

EMPLOYMENT AGREEMENT

Fire Chief

This Agreement is entered into between Whatcom County Fire Protection District No. 5 hereafter referred to as "District" and Christopher Carleton hereafter referred to as "Employee".

The District hereby employs Christopher Carleton as the Fire Chief of the District who hereby accepts the employment on the terms and conditions set forth below. The Parties intend to enter into a fifteen (15) year working relationship consisting of three (3), five (5) year terms.

1. **Duties.** The Employee shall perform the following duties:

- 1.1. Perform such services for the District as directed from time to time by the Board of Commissioners which are consistent with the duties and responsibilities of the highest ranking officer of the fire department and in the manner and to the extent permitted by the laws of the State of Washington and in accordance with the policies of the District.
- 1.2. Perform all duties established by the job description for the position of Fire Chief which is incorporated into this Agreement as Exhibit "A" by this reference. The job description shall be changed only by mutual agreement between the Parties.
- 1.3. The Board of Commissioners vests in the Fire Chief the day-to-day operational control of fire district operations and reserves to the Board the policy-making authority and control over all matters of fiscal policy, budget and financial matters not expressly delegated to the Fire Chief.

2. **Hours of Employment.** The position of Fire Chief is a part-time paid salaried position. Except for pre-approved vacation leave, the Employee is expected to devote a minimum of twenty-five (25) hours per week, or one hundred (100) hours a month, to perform the duties assigned to the position of Fire Chief. The Parties recognize that the Employee must devote time outside of this regular weekly schedule in performing the duties of Fire Chief, including (a) responding to emergency calls; (b) attending meetings or events on behalf of, and representing, the District; (c) attending conferences, classes and/or courses on behalf of, and representing, the District; and (d) attendance at community or other events as directed by the Board. All such hours shall count towards the minimum hours per week requirement. The Employee shall determine the hours of work and set his own work schedule so as to be available to the public on a predictable and regular basis. The Employee may designate a District representative, e.g. the Assistant Chief, to attend required meetings and events if the Employee is unavailable. The position of Fire Chief is considered a salaried FLSA exempt executive position and therefore Employee is not entitled to receive overtime compensation unless authorized in writing in advance by the Board of Commissioners. The Employee is not required to reside within the geographical boundaries of the District.

3. **Working Facilities.** Employee shall be furnished with such tools, facilities, personnel and equipment, including fire and medical apparatus, as are required for the adequate performance of the duties of Fire Chief and within the budgetary limitations of the District. Facilities shall include an office, personal computer, smartphone, telephone, copier, facsimile machine and other necessary office equipment, furniture and supplies necessary to perform the duties of Fire Chief. In order to be available to respond immediately to emergencies or critical events, Employee is entitled to use a District vehicle at all times, including for reasonable personal use. In order to function at Employee's current EMS certification level, the District, subject to budgetary limitations, will ensure that medical supplies and equipment will be supplied to Employee in order to act in such capacity.

4. **Compensation.**

4.1. **Salary.** For the services provided by the Employee under this Agreement, the District shall pay Employee in the first term of this Agreement a monthly salary of \$ 4166.66 (\$ 50,000 ~~2~~ yearly) payable in accordance with the District's normal payroll process.

4.2. **Fringe Benefits.** Employee shall receive the additional Benefits as set forth in Exhibit "B" which is incorporated herein by reference.

5. **Review.** Employee's salary shall be adjusted upward beginning January 1, 2016 and thereafter each January 1st by at least 100% of the Seattle/Tacoma/Bremerton CPI-W percentage increase for the period of June to June of the previous year. However, in no event shall Employee's salary be adjusted downward.

6. **Term.** This Agreement shall be effective on September 1, 2015 and shall continue in force until September 1, 2020 unless renewed or terminated as provided by this Agreement.

6.1. **Extensions.** After the first five (5) year term, this Agreement shall automatically be renewed for an additional two (2) five (5) year terms, subject to mutually agreed modifications of working hours, Compensation and Benefits, and unless the District exercises its right to terminate Employee's employment in the manner specified in Paragraphs 9 or 10. Term two (2) of this Agreement shall be from September 1, 2020 to September 1, 2025. Term three (3) of this Agreement shall be from September 1, 2025 to September 1, 2030.

6.2. **Non-Renewal.** After the third term of this Agreement, ending September 1, 2030, the District may elect to not renew this Agreement. In this event, the District shall provide the Employee with written notice 180 days prior to the expiration of the end of the third term, on or before, September 1, 2030. The decision of whether to renew the Agreement beyond the third term shall be in the sole discretion of the Board of Commissioners and may be made for any reason with or without cause.

6.3. Agreement to Renegotiate Contract Terms. In the event the District becomes Employee's sole Employer, the Parties agree to meet and renegotiate the terms of this Agreement for the mutual benefit of both Parties.

