

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the UPPER CAPTIVA FIRE PROTECTION AND RESCUE SERVICE DISTRICT, an independent special fire district, as the Employer, with a principal place of business located at 4511 Hodgepodge Ln, North Captiva, FL 33924 (hereinafter referred to as the “DISTRICT”) and JESSE JAMES COTTRELL (hereinafter referred to as "COTTRELL").

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

WHEREAS, on or about 2 September 2023, the DISTRICT’S Fire Commission determined that COTTRELL possessed the skills, abilities, knowledge, and experience to serve as the DISTRICT’S next Fire Chief; and

WHEREAS, it is the desire of the DISTRICT and COTTRELL to enter into an Agreement that memorializes the parties’ mutual duties and responsibilities with respect to the Fire Chief position; and

WHEREAS, the purpose of this Agreement is to: (1) provide certain benefits to, establish certain conditions of employment for, and set the working conditions of COTTRELL in the Fire Chief position; (2) provide inducements that secure and retain the services of COTTRELL as the Fire Chief; and (3) provide a means for the DISTRICT to terminate COTTRELL services should circumstances warrant such action; and

WHEREAS, it is the desire of COTTRELL to serve as the DISTRICT’S Fire Chief pursuant to the contractual terms provided for herein.

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

### SECTION I – DUTIES AND RESPONSIBILITIES

A. COTTRELL is employed as the Fire Chief of the DISTRICT as an hourly paid employee in an executive and managerial level capacity in a small public fire department that has less than five (5) fulltime firefighters. As the chief executive for the DISTRICT, COTTRELL shall follow all DISTRICT policies, perform management duties including those defined in 29 C.F.R. 541.102 when applicable, and otherwise perform the customary duties of a fire chief of a small public fire department. 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 DISTRICT to perform including, but not limited to, the following duties:

1. Act as Chief Administrative Officer and manager of the DISTRICT and be responsible to the DISTRICT Board of Commissioners for proper administration and management of all affairs of the DISTRICT;

2. Respond to emergency rescue calls, including emergency rescue calls from Lee County dispatch, while COTTRELL is physically in the DISTRICT or as COTTRELL deems appropriate. The parties acknowledge and agree that COTTRELL will respond and actively participate in emergency rescue calls (fire, rescue, and medical) in the DISTRICT while he is physically present in the DISTRICT because of the small number of certified firefighters and credentialed paramedics who are available in the DISTRICT to respond to emergency rescue calls in the DISTRICT at any particular time;
3. Attend all meetings of the DISTRICT Board of Commissioners at which COTTRELL'S's attendance may be required by the DISTRICT Board of Commissioners, except as excused by the Chair;
4. Except for members of the DISTRICT Board of Commissioners, appoint and remove, at any time, all officers, employees and contractors of the DISTRICT, subject to applicable federal and Florida law, the rules, regulations, and policies of the DISTRICT, and the binding agreements of the DISTRICT;
5. Recommend for adoption by the DISTRICT Board of Commissioners such measures as COTTRELL may deem necessary or expedient to achieve and carry out the purposes and goals of the DISTRICT;
6. See that all laws, ordinances, rules, regulations, resolutions, policies, and other directives of the DISTRICT adopted by the DISTRICT Board of Commissioners are faithfully executed;
7. On or before 30 June each year, COTTRELL will prepare and submit a preliminary or proposed DISTRICT budget and work with the DISTRICT Board of Commissioners in its analysis and review of the proposed budget;
8. Implement departmental budgets, with attendant concern of budget limits and cash flow for the DISTRICT, prepare and maintain proper reports and records, and work with community groups and governmental agencies with respect to fire control, prevention and safety issues and submit to the DISTRICT Board of Commissioners such reports as may be required;
9. Oversee departmental vehicular and equipment needs, and the maintenance of all departmental buildings;
10. Develop and update the five-year plan for the DISTRICT;
11. Analyze and assess staffing needs and prepare a report in connection therewith which is to be submitted to the Board for its annual review;
12. Update and maintain the hurricane plan for the DISTRICT.
13. Perform such other duties, responsibilities and administrative/management

functions as described in the job description for the Chief's position, Florida law and the ordinances, rules, regulations and policies of the DISTRICT adopted by the DISTRICT Board of Commissioners, as said job description for the Chief's position, Florida law and the ordinances, rules, regulations, resolutions, policies, and other directives of the DISTRICT adopted by the DISTRICT Board of Commissioners may be amended from time to time in the future by the State of Florida or the DISTRICT Board of Commissioners;

B. COTTRELL shall also engage in fire protection activities as that term is defined in 29 C.F.R. 553.210, including as a firefighter or paramedic who is trained in fire suppression, has legal authority and responsibility to engage in fire suppression; who is engaged in the prevention, control, and extinguishment of fires and who responds to emergency situations where life, property, or the environment are at risk; when such events occur in COTTRELL'S duties as Fire Chief. COTTRELL shall maintain all credentials necessary to ensure that he is able to engage in fire protection and medical activities as described herein.

