

EMPLOYMENT AGREEMENT BETWEEN
STANISLAUS CONSOLIDATED FIRE PROTECTION DISTRICT
AND MICHAEL WHORTON

THIS AGREEMENT is between the Stanislaus Consolidated Fire Protection District (“District”) and Michael Whorton (“Employee”). It is effective on January 14, 2019 (the “Effective Date”). District and Employee are hereinafter sometimes referred to as “Party” or collectively “Parties.”

This Agreement is entered into on the basis of the following facts, among others:

A. The Board of Directors (“Board”) of the District desires to employ Employee as the Fire Chief of the District, and Employee desires to accept this employment and perform the duties of that position.

B. The District and Employee desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE DISTRICT AND EMPLOYEE AGREE AS FOLLOWS:

1. Employee Appointed, “At Will” Employment. The Board hereby appoints, and District employs, Employee as Fire Chief, and Employee accepts the appointment and employment, beginning work on January 14, 2019. Employee serves at the will and pleasure of the Board.

2. Duties of Employee. Employee shall perform the duties of such position as established by and in conformance with state law, all District ordinances, rules and regulations, the job description attached hereto as Exhibit A, and in accordance with the policy direction of the Board, and any additional duties which are assigned by the Board and which are legally permissible and proper duties. Employee shall faithfully, diligently, and to the best of Employee’s abilities, perform all duties that may be required under this Agreement. At all times, during the term of this Agreement, Employee shall be directly responsible to and report to the Board.

(a) Fiduciary Duty. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the District. Employee shall devote the whole of Employee’s working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the District’s business and affairs.

(b) No Conflict.

(i) Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee’s duties. Further, Employee shall not, during the term of this Agreement, engage in any activity which is or may

become a conflict of interest, prohibited contract, or which may create an incompatibility of office under California law. Employee will complete annual disclosure forms required by law.

(ii) It is further understood and agreed that because of the duties of the Fire Chief within and on behalf of the District and its citizenry, Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer, or shareholder, invest or participate in any business venture conducting business within the corporate limits of the District, except for Pizza Plus (with the understanding the Fire Chief is to not be in Pizza Plus during District working hours and shall devote all of his working time to the District), and except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior written consent of the District Board. For and during the term of this Agreement, Employee further agrees, except for a personal residence used as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the District, without the prior, written consent of the District Board.

(c) Outside Activities. Employee shall not spend more than 8 hours per month in teaching, consulting, expert witness testimony, speaking, or other non-District connected business for which compensation is paid without express prior consent of the Board. Employee will take personal leave (i.e. vacation time) for all outside activities of this nature.

(d) Hours of Work. The position of Fire Chief is an Exempt Management Personnel position of the District and a FLSA-exempt position. Employee's normal schedule shall be 8 a.m. to 5 p.m., Monday through Friday, and Employee is expected to engage in those hours of work that are necessary to fulfill the obligations of the Fire Chief's position. It is recognized that Employee must sometimes devote time to the business of the District outside of the District's customary office hours, and to that end Employee's schedule of work each day and week may vary in accordance with the work required to be performed and in accordance with any specific direction provided by the Board.

(e) Required Attendance During Business Hours. Employee's regular, consistent attendance at District offices is expected as part of fulfilling the Fire Chief duties, including during regular hours of work and meetings of the Board and its subcommittees.

3. Term. District agrees to employ Employee, and Employee accepts employment with the District for a term of two (2) years or until Employee's employment is terminated by either Party in accordance with the provisions set forth in Paragraph 7 or by the event of the death or permanent disability of Employee which cannot be reasonably accommodated. Nothing in this provision alters Employee's status as an "at will" employee who serves at the pleasure of the Board of Directors.

4. Compensation and benefits.

(a) Salary. Employee shall receive the base annual salary of one hundred and thirty-five thousand dollars (\$135,000.00), payable on a pro-rata basis in the same manner as all full-time District employees, and subject to all applicable payroll taxes and withholdings.

(b) Benefits. Employee shall be eligible for and receive the same Medical, Dental, Vision and other group insurance benefits provided to other full-time District employees. Employee shall be eligible for and subject to the California Public Employee Retirement System (CalPERS) set forth in District's Retirement Benefits policies and state law.