7. Due Process. If the District considers imposing a negative employment action against Employee, e.g. termination, reduction in pay or suspension without pay (only as permitted by the FLSA for exempt employees), or any other action which would affect Employee's due process rights, the Employee shall receive written notice of any allegations against him and the possible negative action being considered. The Employee will be afforded an opportunity, within a reasonable time-frame, to refute and/or explain the allegations, either orally or in writing at Employee's choice, before the Board of Commissioners in an Executive Session convened for that purpose; including the right to have representation of Employee's choice at such time. The Parties shall agree on a mutually convenient time and place to discuss the allegations prior to the Board of Commissioners taking any negative employment action.

8. Non-disparagement. Without limiting either parties ability to perform its statutory and contractual obligations, the Parties agree that they will take no action that might interfere with a Party's activities or damage a Party's reputation, including private or public comments, statements, or writing which are disparaging, defamatory, negative or critical of the other Party, or of Employee's employment relationship and history, or of Employee's separation of employment, to any third party. This paragraph shall not preclude either Party from responding truthfully to inquiries made in connection with any legal or governmental proceeding pursuant to subpoena.

9. Termination Without Cause. The Board of Commissioners may terminate Employee's employment under this Agreement at any time, without cause and without advance notice, provided that the District shall pay the Employee as follows: in the first contract term (years one to five), a single lump sum payment of one hundred and fifty thousand dollars (\$150,000) plus the full value of all accrued and unused vacation. In the second contract term (years 6 to 10), a single lump sum payment of one hundred seventy-five thousand dollars (\$175,000) plus accrued and unused vacation. In the third contract term (years 11 to 15), a single lump sum payment of two hundred thousand dollars (\$200,000) plus accrued and unused vacation. The liquidated damages amount shall be paid in conjunction with the District's normal payroll cycle on the next regular District payroll date that is more than 15 days following the date of termination. In the event of budgetary constraints, the payment of the liquidated damages will be distributed at the discretion of the Board but in no event will the payments distribution exceed six (6) months.

10. Termination For Cause. Subject to Employee's Due Process rights specified in paragraph 7 herein, the District shall have the right to discipline or terminate the Employee's services, and this Agreement, for just cause as defined below. If terminated for just cause, all Compensation and Benefits described herein shall cease as of the termination date, subject to the language of any insurance plans then in effect. "Just Cause" for discipline or termination includes but is not limited to:

- 10.1. Mental or physical unfitness for the position which the Employee holds, subject to Employee's rights of reasonable accommodation under the Washington Law Against Discrimination.
- 10.2. Dishonest or prejudicial conduct.
- 10.3. Use of alcoholic beverages or controlled substances to such extent that such use interferes with the efficiency or mental or physical fitness of the Employee, or which precludes the Employee from properly performing the functions and duties of the position of Employee.
- 10.4. Conviction of a felony, or a misdemeanor involving dishonesty.
- 10.5. Failure to perform the duties described in Exhibit "A" which are within Employee's direct control.

11. Termination by Employee. Employee may voluntarily retire or resign his position as Fire Chief with a minimum of 180 days' advance written notice, except in case of undue hardship in which case notice shall be waived by the Board. Examples of undue hardship include, but are not limited to, diagnosis of terminal illness, incapacitation due to accident or illness, and the like. In the event of resignation, the Employee shall receive all Compensation earned prior to the resignation date together with accrued and unused vacation leave as specified in Exhibit "B", but shall not receive any further Compensation.

12. Annual Evaluation. The Employee will receive an annual performance evaluation conducted by the Board of Commissioners or a designated Commissioner. The Employee shall schedule such evaluation with the Board during the month of June each year. Any concerns relating to job performance will be noted during the evaluation process and any areas of improvement specified in reasonable detail in writing. In the absence of any objective evidence and documented concerns, the Parties agree that Employee's job performance will be deemed acceptable and meeting standards. A copy of the annual evaluation shall be placed in the Employee's personnel file and a copy given to the Employee. The Employee shall be provided the opportunity to address, in writing, any concerns on the evaluation prior to it being placed in his personnel file and the Employee's writing(s) shall become part of the evaluation.

13. General Expenses. The District will reimburse the Employee for reasonable job related expenses when approved in advance and on receipt of documentation of such expenses. The Employee is authorized to expend District funds in the execution of District business and in representing the District at conferences and otherwise, to purchase materials for recognition of employees or volunteers, and to incur travel and lodging expenses in the conduct of District business. Subject to budgetary limitations, Employee may participate in professional development courses, conferences and classes, which Employee deems relevant to his position as Fire Chief and which would also benefit the District.

