

1 **EMPLOYMENT AGREEMENT**
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4 THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the UPPER
5 CAPTIVA FIRE PROTECTION AND RESCUE SERVICE DISTRICT, an independent special fire
6 district, as the Employer, with a principal place of business located at 4511 Hodgepodge Ln, North
7 Captiva, FL 33924 (hereinafter referred to as the “DISTRICT”) and JOSEPH ANTHONY PETERS
8 (hereinafter referred to as "PETERS").

9 WHEREAS, the DISTRICT publicly advertised the Fire Chief position and indicated that the
10 newly selected Fire Chief would receive an annual salary in the range of \$70,000.00 - \$130,000.00; and

11 WHEREAS, the Fire Commission of the DISTRICT interviewed several applicants that applied
12 to fill the position of Fire Chief; and

13 WHEREAS, on or about 10 March 2023, the DISTRICT’s Fire Commission determined that
14 PETERS possessed the skills, abilities, knowledge and experience to serve as the DISTRICT’s next Fire
15 Chief; and

16 WHEREAS, it is the desire of the DISTRICT and PETERS to enter into an Agreement that
17 memorializes the parties’ mutual duties and responsibilities with respect to the Fire Chief position; and
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19 WHEREAS, the purpose of this Agreement is to: 1) provide certain benefits to, establish certain
20 conditions of employment for and set working conditions of PETERS in the Fire Chief position; 2) provide
21 inducements that secure and retain the services of PETERS as the Fire Chief; 3) assure PETERS morale
22 and peace of mind with respect to future security as the Fire Chief; and 4) provide a means for the
23 DISTRICT to terminate PETERS services should circumstances warrant such action; and
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25 WHEREAS, it is the desire of PETERS to serve as the DISTRICT’s Fire Chief pursuant to the
26 contractual terms provided for herein.
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28 NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the
29 parties hereby agree as follows:
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31 **SECTION I – TERM /TERMINATION/RENEWAL/SEPARATION/SEVERANCE**
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33 A. Recitals: The above recitals are true and correct and are incorporated herein by reference.
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35 B. Term: Unless otherwise extended, renewed, or terminated as provided for in this Agreement, the
36 initial term of this Agreement shall commence on 6 June 2023, and shall expire at 12:01 a.m.
37 on 6 June 2025. Notwithstanding the foregoing, the parties agree that the first year of the initial
38 term of the Agreement shall be considered a probationary period.

