



## **TOWN COUNCIL SPECIAL MEETING**

**Wednesday, June 23, 2021 at 6:00 pm**

Attendees: Interim Town Manager - Heidi Wink, Town Clerk - Kelsi Miller, Fire Chief - Robert Pena Jr., Battalion Chief - Robert Pena III, Tosca Henry - Town Attorney via phone

**Springerville Town Council Chambers - 418 E. Main St.  
Springerville, AZ 85938**

Pursuant to A.R.S. Section 38-431.02, notice is hereby given to the members of the Springerville Town Council and to the general public that the Council will hold a meeting open to the public at the Springerville Town Hall, 418 East Main Street, Springerville, Arizona. The Town Council reserves the right to adjourn into Executive Session in accordance with Arizona Revised Statutes Section 38-431.03 (A)(1)(3)(4) and (7) for legal consultation on any of the following agenda items.

### **TOWN COUNCIL SPECIAL MEETING: 6:00 P.M.**

**1. CALL MEETING TO ORDER AND PLEDGE OF ALLEGIANCE:**

**2. ROLL CALL:**

Members of the Town Council or Legal Counsel that are unable to be present in person at a scheduled Council meeting, may participate in the meeting by telephone or video conference.

### **OLD BUSINESS**

**3. FIRE CHIEF CONTRACT:**

Discussion, direction, and possible action regarding the Fire Chiefs contract.

### **NEW BUSINESS**

**4. DISCUSSION ITEMS:**

**a. Hearing Officer**

Discussion and possible direction regarding the future of a hearing officer.

**b. Zoning Administrator**

Discussion and possible direction regarding Chapter 17.20 Zoning Administrator in the Springerville Town Code.

**5. ADJOURNMENT:**

Submitted by: \_\_\_\_\_

Posted by: \_\_\_\_\_

Americans with Disabilities Act (A.D.A.): The Town of Springerville intends to comply with A.D.A. If you are physically challenged or disabled and need special accommodations to participate in this town meeting, please contact the Town Clerk at (928) 333-2656 ext. 224 forty-eight (48) hours prior to the meeting to arrange necessary accommodations.

**TOWN OF SPRINGERVILLE  
MEMORANDUM**

**TO: Springerville Town Council**  
**FROM: Heidi Wink, Interim Town Manager**  
**DATE: 6/23/2021**  
**SUBJECT: Fire Chief Contract**

**SUGGESTED MOTIONS:**

I move we reappoint Robert Pena as the Springerville Fire Chief and authorize the Interim Town Manager to renegotiate and execute a contract.

OR

I move we direct the Town Manager to advertise for RFQ's for a contract Springerville Fire Chief.

OR

Table this item

**STAFF REPORT**

This item was tabled at the May 19, 2021 Regular Council Meeting.

Robert Pena Jr. was appointed Fire Chief by Town Council on May 20, 2020 to serve from July 1, 2020 until July 1, 2021. Per Town Code 2.44.040 The Fire Chief shall be appointed by the common council. Council may vote to discuss this matter in executive session pursuant to A.R.S. § 38-431.03. (A) (1) (3) (4). Mr. Pena may request this item be discussed in open session.

## EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made and entered into this 1<sup>st</sup> day of July, 2020, by and between the Town of Springerville, designated herein as the "TOWN", and Robert J. Pena Jr., designated herein as "FIRE CHIEF"; and

Whereas the TOWN is principally engaged in the normal activities of running/managing the town; and

Whereas the TOWN desires to employ FIRE CHIEF and FIRE CHIEF desires to enter this Agreement as an employee, in the position, with the responsibilities and duties, and upon and subject to the terms herein provided.

Now, therefore, in consideration of the demises and the covenants set forth herein, it is agreed:

**1) Term.** FIRE CHIEF'S employment under the provisions of this Agreement shall begin on the date that this Agreement was made and entered into as specified above, and continue in effect for **twelve months (12)** months thereafter, unless terminated as stated herein.

**2) Employment Classification.** The TOWN will employ FIRE CHIEF as a non-exempt employee paid on an hourly basis, as further outlined in Section 5 of this Agreement. FIRE CHIEF shall perform duties under this Agreement as needed for the TOWN. FIRE CHIEF is not obligated to devote any specific number of hours for TOWN on a weekly basis. However, FIRE CHIEF is responsible for carrying out all the duties and obligations as specified in this Agreement and shall use his best judgment to determine the amount of hours needed to successfully fulfill his duties and obligations.