C. COTTRELL shall work as follows:

1. COTTRELL shall work four (4) regular work shifts during the 14-day pay period. Each shift will be for twenty-four (24) hours. The Fire Chief shall be responsible for setting the dates and times that each twenty-four (24) hour work shift begins and ends. During these shifts COTTRELL shall be expected to perform the managerial duties of the DISTRICT but shall also be expected to respond to calls for service during these scheduled shifts, including but not limited to fire and serious medical emergency calls. COTTRELL shall have discretion to either call off calls or to not respond to non-serious medical calls during such shifts.

2. COTTRELL shall be responsible for scheduling all staffing of the DISTRICT in conformance with ISO standards. COTTRELL shall publish and provide to the Fire Commission a monthly calendar indicating his on-duty Fire Chief days.

3. COTTRELL is entitled to hire and shall schedule part-time fire chief(s) for all days he wishes to not be scheduled for a set shift. COTTRELL can swap work with another fire chief of the DISTRICT, as long as there is no cost to the DISTRICT as a result of the swap of work with that fire chief.

4. COTTRELL shall be expected to keep an accurate time sheet and submit it to the Chair of the DISTRICT'S Board of Fire Commissioners for each pay period in conformance with the DISTRICT'S normal time keeping and payroll practices that reflects all time worked during said pay period, including scheduled time and time actually spent working during off-duty time.

## SECTION II – COMPENSATION

A. Base Wage: COTTRELL shall be paid an hourly base wage of \$25.00 per hour for up to 106 hours per pay period (“Regular Rate”), payable in installments at the same time and in

the same manner as other employees of the DISTRICT, as follows:

1. The parties jointly agree that COTTRELL'S employment position is NOT exempt from the Fair Labor Standards Act (FLSA) regarding the payment of overtime.
2. COTTRELL shall be paid the Regular Rate for the time worked on each scheduled twenty-four-hour shift during the 14-day pay period described in Section I.C.1., above.
3. COTTRELL shall be paid at the rate of one and one-half times the Regular Rate for all actual hours worked during the 14-day pay period in excess of 106 hours ("Overtime Rate"). The Overtime Rate is \$37.50 per hour (1.5 x \$25.00).
4. The DISTRICT does not pay firefighters for any time off on any holidays. If COTTRELL works on **Easter Sunday**, 4<sup>th</sup> of July, Thanksgiving Day, Christmas Eve, or Christmas Day, he shall be paid at **1.5** times COTTRELLS hourly rate of pay for COTTRELL'S work on the stated holiday for twenty-four (24) hours of work.

B. Hourly Wage Increase: The determination of whether to increase COTTRELL'S Regular Rate shall be made at the discretion of the DISTRICT'S Board of Fire Commissioners, as part of the annual budget process.

C. Tools of the Trade: The DISTRICT shall provide COTTRELL with the necessary tools of the trade to perform his duties. Such tools of the trade shall include, but not be limited to, the following: firefighting gear, desktop computer, cellular phone and radio communication equipment.

D. Professional Dues, Travel and Job-Related Expenses:

1. The DISTRICT shall pay reasonable professional dues and subscriptions of COTTRELL that are necessary for his participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement that are pre-approved as part of the annual budget development.
2. The DISTRICT shall pay reasonable applicable travel and per diem expenses of COTTRELL pursuant to Florida Statutes §112.061, for short courses, institutes, and seminars that are necessary for employee's professional development and for the benefit of the DISTRICT that are pre-approved by the Board of Fire Commissioners.
3. COTTRELL shall keep the Board of Fire Commissioners apprised of all travel plans that cause COTTRELL to be away from the DISTRICT for more than a forty-eight (48) hour (2 day) time period.

SECTION III – BENEFITS

Effective \_\_\_\_\_ 2024, COTTRELL shall be eligible for the following benefits: a retirement savings benefit plan benefit of \$6,240/year, payable in 26 installments each pay period of \$240. To the extent COTTRELL elects to participate in all or portions of the enumerated DISTRICT employee benefit plans, COTTRELL’S participation shall be in accordance with the terms of any such plan or policy.

SECTION IV – TERM/TERMINATION/RENEWAL/SEPARATION/SEVERANCE

- A. Recitals: The above recitals are true and correct and are incorporated herein by reference.
- B. Term: Unless otherwise extended, renewed, or terminated as provided for in this Agreement, the initial term of this Agreement shall commence on \_\_\_\_\_ 2024, and shall expire at 11:59 p.m. on \_\_\_\_\_ 2026.
- C. Termination: This Agreement shall expire by its own terms or upon the office of the Fire Chief becoming vacant. Additionally, the Agreement may be terminated by COTTRELL or by the DISTRICT in the following ways:

- 1. Termination for “cause”:

- a. The DISTRICT may terminate COTTRELL for cause at a duly-noticed public meeting. Such termination shall be by an affirmative vote of the lesser of four (4) members of the DISTRICT’S Board of Fire Commissioners or 75% of the members of the DISTRICT’S Board of Fire Commissioners.