39 C. Termination: This Agreement shall expire by its own terms or upon the office of the Fire Chief
40 becoming vacant. Additionally, the Agreement may be terminated by PETERS or by the
41 DISTRICT in the following ways:
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43 1. Termination for “cause”:
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- 45 a The DISTRICT may terminate PETERS for cause at a duly-noticed public meeting.
46 Such termination shall be by an affirmative vote of at least four (4) members or
47 75% of the DISTRICT's Board of Fire Commissioners.
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- 49 b "Cause" is defined as follows:
- 50 i. PETERS has been convicted or adjudged guilty of, or plead no contest
51 to, any felony or a serious misdemeanor involving the moral turpitude
52 of the Fire Chief; or
 - 53 ii. PETERS files to run for, or is elected or appointed to the DISTRICT's
54 Board of Fire Commissioners; or
 - 55 iii. PETERS is found to have committed gross mismanagement,
56 malfeasance, misfeasance, gross waste of public funds or gross neglect
57 of duty, as those terms are defined by Florida law; or
 - 58 iv. PETERS fails or refuses to comply with any direct lawful instruction
59 given by the DISTRICT's Board of Fire Commissioners; or
 - 60 v. PETERS becomes incompetent or otherwise permanently unable to
61 perform official duties of the position; or
 - 62 vi. PETERS receives a determination, by a medical doctor selected by the
63 DISTRICT, of total and permanent physical or mental disability and
64 such determination is made under Florida's Workers Compensation
65 statute or the DISTRICT's disability plan; or
 - 66 vii. PETERS has been found to have committed misconduct as defined in
67 Florida Statutes §443.036(29); or
 - 68 viii. PETERS has been found to have accepted gifts or gratuities greater than
69 \$100; or
 - 70 ix. PETERS has been found to have misused his public position or
71 breached the public trust; or
 - 72 x. PETERS has the first positive confirmed illicit drug test; or
 - 73 xi. PETERS pleads guilty, pleads nolo contendere or is adjudicated guilty
74 to a misdemeanor related to the duties of office and/or any violations of
75 federal, state or local law, rule or regulation that creates and presents a
76 substantial and specific danger to the public's health, safety or welfare;
77 or
 - 78 xii. PETERS retires or resigns.
- 79
- 80 2. Termination "without cause". The DISTRICT may terminate PETERS without cause by an
81 affirmative vote of at least four (4) members or 75% of the DISTRICT's Board of Fire
82 Commissioners at a duly-noticed public meeting.
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- 84 3. Applicable Termination Policy. The Parties agree that the provisions governing termination
85 set forth herein are the governing policy applicable between the DISTRICT and PETERS
86 and to the extent necessary, the Parties waive their rights and opportunities to grieve or
87 appeal any decision regarding termination taken in accordance with this Section.
88 Notwithstanding the foregoing, nothing herein shall serve as a waiver of any rights
89 provided for under federal or state law.
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91 4. Resignation or retirement by Fire Chief. If PETERS desires to resign or retire during the
92 term of this Agreement, he shall provide at least 60 days written notice to the DISTRICT.
93 If PETERS resigns or retires prior to the expiration of the Agreement or any extension
94 thereof, he shall receive payment under the Agreement for the balance of salary
95 commensurate with the actual days he has performed duties as the Fire Chief and not for
96 the remainder of the Agreement terms. Resignation or retirement by PETERS shall not
97 entitle PETERS to any severance pay. Additionally, if PETERS resigns or retires without
98 providing at least 60 days written notice, PETERS shall return a portion of the housing
99 allowance as set forth in Section IV of this Agreement.

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101 5. Termination by mutual agreement. This Agreement may be terminated by mutual
102 agreement of PETERS and the DISTRICT in writing upon such terms and conditions as
103 may be mutually beneficial.
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105 D. Benefit Accrual. In all instances associated with the termination, retirement or resignation of
106 PETERS as the Fire Chief, PETERS shall be entitled to all earned and accrued benefits specifically
107 provided for in “Section III- Benefits”.
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109 E. Severance. “Severance pay”, as used herein, shall mean the actual or constructive compensation,
110 including salary and benefits as defined by Florida Statutes §215.425(4). If this Agreement is
111 terminated “without cause” during the second year (6 June 2024 through 6 June 2025) of the initial
112 term of the Agreement , as described in this provision, the District shall pay PETERS a single lump
113 sum cash payment of up to a maximum of twelve (12) weeks of PETERS’ biweekly salary in
114 effect at the time of the termination of this Agreement. The District shall also pay PETERS a single
115 lump sum cash payment in the amount of all earned and unused personal time off (“PTO”)
116 balances, up to a maximum of eight (8) PTO days, using PETERS’ biweekly salary in effect
117 immediately prior to the date of termination of this Agreement. PETERS shall not be eligible for
118 severance pay if he is terminated with or without cause during the probationary period (6 June
119 2023 through 5 June 2024).
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121 F. Extension: PETERS and the DISTRICT may agree at any time to extend this Agreement for
122 additional timeframes in excess of the dates set forth herein. Such extensions or renewals shall be
123 evidenced in writing by a written amendment to this Agreement executed by both parties.
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126 SECTION II – COMPENSATION

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128 A. Base Salary: PETERS shall be paid an annual initial base salary of \$77,000.00, payable in
129 installments at the same time and in the same manner as regular full-time employees of the
130 DISTRICT. The parties agree that PETERS residing in the DISTRICT on his four (4) days of
131 work does not constitute “shift work” for the DISTRICT. It is recognized and agreed that PETERS
132 is employed as a salaried employee in an executive and managerial level capacity in a small public
133 fire department which has less than five (5) fulltime firefighters. As the chief executive for the
134 DISTRICT, PETERS is expected and required to devote a great deal of time to the DISTRICT
135 outside of a five day, forty (40) business hour and administrative work week (ie, Monday –
136 Friday). The parties agree that PETERS employment position is exempt from the Fair Labor