5. Initial and Annual Evaluations. The Board shall evaluate Employee's performance annually on approximately the anniversary date of the Effective Date of this Agreement, as well as prior to any extension of this Agreement. In addition to those annual reviews, the Board retains the discretion to conduct evaluations, whether formal or informal, in a format determined by the Board, when the Board deems appropriate. Any compensation increases are entirely at the discretion of the Board, subject to annual budgetary approval of the Board, and are effective only upon the Parties' written amendment to this Agreement.

6. Additional Benefits and Allowances. In addition to the benefits specified in Section 4, Employee shall receive the following additional benefits and allowances.

(a) Vacation. Employee shall be entitled to accrue vacation time off with pay at the same rate and according to the same terms as other Exempt Management Personnel of the District, commensurate with Employee's years of service with the District. Hours are accrued on a pro rata basis as hours are worked.

(b) Holidays. There are twelve (12) District Recognized Holidays observed each calendar year. Employee shall take off scheduled District Holidays unless otherwise required by the Board.

(c) Management Leave. Employee will receive 120 hours of Management Leave each fiscal year to be utilized during that fiscal year. The hours may not be cashed out. At the commencement of each fiscal year, Employee's Management Leave balance will be placed at 120 hours. (In other words, if Employee uses 80 hours of Management Leave during FY 2018/19, at the commencement of FY 2019/20, Employee's Management Leave account will be replenished with 80 hours, so that it totals 120 at the commencement of the FY).

(d) Sick Leave. Employee shall be allowed to use paid sick leave and be absent from work because of personal illness/injury or the illness/injury of immediate family members (as identified in District sick leave policies and in California Labor Code sections 233 and 245 *et seq*) for such time as is reasonably

necessary or during otherwise unpaid medical leaves provided by law. Sick leave includes attendance at doctor's appointments or related medical activities as well as any other reasons required by the California Labor Code. Employee shall accrue sick leave at the rate of 4 hours per pay period beginning on the first payroll period after the Effective Date. Sick Leave used for the injury or illness of a family member may not exceed the number of sick leave hours that Employee accrues in a calendar year. Accrued Sick Leave has no cash value and is not eligible for a cash-out at any time by Employee, except upon retirement from District service or death in accordance with District policies and the rules and restrictions detailed in the District's then-existing PERS contract.

(e) Life Insurance. District will provide a \$100,000 dollar life insurance policy for Employee at no cost to Employee.

(f) Family Medical Leave, Bereavement Leave, Jury Duty. Employee shall be entitled to Family Medical Leave, Bereavement Leave, and Jury Duty Leave in accordance with the District's rules and regulations for Exempt Management Personnel.

(g) Deferred Compensation. An optional deferred compensation plan is available for Employee, if Employee elects to participate.

(h) Uniform Allowance/Other Reimbursable Expenses. District will provide Employee with a uniform allowance of \$1,000 per fiscal year, payable in a lump sum. In the alternative, and only during the first year from the Effective Date of this Agreement, District will provide Employee with reimbursement of other Board approved expenses up to \$1,000.

(i) District Vehicle. District agrees to provide Employee with a District vehicle (as determined by the Board) for Employee's use in conducting District business. District shall pay all fuel, insurance and maintenance costs for the vehicle. Employee's use of the vehicle shall be limited to District business and ancillary uses necessary to accomplish the duties and responsibilities of the Fire Chief position under the terms and conditions of this Agreement.

(j) Education Reimbursement. Consistent with the terms of the Education Reimbursement policy applicable to other Exempt Management District employees, District shall provide Employee up to \$1,250 of Education Reimbursement per fiscal year for job-related coursework successfully completed. An additional amount of Education Reimbursement may be granted to Employee, as determined by and subject to the Board's exclusive discretion.

(k) Payment of Expenses of Employment. The District shall pay the following usual and customary employment expenses:

(i) The cost of any fidelity or other bonds required by law for the Fire Chief position.

(ii) The cost to defend and indemnify Employee as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. District will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(iii) Subject to Budget Approval and the Board's discretion, reasonable dues for Employee's membership in professional organizations associated with the office of Fire Chief and the cost of attending conferences or other events (i.e. out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties.

7. Termination of Employment.

(a) Termination by District. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as Fire Chief. Employee understands and agrees that Employee works at the will and pleasure of the Board, and that Employee may be terminated, or asked to resign, at any time, with or without cause. Notice of termination shall be provided to Employee in writing by giving not less than thirty (30) days' notice. "Termination," as used in this Agreement, shall also include: 1) a request that Employee resign; or 2) the elimination of the Fire Chief position. No severance benefits apply to the termination of this Agreement or Employee's employment with District.