14. Employment Attention. During the hours Employee is performing services under this Agreement, Employee will devote his full attention, knowledge and skills to the business and

interests of the District and the District shall be entitled to all benefits and profits arising from work and services performed during District working hours by the Employee. Participation in community, business, and civic organizations is encouraged.

15. Dispute Resolution. The Parties desire to establish a fair and rapid process to resolve any and all disputes arising out of or related to this Agreement and to Employee's employment generally. It is the Parties desire to resolve all employment-related disagreements, conflicts and claims through the alternative dispute resolution process described herein. The Parties specifically waive the right to file an action in Superior court and specifically waive a trial by judge or jury. Accordingly, any such disputes shall be resolved as follows, except as reasonably necessary to obtain injunctive or similar equitable relief:

15.1. Stage 1, Mediation: Each Party is required to immediately notify the other Party, in writing, of each and every dispute or disagreement arising out of or related to this Agreement or related to the employment relationship. Upon such written notification, the Parties shall, as soon as practicable but in no event longer than five (5) days, meet and negotiate in good faith to resolve any such disputes. If the dispute is resolved by such a meeting, the terms and conditions of the resolution shall be reduced to writing and signed by both Parties. If the Parties cannot resolve the dispute as provided in this paragraph, the dispute shall be resolved as set forth below:

15.2. Stage 2, Binding Arbitration: If any such dispute identified above is not resolved within fifteen (15) business days from notification of such dispute, the matter shall be transferred for resolution through binding non-appealable arbitration pursuant to RCW 7.04. The Parties shall select an independent and unbiased arbitrator who is not affiliated directly or indirectly with either Party within ten (10) days after any Party demands arbitration. If the Parties fail to select, or cannot agree upon, an arbitrator within this time, then either Party may apply to the Superior Court of Whatcom County pursuant to RCW 7.04 et seq. for an order appointing an arbitrator. Such application may be made at any time after the ten (10) day period has expired. Upon application to the court for an arbitrator, the Court shall select an arbitrator, who shall render his/her decision no later than sixty (60) days after his/her appointment. If the arbitrator requests a hearing prior to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator's appointment. The arbitrator's decision shall be binding on both Parties, subject only to the right of appeal as provided in RCW 7.04; PROVIDED HOWEVER that in arriving at such decision neither the Parties nor the arbitrator shall have the authority to alter this Agreement in whole or in part. The arbitrator cannot order the Fire District to take action contrary to law. This paragraph shall be referred to herein as the "Binding Arbitration Clause."

15.3. Applicability of Law. The foregoing Binding Arbitration Clause, RCW Chapter 7.04, and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration. In the event of any inconsistencies between the Binding Arbitration Clause, RCW Chapter 7.04, and MAR 5.2 through

5.4, the terms of the Binding Arbitration Clause shall take precedence over RCW Chapter 7.04 and MAR 5.2 through 5.4; and RCW Chapter 7.04 shall take precedence over MAR 5.2 through 5.4.

15.4. Fees and Costs. Each Party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. The prevailing Party, as determined by the arbitrator, shall be entitled to an award of its reasonable attorneys' fees and costs, including expert witness fees. The total cost of the stenographic record, if requested, shall be paid by the party requesting it. If the other Party also requests a copy, each Party shall pay one-half of the stenographic cost.


16. General Provisions:


- 16.1.** Waiver by the Employer of any breach of any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach nor a waiver of this provision.
- 16.2.** No amendment or variation of the terms and conditions of this Employment Agreement are valid unless the same is in writing, references this Agreement, and is signed by both Parties.
- 16.3.** Except where inconsistent with the terms hereof, Employee shall follow all District policies, procedures, rules, regulations, general orders and general directives.
- 16.4.** If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- 16.5.** The provisions of this Agreement are for the benefits of the Parties solely, and not for the benefit of any person, persons or legal entities. Neither this Agreement nor any rights hereunder may be assigned by either Party.
- 16.6.** At all times, the District has been represented by its attorney. Employee acknowledges that Employee, at all times, had the right to and the availability of independent counsel of Employee's choosing in regard to this Agreement, whether or not Employee chose to exercise that right.
- 16.7.** The Parties agree that venue for any dispute over the terms of this Agreement shall be in Whatcom County, Washington.
- 16.8.** Except as otherwise provided for herein, this Agreement shall constitute the entire agreement between the Parties, and shall supersede, modify and/or rescind all prior written and oral understandings and agreements between the Parties hereto as to the subject of this Agreement.

Dated: 4/15, 2015.

WHATCOM COUNTY FIRE PROTECTION
DISTRICT NO. 5

EMPLOYEE

By: 
Chair William Meursing


Christopher Carleton

By: 
Commissioner Jeff Wilmot

By: 
Commissioner Stan Riffle

By: 
Secretary Linda Hughes