



See attached documentation

Public Records Request - Thatcher Contract

1 message

denise@forneypost.net <denise@forneypost.net>

Wed, Nov 2, 2016 at 12:43 PM

To: jfisher@cityofforney.org, Jon Thatcher <jthatcher@cityofforney.org>, Dorothy Brooks <dbrooks@cityofforney.org>

Cc: rwilson@cityofforney.org

Dear Ms. Brooks,

It is under the Freedom of Information Act 5 U.S.C. § 552 , and the Texas Public Information Act, that I request you please provide the following documents, via email, as soon as legally possible.

Please provide a complete copy of any employment contract entered into between the City of Forney and new City Attorney Jon Thatcher.

In order to help to determine my status to assess fees, you should know I am a representative of the news media affiliated with The Forney Post, an online newspaper based in Forney, Texas, with a concentration on the news of Forney, Texas.

If you have any questions processing this request, you may contact me by email at denise@forneypost.net

Respectfully,

Denise Bell
Post Managing Editor
www.forneypost.net
denise@forneypost.net

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Post Managing Editor
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denise@forneypost.net

**AGREEMENT FOR PROFESSIONAL SERVICES
AND EMPLOYMENT AS CITY ATTORNEY**

This Agreement for Professional Services and Employment as City Attorney (this "Agreement"), is made and entered into effective as of this the 22nd day of August, 2016 by and between the City of Forney, Texas, a municipal corporation (the "City"), and Jon Thatcher, (the "Attorney"), to establish and set forth the terms and conditions of the employment of the Attorney as the City Attorney of the City.

W I T N E S S E T H:

WHEREAS, the City Council of the City of Forney ("the council") and the City Attorney believe that employment agreements negotiated between City Councils and City Attorneys can be mutually beneficial to the city organization, the City Attorney, and the community they serve; and

WHEREAS, when appropriately structured, the City Council and City Attorney believe employment agreements can strengthen the Council-Attorney relationship by enhancing the excellence and continuity of the management of the city for the benefit of its citizens; and

WHEREAS, the City Council and City Attorney believe it is important to thoughtfully consider guidelines that will be consistent with both the letter and the spirit of State law, and to the extent applicable, the city's charter and personnel policies, that will uphold the principle of "serving at the pleasure of the Council," that will clearly define and incorporate the benefits to the community and organization, and that will address the protection of the Attorney and family through provisions that are reasonable in nature and scope when compared to professional practices and local/regional market conditions and appropriately funded within the city's budget; and

WHEREAS, the City desires to employ the services of the Attorney as the City Attorney of the City, pursuant to the terms, conditions and provisions of this Agreement; and

WHEREAS, it is the desire of the Council, to provide compensation and benefits, establish conditions of employment for, and to set the working conditions of, the Attorney as provided in this Agreement; and

WHEREAS, the Council desires to retain the services of the Attorney, to provide inducements for the Attorney to employment as the City Attorney of the City and to remain in such employment, to encourage full work productivity by assuring the Attorney's morale and peace of mind with respect to future security, and to provide a proper means for termination, resignation, or retirement of the Attorney; and

WHEREAS, except as otherwise specifically provided herein, the Attorney shall have and be eligible for the same benefits as are provided to all employees of the City; and

WHEREAS, the Attorney has agreed to employment as the City Attorney of the City, subject to and on the terms, conditions, and provisions agreed to and set forth in this Agreement;

NOW, THEREFORE, in consideration of Attorney agreeing to employment with the City, and other good and valuable consideration, including the mutual covenants herein contained, the City and the Attorney hereby contract, covenant, and agree as follows:

Section 1. Duties. The Council hereby employs the Attorney as the attorney and counsel of the City to perform the duties and functions specified in Article IV, Section 4.04 of the City Charter, this Agreement, and as the Council shall, from time to time, assign to the Attorney consistent with the intent of this Agreement.

Section 2. Term. The term of this Agreement shall be indefinite and this Agreement shall be and remain in full force and effect until terminated by the Attorney or the Council as herein provided (the "Term"). The Attorney shall serve at the pleasure of the Council and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council, or the Attorney, to terminate the services of the Attorney at any time, subject only to applicable provisions of the City Charter, city personnel policies, and the provisions set forth hereinafter in the section titled "Termination."

Section 3. Salary. City agrees to pay the Attorney an annual base salary, which salary shall be \$128,000 payable in installments and at the same time as other employees of the City are customarily paid. City further agrees to review the base salary and other benefits of the Attorney at least annually.

Section 4. Disability and Retirement Benefits. The Attorney shall be covered and governed by the Texas Municipal Retirement System ("TMRS"). TMRS contributions shall be paid as required by the retirement system's plan documents. If the Attorney retires pursuant to a qualified retirement plan or is permanently disabled during the Term, the Attorney shall be compensated for all sick leave, vacation leave, holidays, and other benefits then accrued or credited to the Attorney, and, at the Attorney's option, shall be permitted to participate in the City's health insurance plan on the same basis as other retirees from the City are permitted to do so, or, if such other retirees are not permitted to do so, such coverage shall be at the cost of the Attorney and at the same rate City pays for such coverage. The Attorney at his option may maintain coverage for all family members covered at the time of disability or retirement.

