

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATION**

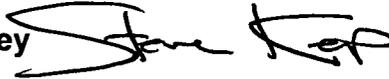
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Amend No. _____

Date Prepared: June 23, 2008

Council Meeting Date: July 1, 2008

TO: Honorable Mayor and Council

FROM: Steve Kemp, City Attorney



SUBJECT: Amendments to Terms and Conditions of Employment Agreement with the City Attorney and the Presiding Municipal Judge

RECOMMENDATION:

Discussion and possible action to: A. Approve an amendment to the Agreement for Municipal Judge Services with the Presiding Municipal Judge. B. Approve an amendment to the Terms and Conditions of Employment with the City Attorney.

BACKGROUND:

The City Council subcommittee recently met and conducted the annual performance evaluation of the Presiding Municipal Judge, Honorable George Anagnost and the City Attorney, Steve Kemp. Based on the comments of all council members to the subcommittee, the Council once again gave the Presiding Municipal Judge and the City Attorney high marks in their reviews.

A. Presiding Municipal Judge

Based on the evaluation and taking into account comparable cities it was the consensus of the Subcommittee the Presiding Municipal Judge Salary is below market. The Subcommittee recommended that the Presiding Municipal Judge salary be adjusted to \$150,675, effective the first full pay period in July 2008. The salary would be adjusted in January 2009 to \$155,948. In addition, the Subcommittee consensus was that the Presiding Municipal Judge should also receive a \$2,000 per year increase in the City's contribution to his deferred compensation program, effective the first full pay period in July 2008, with the amount to increase to a total of \$3,000 per year effective January 2009.

B. City Attorney

The Subcommittee recommended that the City Attorney's salary be adjusted to \$160,500, effective the first full pay period in July 2008. The salary would be adjusted in January 2009 to \$162,900. In addition, the Subcommittee consensus was that the

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- Consent Agenda
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- Unfinished Business (Date heard previous: _____)
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Action Date: _____

City Attorney should also receive a \$2,000 per year increase in the City's contribution to his deferred compensation program.

Attached is an updated employment agreement, prepared by the City Attorney which effects these changes pertaining to the Municipal Judge. The amendment to the Terms and Conditions of Employment with the City Attorney has been reviewed by Fredda Bisman of the law firm of Mariscal, Weeks, McIntyre and Friedlander on behalf of the council. The amendments are attached.

ATTACHMENT:

1. Amendment to Contract for Municipal Judge Services
2. Amendment to Terms and Conditions of Employment Agreement with the City Attorney

AMENDMENT TO CONTRACT FOR MUNICIPAL JUDGE SERVICES

THIS AGREEMENT, made this 1st day of July, 2008, by and between George T. Anagnost, ("Municipal Judge") and the City of Peoria, a municipal corporation organized under the constitution and statutes of the State of Arizona ("City").

RECITALS

WHEREAS the City operates a Municipal Court pursuant to Title 22, Arizona Revised Statutes, Article XI of the Peoria City Charter and Chapter 15 of the Peoria City Code; and

WHEREAS, the Mayor is authorized to appoint and the Council of the City consent to the appointment of a Presiding Municipal Judge pursuant to Section 15-2 of the Peoria City Code (1992); and

WHEREAS, the City and Municipal Judge desire to amend the Agreement dated July 1, 2006, pertaining to Municipal Judge Services.

THEREFORE, the parties agree as follows:

1. Application of City Charter and City Code and other applicable rules.

(a) This Amendment shall be subject to all the provisions of the Arizona Revised Statutes, Peoria City Charter and Peoria City Code (1992) and to all amendments to the Charter and Code.

(b) This Amendment also shall be subject to the Arizona Code of Judicial Conduct and the Administrative Orders of the Arizona Supreme Court and any other applicable statute or court rule as they pertain to the duties and responsibilities of lower court judges.

(c) All provisions of the Agreement between City and Municipal Judge, dated July 1, 2006, shall remain in full force and effect unless specifically amended by this Amendment.

2. Amendment

Paragraph 2(a) of the Agreement pertaining to Compensation of the Presiding Municipal Judge shall be amended to read as follows:

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(a) The compensation for the Presiding Municipal Judge shall be set at the sum of One Hundred and Fifty Thousand, Six Hundred and Seventy Five Dollars (\$150,675.00) per year, effective the beginning of the first full City pay period including July 1, 2008, subject to applicable federal and state income taxes and withholdings. Effective the beginning of the first full pay period that includes January 1, 2009 the compensation of the Presiding Municipal Judge shall be set at the sum of One Hundred and Fifty Five Thousand, Nine Hundred and Forty Eight Dollars (\$155,948.00) per year. On the annual anniversary date of this Agreement, the City Council shall evaluate the Presiding Municipal Judge and if the City Council in its sole discretion determined the Presiding Municipal Judge's performance to be satisfactory, the Presiding Municipal Judge's salary shall be adjusted up from the amount set forth in this section (the amount set forth above and that will include any cost of living increase) granted by the City Council, if any. The amount and timing of such increases shall be in the sole discretion of the City Council. Other than this section, the compensation shall not be adjusted during the term of this Agreement, except by a written amendment approved and executed by both parties.

