



CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

SPECIAL MEETING

July 14, 2014

6:00 PM

CALL TO ORDER BY MAYOR

1 ROLL CALL BY THE CITY CLERK

2 PROFESSIONAL SERVICES AND EMPLOYMENT AGREEMENT – PRESIDING JUDGE - CRAIG L. JENNINGS

City Council will consider a request to approve a Professional Services and Employment Agreement with Craig L. Jennings for a two-year appointment as Presiding Judge and authorize the Mayor and the City Clerk to execute the agreement documents. The Council will take appropriate action.

3 INSTALLATION OF PRESIDING JUDGE - CRAIG L. JENNINGS

4 EXECUTIVE SESSION

City Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(1) for discussion regarding process for the appointment of the City Manager. The Council will take appropriate action.

5 APPOINTMENT OF CITY MANAGER

City Council will consider the process and potentially take action on the appointment of City Manager. The Council will take appropriate action.

6 ADJOURNMENT

Respectfully submitted,

Carmen Martinez
City Clerk

Council Members of the City of Avondale will attend either in person or by telephone conference call.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica.

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles antes de la junta del Concejo.

Notice is hereby given that pursuant to A.R.S. 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City

Council may be audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad política haga grabaciones de video o audio de un menor de edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes estos aparezcan en estos videos o grabaciones de audio. Los padres pueden ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. 1-602.A.9.



CITY COUNCIL AGENDA

SUBJECT:

Professional Services and Employment
Agreement – Presiding Judge - Craig L. Jennings

MEETING DATE:

7/14/2014

TO: Mayor and Council**FROM:** Andrew McGuire, City Attorney (602) 257-7664**THROUGH:** David Fitzhugh, Acting City Manager**PURPOSE:**

Staff is recommending Council approval of the attached employment agreement with Craig L. Jennings for a two-year appointment as Presiding Judge and authorize the Mayor and the City Clerk to execute the agreement documents. Council appointed Mr. Jennings on July 7, 2014.

DISCUSSION:

The employment agreement with Mr. Jennings covers the period from August 17, 2014 through August 16, 2016, as required by the City Charter. Mr. Jennings shall be paid a base salary of \$145,000 annually for the period from August 17, 2014 to August 16, 2016. If the City's FY 2015-2016 annual budget includes a cost-of-living increase for all non-exempt employees, Mr. Jennings base salary may be increased by an equivalent percentage. No adjustments to his base salary are allowed to be made as a result of any merit increases provided to City employees. In addition to any amounts contributed by Mr. Jennings, the City shall contribute \$5,000 annually into his existing ICMA 457 Plan. Any catch-up amounts permitted by the 457 Plan shall be made separately by Mr. Jennings. Except as described above, Mr. Jennings' salary, compensation or other financial benefits cannot be adjusted up or down during the term of the agreement.

BUDGET IMPACT:

Funding for this agreement is in the Courts Budget in Fund 010-6200-00-5000 Personnel Services.

RECOMMENDATION:

Staff is recommending approval of the Professional Services and Employment Agreement with Craig L. Jennings for a two-year appointment as Presiding Judge and authorize the Mayor and City Clerk to execute the agreement documents.

ATTACHMENTS:

Description

[Professional Services and Employment Agreement](#)

**PROFESSIONAL SERVICES AND EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CRAIG L. JENNINGS**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is entered into on July 14, 2014, by and between the City of Avondale, an Arizona municipal corporation (the “City”) and Mr. Craig L. Jennings (“Employee”).

RECITALS

A. Pursuant to ARIZ. REV. STAT. § 22-402, the City is required to have a municipal court (the “City Court”), which shall be presided over by a magistrate judge (the “Presiding Judge”).

B. Employee was selected by the Mayor and Council of the City (the “City Council”) in accordance with Article XI, Section 3 of the Avondale City Charter and Sections 5-17 through 5-19 of the Avondale City Code.

C. The City and Employee desire to enter into this Agreement for employment by the City of Employee for the position of Presiding Judge of the City Court.