Section 5. Insurance.

A. Health Insurance. The Attorney shall be covered by the same health and dental plans as all other employees, or such plans that are available through the City and selected by the Attorney.

B. Life Insurance. The City shall provide for Supplemental Death Benefits provided through TMRS and any other life insurance provided for all other employees. The Attorney shall designate the beneficiary of such life insurance policies.

C. Disability Insurance. The City agrees to put into force for the Attorney, and to make the required premium payments for, an insurance policy providing 24 hour coverage for occupational disability as well as total and permanent disability income benefits, with no expiration. The policy will provide 60% income replacement for long-term coverage. The policy shall be non-cancelable and be guaranteed renewable, with cost of living provisions included.

Section 6. Technology. Recognizing the importance of constant communication and maximum productivity, the City Attorney shall be provided a cell phone allowance equal to the allowance paid to all employees for use of their personal smart phone.

Section 7. Monthly Vehicle Allowance. The Attorney's duties require exclusive and unrestricted use of a vehicle. The City agrees to pay to the Attorney, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$4,800 per year, payable bi-weekly, as a vehicle allowance. The Attorney shall acquire and maintain a vehicle during the term of this Agreement, which shall be available for the Attorney's exclusive and unrestricted use in the performance of his/her duties hereunder. The Attorney shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

Section 8. Leave Benefits. All provisions of the rules and regulations of the City applicable to fringe benefits, leave and working conditions as they now exist or hereafter may be amended, shall also apply to the Attorney as they apply to all other employees of the City, in addition to the benefits enumerated specifically for the benefit of the Attorney herein; any and all leave balances including but not limited to sick, vacation, holiday and personal leave will be payable at resignation or termination; vacation leave will accrue at the rate of ten (10) days per year until Attorney has served as Attorney for six (6) years, at which time the Attorney will accrue vacation leave at the same rate as all other City employees. In addition, Attorney shall receive five (5) additional days of personal leave each

calendar year, which shall not accrue, but which shall be utilized each calendar year.

Section 9. Professional and Civic Development. The City agrees to budget and pay for the civic and professional membership dues and subscriptions of the Attorney necessary for the Attorney's continuation and participation in national, regional, state, and local associations necessary and desirable for the Attorney's continued professional participation, growth and advancement, and for the good of the City. Developing and maintaining professional association contacts and standing provide the City access to valuable resources, and the reasonable participation and related travel by the Attorney as provided for in the annual budget will be a part of the Attorney's duties. The City agrees to budget and pay for the Attorney's annual dues to the State Bar of Texas, and annual Occupation Tax to the State of Texas.

Section 10. Business Expenses. Certain expenses of a non-personal and job-related nature will necessarily be incurred by the Attorney in the performance of the Attorney's duties. The City will pay or reimburse such business expenses, and the Finance Director is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. The City will also pay the full cost of any bond, if any is required by the City to be made by the Attorney.

Section 11. Indemnification. To the fullest extent permitted by law, the City shall defend, save harmless and indemnify the Attorney against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Attorney's duties, and shall obtain and keep in full force and effect liability insurance, or risk pool coverage, including errors and omissions coverage on a "per occurrence" basis, in sufficient amounts to assure accomplishment of such hold harmless and indemnification; provided that this section shall not be construed as creating any right, cause of action, or claim of waiver or estoppel for or on behalf of any third party, nor shall it be construed as a waiver or modification of the availability of the defense of governmental immunity or any other legal defense available to either City or the Attorney as to any third party; and provided further that City shall not indemnify and hold harmless the Attorney from and with respect to any claim or liability for which the conduct of the Attorney is found by the courts to have been intentional wrongful conduct. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This indemnification shall extend beyond and survive the termination of employment and the expiration of this Agreement.

Section 12. Hours of Work. It is recognized that the Attorney is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time

outside the normal office hours to the business of the City. The Attorney acknowledges that the proper performance of the duties of the City Attorney of the City will require the Attorney to generally observe normal business hours, with Council recognizing the need for flexibility in the Attorney's schedule, and will also often require the performance of necessary services outside of normal business hours. The Attorney agrees to devote such additional time as is necessary for the full and proper performance of the Attorney's duties and that the compensation herein provided includes compensation for the performance of all such services. However, the City intends that reasonable time off be permitted the Attorney, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of the City Attorney. The Attorney will devote full time and effort to the performance of the duties of the City Attorney of the City, and shall remain in the exclusive employ of the City during the Term of this Agreement; provided that, with the prior consent of the Council, the Attorney may accept temporary, outside professional employment which will not in anyway limit the performance of, or the Attorney's availability for the performance of, the Attorney's duties hereunder. The term "outside professional employment" shall be construed to include occasional teaching, writing or consulting performed on the Attorney's time off.