137 Standards Act (FLSA) regarding the payment of overtime.
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139 B. Salary Increase: The determination of whether to increase PETERS' salary shall be made at the
140 discretion of the DISTRICT's Board of Fire Commissioners.
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142 C. Tools of Trade: The DISTRICT shall provide PETERS with the necessary tools of the trade to
143 perform his duties. Such tools of the trade shall include, but not be limited to, the following:
144 uniforms, firefighting gear, desktop computer, cellular phone and radio communication
145 equipment.
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147 D. Professional Dues, Travel and Job-Related Expenses:
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149 1. The DISTRICT shall pay reasonable professional dues and subscriptions of PETERS that
150 are necessary for his participation in national, regional, state and local associations and
151 organizations necessary and desirable for his continued professional participation, growth
152 and advancement that are pre-approved as part of the annual budget development.
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154 2. The DISTRICT shall pay reasonable applicable travel and per diem expenses of PETERS
155 pursuant to Florida Statutes §112.061, for short courses, institutes and seminars that are
156 necessary for employee's professional development and for the benefit of the DISTRICT
157 that are pre-approved by the Board of Fire Commissioners.
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159 3. PETERS shall keep the Board of Fire Commissioners apprised of all travel plans that cause
160 PETERS to be away from the DISTRICT for more than a 48 hour (2 day) time period.
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162 E. Working/Staffing Vacancy Shifts:
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164 1. PETERS is expected to work four (4) calendar days out of every seven (7) calendar days
165 as the DISTRICT's Fire Chief and shall publish and provide to the Fire Commission a
166 monthly calendar indicating his on-duty Fire Chief days. Notwithstanding the foregoing,
167 PETERS can fill a staffing vacancy caused by the absence of another District firefighter
168 when he is not on-duty as the FIRE CHIEF to maintain the District's minimum staffing of
169 four (4) paid Florida certified firefighters in the District.
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171 2. Additionally, to the extent needed, PETERS will be paid \$500/day for each full 24-hour
172 shift he works when PETERS is not on duty as the Fire Chief to fill in for an absent District
173 firefighter position. It is recognized by the parties that the \$500/day payment to PETERS
174 is intended only to fulfill a critical firefighter staffing need on an infrequent basis and is
175 not intended to be a routine occurrence. Additionally, it is recognized by the parties that
176 this payment to PETERS will not create an additional expense to the DISTRICT, since
177 PETERS is filling in for an already budgeted staffing position.
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179 3. Separate and apart from PETERS filling a staffing vacancy caused by the absence of
180 another District firefighter as described in the preceding sentence, PETERS can swap work
181 with another full-time Chief of the District, as long as there is no cost to the District as a
182 result of the swap of work with that Chief.

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SECTION III – BENEFITS

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Effective 6 June 2024, PETERS shall be vested with two (2) weeks (8 days) of paid time off (PTO). There are no other paid holidays or sick leave allowances provided for during the initial term of the Agreement. With the exception of the paid time off benefits enumerated herein, PETERS shall be provided all other benefits available to other full-time employees, if any. Specifically, PETERS is eligible to for the following benefits: health care insurance for employee and spouse, disability insurance, and a retirement savings benefit plan benefit of 10% of Base Salary. To the extent PETERS elects to participate in all or portions of the enumerated DISTRICT employee benefit plans, PETERS’ participation shall be in accordance with the terms of any such plan or policy.