D. This Agreement is based on the Arizona Constitution’s requirement of separation of powers and the necessity of judicial independence to preserve and protect that separation. This Agreement shall set forth the parameters, guidelines, duties, rules of conduct and compensation during the term of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Employee hereby agree as follows:

1. Term. This Agreement shall be effective on August 17, 2014, and shall remain in full force and effect through August 16, 2016, unless sooner terminated for cause as set forth in Section 5 below. After commencing his official duties, and thereafter during the term of this Agreement, Employee shall be in the exclusive employ of the City and shall not accept other employment or carry out any other business other than the position of Presiding Judge unless authorized to do so by the City Council, in writing, prior to Employee engaging in such other activity; provided, however, that any such additional duties shall be conducted outside of regular work hours or on Employee’s vacation time and without the use of City resources or equipment.

2. Compensation.

2.1 Base Salary. Employee shall be paid \$145,000.00 annually (in 26 equal installments, paid every two weeks) for each 12-month period between August 17, 2014 and August 16, 2016, unless increased pursuant to this Subsection. In the event that the City's FY 2015-2016 annual budget includes a cost-of-living increase for all unrepresented employees (a "COLA"), the Employee shall be entitled to an increase in base salary equal to the percentage of the COLA, beginning with the first pay period of FY 2015-2016. Employee expressly agrees and understands that no adjustment to his base salary shall occur relative to any merit increases provided to City employees as part of the FY 2015-2016 annual budget.

2.2 Employee Benefits. Employee shall accrue and exercise benefits at the rate of a department head under Chapter 6 of the City of Avondale Personnel Policies and Procedures Manual (the "Policy Manual"); provided, however, that Employee shall be credited with 40 hours of vacation leave and 40 hours of sick leave, which shall be available on the effective date set forth in Section 1 above.

2.3 Deferred Compensation. In addition to any amounts contributed by Employee, the City shall annually contribute \$5,000.00 into Employee's existing ICMA-RC 457 Plan (the "457 Plan") account. Such contribution shall be in paid into Employee's 457 Plan account in 26 equal installments, paid every two weeks. Any catch-up amounts permitted by the 457 Plan shall be made separately by Employee. The City further agrees to transfer ownership of Employee's 457 Plan to any succeeding employer in the event of Employee's termination from the City, for any reason.

2.4 No Reduction of Benefits. The City shall not, at any time during the term of this Agreement, reduce Employee's salary, compensation or other financial benefits. Employee agrees and understands that changes to employee benefits effecting all City department heads shall not be deemed a reduction in benefits.

3. Duties. Employee shall perform the duties of Presiding Judge pursuant to all laws, ordinances, and rules of the State of Arizona, the City of Avondale and the Arizona Supreme Court. Without limiting the generality of the foregoing sentence, Employee shall be responsible for carrying out the duties and obligations set forth in Chapter 5 of the City Code and Article XI of the City Charter.

3.1 Work Hours. Employee shall maintain reasonable work hours Monday through Thursday except for legal holidays, and shall be available as necessary on Fridays, weekends and legal holidays to conduct initial appearances as required by law; provided, all time worked during a calendar week shall not be less than 40 hours, including any leave taken or holidays occurring during such time period. In the event the City changes its current days of operation from Monday – Thursday to any other schedule, Employee shall adjust his work hours accordingly to ensure he is available on all days when the City Court is open for business.

3.2 Case Adjudication. Employee shall preside as Judge over all assigned court calendar dockets in a timely fashion and shall, if necessary secure the services of Judges Pro Tem or hearing officers to facilitate the timely adjudication of cases in the City Court.

3.3 Judicial Conduct. Employee shall, at all times during the term of this Agreement, ensure that his conduct as Presiding Judge does not violate Arizona Supreme Court Administrative Order No. 93-30 (as amended by Order No. 96-25) and any other applicable order, the Code of Judicial Conduct, Rule 45 of Rules of the Arizona Supreme Court and any other rule or law governing the conduct of judges.

3.4 Court Administration. Employee shall, through the Court Administrator, act as the Chief Administrative Officer over the City Court and shall abide by the rules and regulations of the City, including the City's adopted Personnel Policies and Procedures Manual and any administrative policy or procedure required by the City Manager. Employee shall, through the Court Administrator, be responsible for administering the budget of the City Court and for preparing and submitting for approval an annual budget in accordance with established City procedures.