Section 13. Termination, Severance Pay and Resignation.

A. Termination. In the event the Attorney is terminated by the Council during the Term of this Agreement and the Attorney is then willing and able to perform all the duties of the City Attorney under this Agreement, then, in that event, the City agrees to pay the Attorney the value of all sick, vacation and personal leave, holidays and other benefits accrued by, or credited to the Attorney up to the point of the termination; and the City agrees to pay the Attorney an amount equal to six (6) months full salary and benefits, paid out biweekly in the same manner and on the same schedule as the normal payroll of the city. During such six (6) month period the Attorney will continue to be covered, at the same employee participation rates, in the health, dental, life and disability plans contemplated by this Agreement.

It is specifically provided that if the Attorney is terminated because of a conviction for a misdemeanor involving moral turpitude or personal gain, or any felony, then, in that event, the City shall have no obligation to pay the severance payments designated in this Section.

B. Reductions. In the event the Council during the Term of this Agreement reduces the authority of the Attorney, or reduces the salary or other financial benefits of Attorney in a greater percentage than an applicable across-the-board reduction for all employees of the City, or in the event the City refuses, following written notice, to comply with any other provision benefiting the Attorney herein, or the Attorney resigns following a suggestion, whether formal or informal, by the Council that the Attorney resign, then in that event, the Attorney may, at the

Attorney's option, be deemed to have been terminated as of the date of such reduction, or as of the date the Attorney resigns at the Council's suggestion.

C. Resignation. If the Attorney terminates this Agreement by voluntary resignation of the position of City Attorney, the Attorney shall give thirty (30) days notice in advance unless the Council agrees otherwise.

Section 14. Notices. All notices, demands, and other writings may be delivered by either party hereto to the other by United States Mail, or by a reliable commercial courier at the following address:

(1) City: City of Forney
 Attention: Mayor
 P.O. Box 826
 Forney, Texas 75126

(2) Attorney: Jon Thatcher

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service, or three (3) days after the date the notice is deposited in the United States Mail or with a commercial courier.

Section 15. Conflict of Interest Prohibition. The Attorney shall not, during the Term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City, except for stock ownership in a company whose capital stock is publicly held and regularly traded on any stock exchange, without the prior written approval of the Council. For and during the Term of the Agreement, the Attorney shall, except for a personal residence or residential property acquired or held for future use as the Attorney's personal residence, not invest in any other real estate or property improvements within the City, without the prior written consent of the Council.

Section 16. Texas Disciplinary Rules of Professional Conduct. The parties understand and agree that Attorney is bound to recognize and follow the Texas Rules of Professional Conduct, and that all terms of this Agreement are to be interpreted in light of those Rules, as now or hereafter amended.

Section 17. Appropriations. The Council has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and un-appropriated funds of the City in an amount sufficient to fund and pay all

financial obligations of the City pursuant to this Agreement, including, but not limited to, the severance pay, salary and benefits set forth and described herein.

Section 18. General Provisions.

A. Section Headings. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

B. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas. Venue shall lie exclusively in Kaufman County, Texas.

C. Severability. In the event any one or more of the sections, provisions or clauses contained herein 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 provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

D. Entire Agreement. This Agreement incorporates all the agreements, covenants and understandings between the City and the Attorney concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No other prior agreements or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

E. Amendment. This Agreement shall not be modified or amended except by a written instrument executed by the Attorney and the duly authorized representative of the Council.

F. Effective Date. This Agreement shall be and become in full force and effect as of the date above first written upon the adoption and approval of the Council, and the execution and delivery hereof by the authorized officer of the City and the Attorney.

G. Counterparts. This Agreement may be executed in duplicate original counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one in the same instrument.

IN WITNESS WHEREOF, the City and the Attorney have executed this Agreement with an effective date as of the date first written above.

AGREED AND ACCEPTED by City Council action as of this the 2nd day of August, 2016.

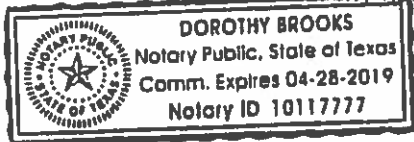
For CITY:

By: [Signature]
Rick Wilson, Mayor

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

Before me, the undersigned authority, personally appeared Rick Wilson as Mayor of the City of Forney, Texas, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity and under the authority of City Council action taken the 2nd of August, 2016.

Given under my hand and seal of office this 18 day of August, A.D. 2016.



[Signature]
Notary Public in and for the State of Texas

My commission expires: 04-28-2019

For ATTORNEY:

By: [Signature]
Jon Thatcher

STATE OF TEXAS §
 §
COUNTY OF KAUFMAN §

Before me, the undersigned authority, personally appeared Jon Thatcher as Attorney, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 22 day of August, A.D. 2016.

[Signature]
Notary Public in and for the State of Texas

My commission expires: 9/27/2018