**3) Scope.** FIRE CHIEF agrees to act within the scope of authority delegated to him from time to time by the Town Manager or Town Council and to observe and abide by every limitation placed upon such authority from time to time by any of them.

**4) Duties.** FIRE CHIEF agrees that during continuance of his employment he shall be the FIRE CHIEF for the TOWN with authority concerning and responsibility for the management of every phase of the Fire Department operation and the effectiveness and provision of public safety and security, and in connection therewith, shall use his best efforts in the selection and supervision of personnel, the conception, organization, execution and coordination of operating, providing public safety and expansion programs, and the application thereto of progressive techniques, controls, systems and procedures, as required to provide public safety, reduce expenses when possible and otherwise increase public safety and protect and enhance the image of the Fire Department in relation to its personnel and the public. FIRE CHIEF, in the fulfillment of such responsibilities and the performance of such duties, shall be accountable to and be subject to the direction and control of the Town Manager and Town Council of the Town of Springerville. FIRE CHIEF shall devote the necessary working time and

attention and energies and services to the fulfillment of such responsibilities and the performance of such duties, serve on such committees to which the Town Council may appoint him from time to time, exert his best efforts to improve the business and condition of the Fire Department, and not be or become employed or engaged in any other endeavor or business or business activity during continuance of his contract hereunder which are directly or indirectly in conflict with this Agreement which materially affects his ability to carry out his duties.

FIRE CHIEF'S duties may be delegated when appropriate. The duties include, but are not limited to, and may be supplemented at any time during the term of this Agreement:

- A) Provide for public safety and security of the community including coordinating town-wide emergency preparedness exercises; and
- B) Develop and oversee the budget for the Fire Department; and
- C) Interview applicants for positions in the Fire Department and recommend for hiring to the Town Manager; and
- D) Assist the Battalion Chief to supervise, train, and manage employees for the Fire Department including evaluating subordinate personnel; and
- E) Represent the Town of Springerville at local, regional, State, and other meetings related to Fire Department activities; and
- F) Plan, direct, coordinate, organize and supervise the departmental operations of fire suppression and prevention; and
- G) Other duties incidental to the general job description of FIRE CHIEF as assigned by the Town Manager; and
- H) Act as a department head when following the TOWN'S adopted Purchasing and Bidding policy.

**5) Compensation.** The TOWN agrees to pay FIRE CHIEF, and FIRE CHIEF agrees to accept from it, as compensation in full for such employment and for the faithful performance and observance of all his obligations hereunder, an hourly rate of \$31.58. In addition, the TOWN shall reimburse FIRE CHIEF for all amounts FIRE CHIEF expends for reasonable business purposes pursuant to its authorization including for transportation and travel, provided, however, that FIRE CHIEF's expense of commuting between his residence and work place shall not be subject to reimbursement unless solely for purposes of the TOWN'S business.

It is understood the FIRE CHIEF will be entitled to reimbursement for all budgeted and necessary expenses so incurred by him in the direct performance of his duties hereunder, upon submission to the TOWN, vouchers supporting such expenditures.

**6) Termination.**

- A) **"For Cause" Termination by TOWN.** For purposes hereof, the TOWN may immediately terminate employment with FIRE CHIEF "for cause" if any of the following occur:
- 1) FIRE CHIEF's conviction of a felony or crime involving moral turpitude or FIRE CHIEF's causing material harm to the reputation of the TOWN;
  - 2) FIRE CHIEF's commission of any act of fraud or dishonesty with respect to the TOWN;
  - 3) insubordination in relation to the TOWN'S Council, and Manager and/or Mayor;
  - 4) FIRE CHIEF's failure or refusal to perform any obligation under this Agreement that continues uncured for ten **(10) days** after written notice thereof;
  - 5) FIRE CHIEF's gross negligence or willful misconduct in the performance of his duties to the TOWN;
  - 6) an "unsatisfactory" annual performance review that is not improved to a "satisfactory" performance review not less than ninety (90) days following the annual performance review.
- B) **Termination by the Town Council.** The Town Council, by the affirmative vote of three members of the Council, at any Regular or special meeting may terminate this Agreement without cause and shall establish at that meeting a date of termination.
- C) **Termination as a Result of FIRE CHIEF's Disability.** If FIRE CHIEF shall become disabled by sickness or accident which renders FIRE CHIEF unable to fulfill his duties and the terms and conditions of this Agreement, FIRE CHIEF'S personal physician shall inform the TOWN, in writing, of such disability and of the nature, extent and continuance thereof. If FIRE CHIEF's personal physician, based on his or her medical opinion, concludes that FIRE CHIEF's disability will continue for a period of **thirty (30) days** or more, this Agreement will automatically terminate.
- D) **Termination by FIRE CHIEF.** FIRE CHIEF may terminate this Agreement and his employment with the TOWN for any reason upon providing a thirty (30) days' advance written notice prior to ending his employment with the TOWN.
- E) **Termination of Obligations.** In the event of the termination of this Agreement and FIRE CHIEF's employment with the TOWN, the TOWN shall have no further obligation whatsoever to pay FIRE CHIEF's compensation, as provided in Section 5, or any other compensation or benefits provided to FIRE CHIEF under this Agreement.