- b. “Cause” is defined as follows:

- i. COTTRELL has been arrested for, charged with, placed in a court-sanctioned diversionary program for, sentenced for, convicted or adjudged guilty of, or plead no contest to, any felony or misdemeanor offense; or
- ii. COTTRELL files to run for, or is elected or appointed to the DISTRICT’S Board of Fire Commissioners; or
- iii. COTTRELL is found to have committed gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty; or
- iv. COTTRELL fails or refuses to comply with any DISTRICT policy, practice, or procedure or a direct lawful instruction given by the DISTRICT’S Board of Fire Commissioners; or
- v. COTTRELL becomes incompetent or otherwise permanently unable to perform official duties of the position; or
- vi. COTTRELL receives a determination of total and permanent physical or mental disability; or

- vii. COTTRELL has been found to have committed misconduct as defined in Florida Statutes §443.036(29); or
- viii. COTTRELL has been found in violation by the Florida Commission on Ethics to: (1) have directly or indirectly (personally or through an immediate family member) accepted gifts or gratuities in excess of \$100.00; (2) have directly or indirectly (personally or through an immediate family member) accepted gifts or gratuities in furtherance of influencing official governmental action regardless of amount or value; or (3) be otherwise in violation of state reporting or ethics laws, rules, or precedent, including those outlined in Ch. 112, Florida Statutes; or
- ix. COTTRELL has been found to have misused his public position or breached the public trust; or
- x. COTTRELL breaches the terms of this Agreement; or
- xi. COTTRELL tests positive for or is under the influence of any controlled substance, drug, or other substance prohibited by state or federal law; or
- xii. COTTRELL retires or resigns.

2. Termination “without cause”. The DISTRICT may terminate COTTRELL without cause by an affirmative vote of the lesser of four (4) members of the DISTRICT’S Board of Fire Commissioners or 75% of the members of the DISTRICT’S Board of Fire Commissioners at a duly-noticed public meeting.

3. Applicable Termination Policy. The Parties agree that the provisions governing termination set forth herein are the governing policy applicable between the DISTRICT and COTTRELL and that no other agreements, entitlements, hearings, proceedings, mechanisms, or procedures for appeal or relief are available. To the extent necessary, the Parties waive their rights and opportunities to grieve, appeal, or otherwise challenge any decision regarding termination taken in accordance with this Agreement.

4. Resignation or retirement by Fire Chief. If COTTRELL desires to resign or retire during the term of this Agreement, he shall provide at least sixty (60) days written notice to the DISTRICT. If COTTRELL resigns or retires prior to the expiration of the Agreement or any extension thereof, he shall be paid at his then rate of pay for all work performed pursuant to this Agreement during said sixty (60) day period.

5. Termination by mutual agreement. This Agreement may be terminated by mutual agreement of COTTRELL and the DISTRICT in writing upon such terms and conditions as may be mutually beneficial.

D. Benefit Accrual. In all instances associated with the termination, retirement, or resignation of COTTRELL as the Fire Chief, COTTRELL shall be entitled to all earned and

accrued benefits specifically provided for in “Section III- Benefits”.

E. Severance. “Severance Pay”, as used herein, shall mean the actual or constructive compensation, including wages and benefits as defined by Florida Statutes §215.425(4). If this Agreement is terminated “without cause” during the term of the Agreement, as described in this provision, the DISTRICT shall pay COTTRELL a single lump sum cash payment of twelve (12) weeks of COTTRELL’S set hourly wages per pay period in effect at the time of the termination of this Agreement (calculated as 12 weeks x 2 shifts/week x 24 hours/shift x \$25/hour or \$14,400). COTTRELL shall not be eligible for Severance Pay if COTTRELL is “terminated for cause” as contemplated in I.C.1., above, at any time during this Agreement.

F. Extension: COTTRELL and the DISTRICT may agree at any time to extend this Agreement for additional timeframes in excess of the dates set forth herein. Such extensions or renewals shall be evidenced in writing by a written amendment to this Agreement executed by both parties.

#### SECTION V - OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The DISTRICT, in consultation with COTTRELL, shall fix any such other terms and conditions of employment as it may determine from time to time relating to the performance of COTTRELL, 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 policy, handbook, directive, practice, procedure, or protocol, as created and amended from time to time, shall apply to COTTRELL to the extent not in conflict with this Agreement or general law.

#### SECTION VI – GENERAL PROVISIONS

A. The text herein, all DISTRICT policies, protocols, directives, practices, handbooks, and procedures, as modified in good faith from time to time, 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 in writing 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 \_\_\_\_\_ 2024.

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. The parties enter this Agreement knowingly, freely, and voluntarily and acknowledge that no one has pressured, forced, or coerced them to do so.

F. 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.

G. 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.

H. 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 to by its Vice Chairman; and COTTRELL has executed this Employment Agreement in duplicate on the day and year indicated below.

UPPER CAPTIVA FIRE  
PROTECTION AND RESCUE  
SERVICE DISTRICT

By: \_\_\_\_\_  
CHAIRMAN, DUNCAN ROSEN  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
JESSE JAMES COTTRELL  
Date: \_\_\_\_\_

STATE OF FLORIDA, COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me, a Florida Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by JESSE JAMES COTTRELL, 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: \_\_\_\_\_