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SECTION IV – RESIDENCY & HOUSING ALLOWANCE

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PETERS acknowledges and understands that proximity to the DISTRICT is of critical importance to providing oversight on a scene when fire or other emergency incidents arise within the DISTRICT. Accordingly, PETERS hereby agrees to reside within the Upper Captiva Community, north of the State Preserve. The DISTRICT shall provide a housing allowance to PETERS during the initial term of this Agreement by renting a suitable residence for PETERS’ residence valued up to approximately \$3,000/month (\$36,000/annually). PETERS’ eligibility to receive the housing allowance shall be contingent upon his ongoing employment as the DISTRICT’s Fire Chief and the housing allowance shall expire immediately upon the effective date of PETERS’ termination or resignation. In the event PETERS resigns or retires and fails to provide at least 60 days written notice of his resignation or retirement as provided herein in Section I(C) of this Agreement, PETERS shall return three (3) months of the housing allowance (valued at \$9,000) to the DISTRICT within 45 days of the effective date of such resignation or retirement. The rental housing allowance provided for herein is exclusive of utility expenses that may be required for such residence (i.e., water, sewer, electric, gas, cable, and internet expenses). PETERS shall be responsible for the payment of any associated utility cost for the rental residence.

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SECTION V - OTHER TERMS AND CONDITIONS OF EMPLOYMENT

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The DISTRICT, in consultation with PETERS, shall fix any such other terms and conditions of employment as it may determine from time to time relating to the performance of PETERS, provided such terms and conditions are not inconsistent with, or in conflict with, the provisions of this Agreement or other applicable law. Notwithstanding the foregoing, any future DISTRICT Employee Manual, as created and amended from time to time, shall apply to PETERS to the extent not in conflict with this Agreement or general law.

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SECTION VI – OUTSIDE EMPLOYMENT

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PETERS agrees to devote his full working time to the performance of his duties and responsibilities to the DISTRICT, and agrees not to engage in other unauthorized employment or any unauthorized contractual relationships for personal services during the period of his employment with the DISTRICT.

SECTION VII – GENERAL PROVISIONS

- A. The text herein, handbooks, Employee Manual, or other referenced written materials are hereby incorporated by reference within this Agreement and shall constitute the entire agreement between the Parties, except as it may be amended from time to time. Any amendments to the terms of this Agreement shall be in writing and signed by the Parties. This Agreement supersedes any prior agreements, written or oral, between the Parties.
- B. The effective date of this Agreement shall be _____2023.
- C. If any provision or portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed to be severable and shall remain in full force and effect, to the extent authorized by Florida law.
- D. The Parties agree that this Agreement has been entered into for their sole and exclusive benefit and by so doing do not intend to benefit any third party.
- E. The parties hereby acknowledge and understand the contents of this Agreement, they have been advised by or have had an opportunity to consult with their own independent legal counsel and/or tax advisor regarding the provisions provided for in this Agreement and their implications.
- F. In any action in law or equity to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs, including any such fees and costs from any appeals.
- G. Any waiver by either party of a breach of any provision within this Agreement shall not operate or be construed as a waiver or any subsequent breach or of any rights that said party may otherwise have.
- H. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties agree that in the event of litigation the proper venue shall be Lee County, Florida.
- I. This Agreement may be executed in any number of copies, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the UPPER CAPTIVA FIRE PROTECTION AND RESCUE SERVICE DISTRICT has caused this Employment Agreement to be signed and executed on its behalf by its Chairman and fully attested by its Secretary and PETERS has executed this Employment Agreement in duplicate on the day and year indicated below.

UPPER CAPTIVA FIRE PROTECTION
AND RESCUE SERVICE DISTRICT

By: _____

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CHAIRMAN, DUNCAN ROSEN

Date: _____

ATTEST:
UPPER CAPTIVA FIRE PROTECTION AND RESCUE SERVICE DISTRICT

By: _____
VICE CHAIRMAN JOHN V.
HAMMOND

By: _____
JOSEPH ANTHONY PETERS

Date: _____

STATE OF FLORIDA
COUNTY OF
_____:

The foregoing instrument was acknowledged before me, a Florida Notary Public, this _____ day of _____, 2023, by JOSEPH ANTHONY PETERS, who is personally known to me or who has produced _____ as identification and who did take an oath at the time of notarization.

Seal:

Signature: _____
Printed: _____
My commission expires: _____
Commission number: _____