**7) Vehicle.**

Commencing on the **1st day of July 2020**, the TOWN will provide the FIRE

CHIEF with a vehicle to be used **SOLELY** for TOWN business: The TOWN will pay for all fuel, maintenance, and insurance for said vehicle.

**8) Annual Performance Review.**

- A) The Town Manager shall conduct a performance review annually prior to April 1st of each year.
- B) The Town Manager will specifically evaluate FIRE CHIEF'S performance in all areas of the duties listed in this Agreement as well as FIRE CHIEF'S overall performance. If FIRE CHIEF receives an unsatisfactory performance rating, FIRE CHIEF'S compensation may be reduced for the remainder of the Agreement.
- C) A poor performance evaluation may be justification for immediate termination of this Agreement, subject to the terms contained in section 6 (A) (6) herein. The FIRE CHIEF'S annual performance review, and the Town Manager's recommendations, shall be submitted to the Town Council for final approval.

**9) Miscellaneous.**

- A) **Waiver.** No latitude, indulgence or forbearance granted by the TOWN to FIRE CHIEF shall be deemed a relinquishment of its right to direct or control him or a waiver of its right to require performance and fulfillment of the duties and responsibilities of his contract hereunder or of any other provision hereof.
- B) **Notice.** Any and all notices, requests or other communications required or permitted in or by any provision of this Agreement shall be in writing and may be delivered personally or by mail.
  - 1) Notice to TOWN: Town Manager  
418 E. Main St.  
Springerville, AZ 85938
  - 2) Notice to FIRE CHIEF: Robert J. Pena Jr.  
469 S. Butler Dr.  
Springerville, AZ 85938
- C) **Modification.** No agreement or understanding purporting to alter, vary, modify or extend this Agreement or any provision hereof shall be binding upon either party hereto unless in writing and signed by an authorized person of the TOWN and by FIRE CHIEF.
- D) **Severability.** Should any clause or provision of this Agreement be declared illegal or unenforceable by a court of competent jurisdiction, and cannot be modified to be enforceable, such provision shall be immediately null and void, leaving the remainder of this Agreement in full force and effect. The Parties


further agree that any such court is expressly authorized to modify any such unenforceable provision of this Agreement in lieu of severing, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Agreement, or by making such other modifications as it deems warranted to carry out the intent and agreement of the Parties as embodied herein to the maximum extent permitted by law.

E) **Entire Agreement.** This Agreement constitutes the sole and entire agreement and understanding of the parties hereto concerning the subject matter of this agreement, and all previous agreements or understandings, whether written or oral, between parties hereto pertaining to the subject matter hereof are merged herein and superseded by the provisions of this Agreement.

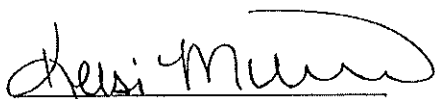
F) **Governing Law and Venue.** This Agreement shall be governed by the laws of Arizona, but if a provision hereof is invalid in whole or in part, such invalidity shall not affect the force or effect of any other provision of this agreement. Any dispute arising from this Agreement shall be brought in the County of Apache, State of Arizona.

IN WITNESS WHEREOF, the FIRE CHIEF and the TOWN have executed and deliver this Agreement effective as of the last date set forth below.

  
\_\_\_\_\_  
Fire Chief (Robert J. Pena Jr.)

  
\_\_\_\_\_  
Town Manager Joseph Jarvis

Attest:

  
\_\_\_\_\_  
Town Clerk, Kelsi Miller

Approved as to Form:

  
\_\_\_\_\_  
Town Attorney, Timothy B. Shaffery