3.5 Community Interaction. In addition to his duties as set forth above, Employee (A) shall participate in the Court component of the City's Citizens Academy, (B) should conduct outreach to high schools in the corporate limits of the City to assist with criminal law and justice studies courses and (C) may participate in such local charitable or civic organizations as Employee determines appropriate.

4. Performance Evaluation. The City Council may review and evaluate Employee's performance annually, and shall review and evaluate Employee's performance as far in advance of the expiration of this Agreement as practicable following review by the City's Judicial Advisory Board as set forth in Chapter 5, Article II of the City Code. Employee's review and evaluation by the City Council shall be based upon (i) success at fulfilling the reasonably achievable goals and performance objectives for City Court efficiency set forth by the City Council in its annual goal-setting retreat, (ii) personnel management, including overall management style and ability to lead, supervise and direct City Court staff, (iii) professionalism, including manner of addressing members of the public who appear in the City Court and (iv) the Judicial Advisory Board's recommendation.

5. Termination. During the term of this Agreement, Employee may be removed from office by the City Council for cause, including violation of this Agreement. Notice of removal of office shall be delivered in writing to Employee, and Employee shall have the right to request a hearing before the City Council. Employee may terminate this Agreement and resign his appointment as Presiding Judge upon 30 days' written notice to the City Mayor and the City Manager.

6. Professional Development.

6.1 Professional Associations. The City agrees to budget for and to pay for Employee's expenses of professional and official travel, meetings, and occasions as necessary to

continue his professional development and to adequately pursue necessary official functions for the City Court.

6.2 Continuing Education. The City also agrees to budget for and to pay for Employee's expenses for continuing education courses, institutes and seminars necessary for his professional development as a judge and for the good of the City Court.

7. General Expenses. The City recognizes that certain expenses of a non-personal and generally job-affiliated nature may be periodically incurred by Employee. The City (i) agrees to reimburse or to pay said general expenses and (ii) authorizes the City Manager or authorized designee to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

8. Bonding. The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

9. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: David W. Fitzhugh, City Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to Employee: Craig L. Jennings

Glendale, Arizona 85304

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

10. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Employee of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

11. Attorneys' Fees. In the event either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party and, in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

12. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

13. Time of the Essence. Time is of the essence in this Agreement.

14. Assignment. This Agreement may not be assigned, in whole or in part.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

16. Amendment. No amendment or waiver of any provision in this Agreement will be binding (i) on the City unless and until it has been approved by the City Council and has become effective or (ii) on Employee unless and until it has been executed by Employee or his authorized representative.

17. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

18. Severability. Every provision of this Agreement is and will be construed to be a separate and independent covenant. If any provision in this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability. Each provision in this Agreement will be valid and will be enforced to the extent permitted by law and the parties will negotiate in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

19. Covenant of Good Faith. In exercising their rights and in performing their obligations pursuant to this Agreement, the parties will cooperate with one another in good faith to ensure the intent of this Agreement can be attained. The City and its City Council shall not unreasonably withhold appropriation authority to fund the salary, benefits and other provisions of this Agreement.

20. Conflict of Interest. This Agreement may be cancelled by the City pursuant to ARIZ. REV. STAT. § 38-511.

21. Counsel Assistance; Fair Interpretation.

21.1 Counsel for Employee. Employee has either been assisted by counsel in connection with the preparation and execution of this Agreement or has chosen to forego such legal representation.

21.2 Counsel for City. The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

21.3 Fair Interpretation. This Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.

22. Records and Audit Rights. To ensure that Employee is complying with the warranty under Section 23 below, Employee's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Employee's actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Employee's compliance with the Arizona employer sanctions laws referenced in Section 23 below. To the extent necessary for the City to audit Records as set forth in this Section, Employee hereby waives any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Employee pursuant to this Agreement. Employee shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City shall give Employee reasonable advance notice of intended audits.

23. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, Employee warrants compliance with all federal immigration laws and regulations that relate to City Court employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Employee's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

EMPLOYEE:

CITY:

CITY OF AVONDALE, an Arizona
municipal corporation

Craig L. Jennings

Kenneth M. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk