including such other duties and functions as the City Council shall from time to time assign to Employee.
- B. It shall be the duty of the Employee to employ on behalf of the Employer all other employees of the Office of City Attorney consistent with the personnel policies, ordinances and Charter of the Employer.
- C. It shall also be the duty of the Employee to direct, assign, reassign, evaluate, and terminate, as appropriate, employees of the Office of City Attorney consistent with the policies, ordinances, Charter of the Employer, state and federal law.
- D. All duties assigned to the Employee by the City Council shall be appropriate and consistent with the professional role and responsibility of the Employee.
- E. Employee agrees to remain in the exclusive employment of the Employer, and neither to accept other employment nor to become employed by any other employer. The term "employed" shall not be construed to include occasional teaching, writing, consulting or mediation performed on Employee's time off or compensatory time off. Employee outside activities shall not interfere or conflict with any duties or responsibilities required under this Agreement.

- F. Employee warrants and agrees that Employee is licensed to practice law in this state without limitation. Employee shall maintain Employee's license to practice law in good standing during the term of the Agreement as a condition of employment.

Section 2: Term

- A. The term of this Agreement shall be for an initial period of one (1) year beginning on the last date of execution hereof ("Effective Date"). This Agreement shall automatically be renewed on its anniversary date for successive periods of one (1) year each unless the Employer provides written notice to the Employee that the Agreement shall not be renewed at least sixty days (60) days prior to the expiration date of the then current term.

Notwithstanding the above, in the event the Employer provides written notice that the Agreement shall not be renewed, the term of this Agreement and the service of Employee as City Attorney shall terminate six (6) months after the date of such notice. In the event the Agreement is not renewed all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the then current term of the Agreement (as may be extended by the date of notice of non-renewal as applicable) unless Employee voluntarily resigns.

- B. Nothing in this Agreement shall create a definite or fixed term of appointment for Employee as City Attorney or prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee at any time, with or without cause, subject to the terms of this Agreement governing contractual severance or other accrued benefits to which the Employee shall otherwise be entitled under this Agreement.
- C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from the position as City Attorney, subject only to the specific provisions of this Agreement.

Section 3: Termination and Severance Pay

- A. Termination without Cause. The Employer may, subject to payment of contractual severance pursuant to this Section terminate this Agreement and the services of Employee as City Attorney at any time, without cause, upon thirty (30) days prior written notice to Employee.
- B. Termination for Cause. Upon an affirmative vote of a majority of all members of the City Council the Employer may terminate the Employee at any time, for cause, and upon reasonable written notice to Employee, as set forth herein. In the event of termination for cause, the Employee shall be entitled to all compensation and all accrued benefits, earned through the date of termination. If the Employee is terminated for cause, the Employer shall have no obligation to pay any contractual severance as set forth in this Section.

For the purposes of this Agreement, "cause" shall mean and include, but is not limited to, any of the following:

1. Failure to fulfill the Employee's Duties as required in this Agreement;
2. Incompetence in the performance of the Employee's duties as documented by evaluations, supplemental memoranda, or other written communication from the Employer; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the Employer has provided the Employee a reasonable opportunity to remediate any incompetency;
3. Insubordination or failure to comply with lawful written Employer directives, unless compliance with such directive would violate the law or ethical rules applicable to the Attorney;
4. Neglect of duties;
5. Illegal use of drugs, hallucinogens, or other substances regulated by state law;
6. Conviction of, including probation or deferred adjudication, deferred disposition of a felony or misdemeanor involving moral turpitude, theft, fraud, bribery, forgery, perjury, abuse of public office, illegal drugs or controlled substances, or a crime involving misapplication of public funds;
7. Disability, not otherwise protected by law, that impairs performance of the required duties of the Employer;
8. Knowingly falsifying records or documents related to the Employer's activities;
9. Knowing misrepresentation of material facts to the Employer or other City officials in the conduct of the Employer's business;
10. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the Employer, any agency or corporation thereof, or the Employee in the Employee's official capacity;
11. Loss of license to practice law; or
12. An order by any court of competent jurisdiction restraining, preventing, or otherwise impairing the ability of the Employee to perform the duties and responsibilities as City Attorney under this Agreement.

C. Severance Pay: In the event the Employee is terminated without cause by the City Council during the term of this Agreement, and the Employee is willing and able to perform the duties under this Agreement, the Employer agrees to pay the Employee contractual severance in a lump sum cash payment in an amount equal to six (6) months of the annual Base Salary at the rate of pay (excluding accumulated sick leave, vacation

leave, or other untaken leave or benefits). The severance pay shall be paid within ten (10) days after the effective date of the termination.

