

EMPLOYMENT AGREEMENT

Chief

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into and is effective this **20th day of May, 2016** ("Effective Date"), by and between the Upper Captiva Fire & Rescue Service District, with approval of the Board of Fire Commissioners ("Fire Board") (collectively referred to as the ("District") and Robert Kinniry ("Kinniry" or "Chief").

WHEREAS, the District desires to retain Kinniry as the Fire Chief of the Upper Captiva Fire & Rescue Service District; and

WHEREAS, Kinniry desires to serve as the Fire Chief for the District; and

WHEREAS, the parties wish to memorialize herein the terms and conditions of Kinniry's employment as Chief.

NOW, THEREFORE, for and in consideration of the mutual promises and benefits conferred herein, the payments contemplated hereunder, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto, intending to be legally bound, covenant and agree as follows:

1. **RECITALS**. The recitals contained in this Agreement are true and correct and as incorporated herein in their entirety.
2. **EMPLOYMENT**. The District hereby continues the employment of Kinniry as the Fire Chief of the District and Kinniry hereby accepts such continued employment as Chief upon the terms and conditions set forth in this Agreement.
3. **DUTIES AND RESPONSIBILITIES**. The Chief shall serve as the Chief Executive Officer of the District and shall perform those duties and responsibilities which have been normally and customarily performed by the Chief of the District. In addition, the Chief shall perform all duties and responsibilities imposed upon him by the District's Charter, applicable laws, regulations and policies of the District as well as all other proper and legally permissible duties as he may directed by the Board to perform including, but not limited to, the following duties:
 - 3.1 Oversee the overall planning, organizing, and directing fire prevention and emergency medical service operations for the District;
 - 3.2 Oversee the hiring, disciplining, training, and managing of all District personnel, developing staff projections along with implementing the departmental policies and procedures;

- 3.3 Prepare and maintain proper financial and operational reports and records of all District activities, and work with community groups and governmental agencies with respect to fire control, prevention and safety issues;
- 3.4 Prepare with the Board's Treasurer an annual budget for the District's operations in the upcoming fiscal year. This budget shall be completed in sufficient time to allow the District to properly implement its taxing authority. Kinniry shall be responsible for conducting the operations of the District within the budget for the year in question. Kinniry shall promptly inform the District's Treasurer of any unforeseen or unexpected events which may impair the ability to operate within the District's budget for the year in question.
- 3.5 Execute the annual budgets for the District with attendant concern of budget limits and cash flow for the District;
- 3.6 Oversee departmental vehicular and equipment needs, and the maintenance of all departmental buildings;
- 3.7 Attend all District Board meetings unless excused, and report regularly to the Board on the status of District operations;
- 3.8 Develop and update annually the five-year plan for the District;
- 3.9 Analyze and assess staffing needs and prepare a report in connection therewith which is to be submitted to the Board for its annual review;
- 3.10 Update and maintain the hurricane plan for the District.

4. **TERM AND TERMINATION.**

- 4.1 Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall be probationary through 30 September 2017 unless terminated under the provisions of subparagraphs 4.3 or 4.4 of this Agreement.
- 4.2 Renewal. Upon expiration of the Initial Term, this agreement shall automatically renew for successive one (1) year periods unless terminated under the provisions of subparagraphs 4.3 or 4.4 of this Agreement.
- 4.3 Termination by Chief. Chief may terminate his employment by giving the District notice of intent to terminate of not less than thirty (30) days in advance of the effective date of Termination (or less with the approval of the Board).
- 4.4 Termination by District. Chief's employment may be terminated by the District:

4.4.1 Immediately for cause upon the occurrence of any of the following events:

4.4.1.1 Chief conducts himself in an unethical, illegal, criminal, immoral or fraudulent manner; or

4.4.1.2 Chief fails and refuses to faithfully and diligently perform the provisions of this Agreement or the usual or customary duties of his employment or if, in the sole and absolute discretion of the Board, the Chief performs his duties in a grossly negligent fashion.

4.4.2 Or at any time without cause; provided, however, that if the Board makes a no cause termination, then the Chief shall be entitled to a severance payment equal to one month's salary (based on the Base Salary in effect at the time of termination) for each of the first three full years following the Initial Term Chief has been employed pursuant to this agreement. This severance payment shall not exceed three month's salary.

5. **COMPENSATION.**

5.1 Annual Salary. Chief shall receive an annual salary of **\$55,000.00** ("Base Salary") which shall be paid in semi-monthly installments according to the District's regular payroll schedule.

5.2 Adjustments. The Board shall evaluate the Chief's performance to justify a raise or upward adjustment and to make such upward adjustments or to pay the Chief such bonuses that Board, in its sole discretion, deems appropriate.