(b) Termination by Employee. Employee may voluntarily terminate employment at any time by giving not less than thirty (30) days' notice.

8. Re-employment as Fire Captain. In the event the District decides to remove Employee from the Fire Chief position during the Term of this Agreement (in any manner constituting "termination" within the meaning of paragraph 7(a)), Employee will be offered the right to return to a Fire Captain position. The District retains the right to decide Employee's duties as Fire Captain and can assign Employee to his former position or to another Fire Captain position with commensurate pay and benefits.

9. Miscellaneous.

(a) Training and Coaching. Employee shall commence Fire Chief training within the first month of the Effective Date of this Agreement. Employee shall also commence working with an approved leadership coach within the first month of the Effective Date of this Agreement. The Fire Chief will research options for training and coaching (including options provided by District Counsel), will present those options and associated cost to any ad hoc subcommittee of the

Board formed for this purpose or to the Board if requested, and will obtain the subcommittee's or Board's approval prior to participating.

(b) Location of Employee's Residence. Employee shall establish and maintain his residence within the District's boundaries for the duration of this Agreement, or, if not practical or feasible, within fifteen (15) minutes of the District's boundaries.

(c) Notices. Notices given under this Agreement shall be in writing and shall be:

(i) served personally; or

(ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

(iii) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or the first business day following deposit in the overnight delivery service. Notices shall be directed to the addresses shown below, provided that a Party may change such Party's address for notice by giving written notice to the other Party in accordance with this subsection.

TO DISTRICT:

Stanislaus Consolidated Fire Protection District

Attn: President of Board of Directors

3324 Topeka Street

Riverbank, CA 95367

Tel: (209) 869-7470

Fax: (209) 869-7475

TO EMPLOYEE:

Michael Whorton

(d) Compliance with Government Code §§53243, 53243.1, & 53243.2. If Employee is convicted of a crime involving an abuse of Employee's office or position, all of the following shall apply:

(i) If Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse District for such amounts paid;

(ii) If District pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse District such amounts paid; and

(iii) If this Agreement is terminated based on actions underlying such conviction, any cash settlement related to the termination that Employee may receive from District shall be fully reimbursed to the District by Employee or void if not yet paid to Employee.

(iv) For this subsection, "abuse of office or position" is defined in Government Code section 53243.4 (as it may from time to time be amended) as either (a) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (b) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(e) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the Parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the Parties. This Agreement may be amended at any time by mutual agreement of the Parties, but any such amendment must be in writing, dated, and signed by the Parties and attached hereto.

(f) Attorney's Fees. In the event any attorney's fees are incurred in interpreting and enforcing this Agreement, each party shall bear their own fees and costs.

(g) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the Parties, in which case this Agreement shall be immediately terminated.

(h) Waiver. Any failure of a Party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the Parties.

(i) Representation by Counsel; No Presumption of Drafter. The Parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this

Agreement and that they are fully advised as to their respective rights and obligations resulting from signing this Agreement. The Parties further agree that this Agreement shall not be interpreted or construed against or in favor of either Party by reason of who caused this Agreement to be drafted and that this Agreement is the product of the representation of each Party by independent legal counsel.

(j) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and District agree that venue for any dispute shall be in Stanislaus County, California.

(k) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the Parties only and do not limit or expand the contents of any such section or subsection.

(l) No Assignment. Employee may not assign this Agreement in whole or in part. Any such attempted assignment shall be null and void.

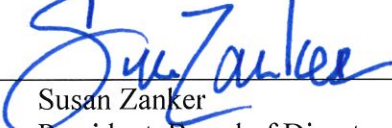
(m) Work Produced As District Property. All documents, reports, notes and computer data produced or prepared by Employee in the course and scope of Employee's duties under this Agreement are the property of the District and shall be delivered to District immediately upon the Board's (or designee's) request.

(n) Binding on Heirs and Successors. This Agreement shall be binding on, and inure to the benefits of, the heirs at law and executors of Employee.

[SIGNATURES ON FOLLOWING PAGE]


SIGNATURE PAGE

DISTRICT:

By: 
Susan Zanker
President, Board of Directors


Dated: 1-10-2019

EMPLOYEE:

By: 
Michael Whorton
Employee

Dated 1-10-19

ATTEST:


Board Clerk

APPROVED AS TO FORM:


Christopher J. Diaz
District Counsel