No severance pay is due if the Employee is terminated for cause.

No severance pay is due if Employer elects not to renew the Agreement in accordance with the provisions of this Agreement or if Employee voluntarily resigns.

- D. Resignation: In the event the Employee voluntarily resigns from the position as City Attorney during the term of this Agreement, the Employee shall give the Employer thirty (30) days prior written notice unless the Parties agree otherwise. In the event of a voluntary resignation the Employee shall not be paid any contractual severance as set forth in this Section.
- E. If the Employer reduces the Base Salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination without cause.

Section 4: Compensation

- A. Base Salary: Employer agrees to pay Employee an annual base salary of Two Hundred Thousand Dollars (\$200,000.00), payable in installments at the same time as other employees of the Employer are paid subject to the same applicable deductions for employee benefit contributions.
- B. This Agreement shall be automatically amended to reflect any Base Salary adjustments that are provided by the City Council or required by the Employer's compensation policies.
- C. The Employer agrees to consider increases to the compensation of the Employee dependent upon the results of performance evaluations conducted under the provisions of this Agreement or at such other times as the City Council deems appropriate.

Section 5: Sick Leave, Vacation and Retirement Benefits

- A. In addition to the benefits provided in this Agreement, all provisions of the City Charter, the Ordinances and Personnel Rules of the Employee relating to health care, vacation, sick leave, retirement system contributions, holidays and other fringe benefits and working conditions as they now exist or may be amended, shall also apply to the Employee as they would to other employees of the Employer, insofar as those provisions, rules and regulations are not inconsistent with this Agreement.
- B. Employee agrees to allow participation of Employee in the Texas Municipal Retirement System in the same manner as that provided generally for other employees of the Employer. The Employer agrees to pay its share of contributions to Employee's Texas

Municipal Retirement System and Retirement Savings Plan benefits for Employee in accordance with the provisions of those plans.

Section 6: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer and, to that end, Employee shall be allowed to establish an appropriate work schedule and to take compensatory time off as Employee shall deem appropriate during said normal office hours, provided such compensatory time does not interfere with the normal conduct of the office of City Attorney.

Section 7: Performance Evaluation

Employer shall annually review the performance of the Employee subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. Consideration shall be given on an annual basis to increase the compensation of Employee based on such performance evaluations or at such other times as the City Council deems appropriate.

Section 8: General Business Expenses

- A. Employer agrees to budget and pay for licensing fees or charges that are required of lawyers to practice law in the State of Texas and professional dues, including but not limited to the International Municipal Lawyers Association, Texas City Attorney Association annual conferences, and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
- B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the IMLA Annual Conference, Texas City Attorney Association annual, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and maintenance of the Employee's required CLE obligations and for the good of the Employer.

Section 9: Other Terms and Conditions of Employment

The Employer, upon agreement with Employee, may fix other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with any provisions of law.

Section 10: Notices

Notice pursuant to this Agreement may be given by personal service, by email, by nationally recognized courier, or by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

- (a) EMPLOYER: City of Plano, Texas
1520 K Avenue
Plano, Texas 75074
Attn: Mayor Harry LaRosiliere

- (b) EMPLOYEE: Paige Mims
1520 K Avenue
Plano, Texas 75074
paigem@plano.gov

Notice shall be deemed given as of the date of personal service or email, as of the date of delivery by courier, or as the date five days after the date of deposit in the custody of the United States Postal Service.

Section 11: General Provisions

A. Entire Agreement:

This Agreement constitutes the sole and only Agreement of the Parties and supersedes any prior understandings or written or oral Agreements between the Parties respecting this subject matter.

B. Successor and Assigns:

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may not be assigned by either Party without the written consent of the other Party.

C. Governing Law:

This Agreement is governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

D. **Amendment:**

This Agreement may be amended by the mutual written Agreement of the Parties.

E. **Severability:**

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

[Signature Page to Follow]

EXECUTED this ___ day of _____, 2015.

EMPLOYER:

CITY OF PLANO, TEXAS

By: _____
Harry LaRosiliere, Mayor

Approved as to form and legality:

By: Peter G. Smith
Peter G. Smith, Special Legal Counsel

EXECUTED this ___ day of _____, 2015.

EMPLOYEE

By: _____
Paige Mims, City Attorney