Paragraph 2(e) of the Agreement pertaining to Compensation of the Presiding Municipal Judge shall be amended to read as follows:

(e) Presiding Municipal Judge shall receive from City an amount equal to four percent of his gross bi-weekly salary which shall be paid by City to a deferred compensation plan of Municipal Judge's choice provided by City to its employees through the International City Management Association, Retirement Corporation or any other deferred compensation plan offered by City. The Presiding Municipal Judge shall also make any required employee contribution under such plan in the manner provided for other employees in the City's Management Pay Plan. In the event the Presiding Municipal Judge's salary is adjusted during the term of this Agreement, the amounts shall be calculated on the adjusted gross bi-weekly salary. Effective the first full pay period in July 2008, the Presiding Municipal Court Judge shall receive an additional amount of deferred compensation calculated in the amount annually of Seven Thousand (\$7,000.00) per year. Effective the first full pay period in January 2009, the amount of additional deferred compensation shall be based on an annual calculation of Eight Thousand (\$8,000.00) per year. Said additional deferred compensation shall be paid to the ICMA Retirement Corporation or any other retirement fund or funds that the City participates in and designated by the Municipal Court Judge in the same manner as other employees. City agrees to transfer ownership of said plan or retirement fund to succeeding employers upon the Presiding Municipal Judge's resignation or discharge to the extent permitted by law. The City may adjust these amounts with the agreement of Municipal Judge in order to comply with the requirements of the Internal Revenue Code of 1986, as amended.

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3. Governing Law; Choice of Forum.

This Amendment shall be construed in accordance with and be governed by the laws of the State of Arizona.

In Witness Whereof the parties enter into this Amendment.

George T. Anagnost, Municipal Judge

CITY OF PEORIA

Bob Barrett, Mayor

ATTEST:

Mary Jo Kief, City Clerk

APPROVED AS TO FORM:

Stephen M. Kemp, City Attorney

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AMENDMENT TO TERMS AND CONDITIONS OF EMPLOYMENT AGREEMENT

This Contract Amendment is made on this 1st day of July, 2008, between the City of Peoria ("City") and Stephen M. Kemp ("City Attorney").

RECITALS

WHEREAS, the Mayor and Council of the City have entered into a Terms and Conditions of Employment Agreement with the City Attorney dated June 30, 2007, (hereinafter "Agreement") for the provision of those duties and functions of the City Attorney, as provided under the Peoria City Charter and Code, and

WHEREAS, the City and City Attorney desire to amend the Agreement.

Therefore, the parties in consideration of the covenants and conditions to be performed by the City Attorney set forth in the Agreement, the Parties agree to amend the Agreement as follows:

Section 2. Agreement Amendment.

Paragraph 4.A. of Section 4 ("Salary") shall be amended to read as follows:

A. City agrees to pay Employee for his services rendered pursuant hereto as City Attorney an annual base salary of \$160,500.00 payable in installments at the same time as other employees of the City of Peoria, Arizona are paid. Commencing on the first pay period including January 1, 2009, the annual base salary of Employee shall be adjusted by City to the amount of \$162,900.00, payable in installments at the same time as other employees of the City of Peoria, Arizona are paid.

Section 3. Agreement Amendment.

Section 5 ("Deferred Compensation") shall be amended to read as follows:

Employer agrees to pay the City Attorney deferred compensation in the amount of Eighteen Thousand Dollars (\$18,000.00) per year. Said deferred compensation shall be paid as follows:

a. An amount equal to 4% of annual salary paid to the City's mandatory 401 (a) plan for the City Attorney.

b. The remainder paid into the City's Section 457 deferred compensation plan with the ICMA Retirement Corporation (ICMA-RC) or any other retirement fund or funds designated by the City Attorney, in the same manner as that with other employees. City agrees to transfer ownership of said plan or retirement fund to succeeding employers upon Employee's resignation or discharge. The

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City may adjust these amounts with the agreement of the City Attorney in order to comply with the provisions of the Internal Revenue Code of 1986 as amended.

Section 4. Full Force and Effect Provision.

City and City Attorney agree that the items covered by this amendment shall become effective the first full pay period following July 1, 2008.

City and City Attorney agree that except solely as modified above, changed and amended, the terms, conditions, and provisions of the Agreement and subsequent amendments thereto, shall continue in full force and effect and shall apply to, and shall govern, this amendment of the Agreement.

In Witness Whereof, the parties execute this agreement on the date set forth above.

CITY ATTORNEY

CITY OF PEORIA

By: Stephen M. Kemp

Bob Barrett, Mayor

ATTEST:

APPROVED AS TO FORM:

Mary Jo Kief, City Clerk

Fredda J. Bisman, Special Legal Counsel

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