5.3 Deductions. The compensation payable to the Chief under this Agreement shall be subject to voluntary deductions, if any, and federal and state income tax withholding, Social Security, Medicare or such other employee deductions as are required by federal, state, and local law. Chief is responsible for any and all taxes associated with any compensation or other benefit provided by the District under this Agreement.

5.4 Reimbursable Expenses.

5.4.1 The Chief shall be reimbursed for reasonable educational expenses; provided that the Board authorizes any expense in advance and approves any expense as necessary to carry out Chief's duties and responsibilities pursuant to the terms and conditions of this Agreement.

5.4.2 The Chief shall be reimbursed for travel expenses for activities undertaken on behalf of the District that the Board shall authorize in advance and approve. The Chief shall be required to submit a carefully itemized breakdown of such

expense for Board review and approval prior to reimbursement and submit or retain receipts or other evidence of payment upon request.

- 5.4.3 This section of the Agreement shall be read to be consistent with the per diem travel expenses for public employees set forth in Section 112.06, Florida Statutes, in the District's travel policy.
- 5.4.4 The District will pay the Chief's membership dues for local, state, and national professional associations that benefit the District and improve the delivery of public safety services to the District, as approved in advance by the Board.

6. **BENEFITS.**

6.1 Paid Time Off.

- 6.1.1 First Year. For Fiscal Year 2016, the Chief shall be afforded 16 work days of paid time off, accrued semi-monthly at the rate of 0.6667 work days each pay period.
- 6.1.2 Second and Subsequent Years. For Fiscal Year 2017 and subsequent years of the contract, the Chief shall be afforded 21 work days of paid time off, accrued semi-monthly at the rate of 0.875 work day each pay period.
- 6.1.3 Accrual of Paid Time Off (PTO). In no event shall any more than 42 days of unused paid time off be accrued and carried over to the next year. If more than 42 days of unused paid time off has accrued, the Chief shall be entitled to be paid for any accrued but unused paid time off beyond the 42 day limitation. Chief must use at least one-half (1/2) of his yearly paid time off each year, and if at least one-half (1/2) of his yearly PTO isn't used, those excess unused days will be lost. The payment rate in effect for this Agreement at the time of such payment shall be based on the lowest daily firefighter rate paid by the District on the payment date.

6.2 Accrued Leave Benefits in the Event of Death. All accrued unpaid leave benefits set forth in 6.1 subparagraphs shall be paid to the Chief's written designee, or if such a designee has not been identified by the Chief, the personal representative of his estate, in the event of death while serving the District.

6.3 Medical Insurance. During the term of this Agreement and as otherwise provided for herein, the District shall provide to the Chief and his spouse, health, dental and vision insurance in such form and in such amounts as were provided to the District's prior Chief, until eligibility begins for Medicare or other employer insurance for Chief or spouse.

- 6.4 Retirement. The District shall provide the Chief with an annual lump-sum payment of 25% of current Base Pay, in lieu of any retirement plan or contribution, which the Chief may use for any purpose, commencing annually on 1 September 2017.
- 6.5 Bonding. The District shall pay the full cost of any fidelity or other bonds required of the Chief under any applicable law.
- 6.6 Off-Duty Disability Insurance. The District shall pay the full cost of temporary disability insurance premiums for the initial term, providing \$2,650 monthly income replacement for up to 2 years, after a 90-day elimination period. It is the intention of the parties that disability insurance in a form substantially similar to the coverage for the Initial Term as stated herein shall continue to be provided after the Initial Term but the parties need more time to consider the specific manner in which this coverage will be provided in future.
- 6.7 Housing and Utility Allowance. In lieu of provided housing, the Chief shall receive a cash allowance of \$14,400/year, payable in 24 equal payments, following the District's regular payroll schedule, beginning on the effective date of this agreement.
7. **LIABILITY**. The District and the Chief recognize that the liability of the parties is governed by the sovereign immunity laws of the state. As to matters not covered under those laws, as long as the Chief acts within the scope of his employment, the District will provide legal representation for the Chief in the same manner as it provides the same for all employees.
8. **PERFORMANCE ASSESSMENT**. The Board shall initiate a review to evaluate the performance of the Chief, in writing, on an annual basis, 120 days before each contract renewal.
9. **CONFLICTS OF INTEREST AND OUTSIDE EMPLOYMENT**.
- 9.1 The Chief shall be expected to honor, at all times, his duty of loyalty to the interests of the District and its Board. The Chief shall avoid any and all activities and actions which might conflict with, or that might appear to conflict with, the interests of the District. The Chief shall not use his position, or any knowledge gained from it, or in connection with it, in such a way that a conflict or the appearance of a conflict, might arise between the interests of the District and its Board and the Chief's personal, immediate family, or private economic or other interests.
- 9.2 The Chief shall provide a list of any organization and position held where he serves on the Board of Directors, committee of the Board of Directors or as any other officer of any company or organization at the time this Agreement is executed.
- 9.3 The Chief shall not serve on the Board of Directors, committee of the Board of Directors or as any officer of any company or organization without first informing and receiving

approval of the Board. Notwithstanding the foregoing, during the term of the Agreement, the Chief shall not serve on the Board of Directors of any organization if his service on any such Board and the interests of the District or his obligations or duties under this Agreement would conflict in any manner. If, during the term of this Agreement, any conflict arises as a result of the Chief's membership on any such Board of Directors, committee thereof or as an officer of any other organization, he shall resign therefrom.

9.4 The provisions contained in subparagraphs 9.1 and 9.2 of this Agreement shall be read consistent with the Code of Ethics provisions set forth in Section 112.11, Florida Statutes.

9.5 Any breach of the provisions of this paragraph can subject the Chief to disciplinary review and action by the Board.

10. **DAYS OF SERVICE.** It is understood that the Chief is employed as an executive level capacity employee under the Fair Labor Standards Act (FLSA) which may require him to devote a great deal of time to District business outside of normal office business hours. The Chief shall typically work or be "on call" for a 96 hour weekly shift schedule on-island (eight 24-hour work shifts per two-week period).

10.1 In the event of a local, state, or national emergency, such as a hurricane, the Chief shall be paid a daily rate of \$400/24-hour shift for any days worked on-island beyond four scheduled shifts per week.

10.2 In the event that off-island meetings are required with other governmental or community organizations, the Chief shall perform these functions on scheduled days off, without further remuneration other than reimbursement for mileage.

10.3 In the event that Board-Approved, off-island training occurs on a scheduled day off, the Chief shall be paid up to \$125 per training day for any training on a scheduled day off.

10.4 In the event that the Chief works additional 24-hour shifts to provide coverage for an unavailable firefighter, the Chief shall be paid a daily rate of \$400/24-hour shift for those shifts worked on-island.

11. **MISCELLANEOUS.**

11.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

11.2 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, signed by the parties against whom the enforcement of such modification, wavier, amendment, discharge, or change is sought.

11.3 Nothing contained in the Agreement shall create a contractual relationship or cause of action in favor of a third party against either District or Chief.

11.4 This Agreement and the schedules attached hereto constitute the entire Agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statement, oral or written, are merged herein.

11.5 If any provision or any portion of any provision of the Agreement or the application of any such provision or portion thereof to any person or circumstance shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement, or the application of such provision held invalid, or unenforceable to persons or circumstances other than those to which it has been invalid or unenforceable, shall not be effected thereby.

11.6 In the event of any dispute as to the precise meaning of any term contained herein, the principles of construction and interpretations that written instruments be construed against the drafter shall not apply.

11.7 All articles, titles, or captions contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement and shall not affect the meaning or interpretation of this Agreement.

11.8 All notices, demands, or other communications made pursuant to this Agreement shall be in writing and copies thereof shall be simultaneously directed to the parties listed below. Further, all notices, demands, or other communications shall be deemed to have been duly given by mailing, unless otherwise specified, by United States Registered or Certified Mail, Return Receipt Requested, with proper postage prepaid at the following address:

If to the District: Edward L. McDonald
Chair
Upper Captiva Fire & Rescue Service District
P.O. Box 322
Pineland, Florida 33945-0322

With Copies to: Robert D. Pritt, Esq.
District Counsel
Roetzel & Andress
850 Park Shore Drive
Naples, Florida 34103

Robert Kinniry
Fire Chief
1304 SW 20th Terrace
Cape Coral, Florida 33914

Or to such other address or to such other persons as any party may designate to the other for such purpose in the manner herein above set forth.


11.9 The parties hereto shall, at any time and from time to time following the execution hereof, execute and deliver all such further instruments and take all such further action as may be reasonably necessary or appropriate in order to carry out more effectively the purpose of this Agreement.

11.10 Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and shall not be strictly construed for or against any party.

Approved by the Upper Captiva Fire & Rescue Service District Board by Resolution 2016-052016(1), dated 20 May 2016.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

Signed, sealed, and delivered
in the presence of:

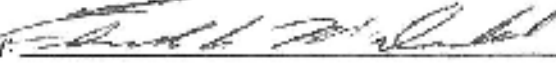

Witness Signature


Print Name/Address: AJ Lavallie
4470 Panama Shell ^{Upper} Captiva


Witness Signature

Print Name/Address: AJ Lavallie
4470 Panama Shell ^{Upper} Captiva

UPPER CAPTIVA FIRE & RESCUE SERVICE DISTRICT

By: 
Edward L. McDonald
Chair

By: 
Robert Kinniry
Chief

Date: 5/20/2016