

# TUBAC FIRE DISTRICT EMPLOYMENT AGREEMENT

## FIRE CHIEF

### Preamble

This Employment Agreement("Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the Tubac Fire District (hereinafter "TFD" or "Fire District," as the context requires) and Benjamin Guerrero (hereinafter "Chief" or "Chief Guerrero," as the context requires). The parties hereby agree that Benjamin Guerrero shall be employed as fire chief of TFD under the following terms and conditions:

### Recitals

WHEREAS, the Fire District is a duly constituted Fire District in Santa Cruz County, Arizona, and a political subdivision of the state of Arizona; and

WHEREAS, the Fire District desires Chief Guerrero to assume the role of Fire Chief on an ongoing basis; and

WHEREAS, Chief Guerrero, by virtue of his training, education and experience is fully qualified to assume the position, and to serve as the Fire District's Fire Chief; and

WHEREAS, the Fire District and Chief Guerrero wish to enter into an agreement for that purpose;

NOW THEREFORE, in consideration of the terms, conditions, and promises set forth herein, the parties agree as follows:

### Covenants

#### **1. Term.**

1.1 The Fire District hereby employs Chief Guerrero as the Fire District's Fire Chief for an initial fifteen-month term ("Term"), effective as of April 1, 2023 and terminating on the 30<sup>th</sup> day of June 2024, unless terminated as otherwise provided for in this Agreement.

The parties agree that unless otherwise terminated, this Agreement shall, upon the expiration of the fifteen month term set forth above, automatically be extended for consecutive two (2) year terms, effective on July 1st of each year, and ending on June 30th of each second year following, unless a party gives the other written notice on or before sixty (60) days before the end of the then current term that the party does not agree to the extension of this Agreement.

If for any reason, existence of the initial fifteen month term or any extension term of this Agreement is found to be unenforceable by final, non-appealable order of a court or arbitrator of competent jurisdiction, then, in that event this Agreement shall not be considered to have been breached, and Chief Guerrero shall serve as Chief on an "at will" basis until termination of his employment, but otherwise consistent with the benefits and terms of this Agreement.

1.2. This Agreement may be terminated, with or without cause, as more specifically set forth in Sections 8 and 9 below.

1.3. In the event the Chief voluntarily resigns his position as Fire Chief before expiration of the term of this Agreement, the Chief shall give the Fire District sixty (60) days advance notice unless the parties agree otherwise.

**2. Duties of the Chief.** The duties of the Chief shall include the following:

2.1. The Chief shall perform the duties as set forth in the Fire Chief's job description (attached as Exhibit A), consistent with TFD's policies, administrative procedures, administrative directives, Standard Operating Procedures (SOPs), department regulations, and directions from the Fire District Governing Board, each as may be amended from time to time.

2.2. Except as otherwise directed by the TFD Governing Board, the Chief will fulfill his duties at the normal place of business of TFD or at such other places as directed by the TFD Board and shall devote full time and attention to the business affairs of TFD. Chief agrees to remain exclusively employed by the Tubac Fire District during the term of this agreement. The term "employed," however, shall not be construed to restrict occasional teaching, writing, speaking, consulting or other services performed on Chief's time off, even if outside compensation is provided for such services. Said activities are expressly allowed, provided that in no case is any activity allowed which would present a conflict of interest with the TFD or interfere with the Chief's duties under this agreement. Furthermore, said activities shall not include the use of any TFD resources.

**3. Duties of the TFD Governing Board.** In addition to its other obligations, the TFD Governing Board shall be obligated as follows:

3.1. Neither the Fire District's Governing Board nor any of its members shall direct or request the appointment of any person to, or removal from, office by the Chief or any of his subordinates, or in any manner take part in the appointment or removal of officers and employees in the service of the Fire District, except where expressly provided by Fire District policy or state law.

3.2. The Fire District's Governing Board and its members shall deal with employees and assets of the Fire District solely through the Chief.

3.3. Neither the Fire District's Governing Board nor any of its individual members shall give orders or direction to any Fire District employee other than the Chief, either publicly or privately, orally or in writing.

**4. Salary and Benefits.** In consideration for Chief Guerrero serving as Fire Chief of TFD and for all services rendered under this Agreement, TFD shall provide the following:

4.1. Salary. The Chief shall receive an annual salary of \$110,000 (paid on a pro-rata basis for any partial year of employment) and paid in compliance with TFD's personnel and financial policies in effect from time to time, and shall continue to be so compensated during the Chief's employment until modified by the TFD Governing Board, from time to time. In setting or modifying the Chief's compensation, the TFD Governing Board shall consider the Fire District's approved pay scale and other compensation made available to the other employees of the Fire District and the Chief's performance, as appropriate.

Consideration shall be given, on an annual basis, prior to adoption of a tentative budget, to any appropriate increase to the Chief's compensation, following a successful performance evaluation.

4.2. Vehicle. The Fire District shall issue the Chief a command vehicle for Fire District business and representing the Fire District at civic and professional events. The Fire District shall be responsible for all costs associated with the operation and maintenance of the vehicle. In the event the Chief uses his personal vehicle for Fire District related travel, the Fire District will reimburse the Chief at the then applicable IRS rate.

4.3. Cell Phone. The Fire District shall issue the Chief a cell phone for Fire District business. The Fire District shall be responsible for all costs associated with the operation and usage of the cell phone.

The Chief shall be responsible for compliance with records retention and preservation on this district device. The Chief shall not use unsecured wi-fi or other unsecured data access and shall be responsible for maintaining the confidentiality of documents and records where applicable, including but not limited to utilizing encryption.

4.4. Uniform Allowance. The Chief will be provided an annual uniform allowance of \$700 for the purpose of purchasing and maintaining appropriate Fire District uniforms and professional TFD logo clothing.

4.5 Retirement. If eligible, the Chief shall be entitled to participate in the Public Safety Personnel Retirement System of the State of Arizona (PSPRS), and any future retirement plan or deferred compensation plan sponsored by the Fire District. In that event, the Chief and employer contributions, if any, will be governed by the plan documents, and state law, as amended from time to time.

4.6. Health Insurance. The Chief and his eligible dependents shall be eligible to participate in the same health, dental, and life plans as all other employees of TFD are afforded, as modified at the discretion of the Fire District, from time to time.

4.7. Paid Time Off (Sick and Vacation). Paid time off (PTO) will be accrued at the rate and in accordance with the provisions in the District Personnel Policy commensurate with the Chief's years of service with the District. The Chief is entitled to whatever PTO has been accrued prior to the effective date of this contract in accordance with the provisions of the District Personnel Policy. Upon termination of the Chief's employment for any reason, PTO accrued shall be paid to the Chief at the rates within and in accordance with the District Personnel Policy in effect.

4.8. Holidays. The Chief shall also be entitled to time off for holidays, as set forth in the District Personnel Policy.

**5. Performance Evaluation.** The Fire District may review the Chief's performance at any time during the term of this Agreement, up to and including an annual performance review. Said review shall be in accordance with and taking into consideration the Chief's job description, the requirements of this Agreement and any other specific criteria reasonably established by the TFD Governing Board. The performance review shall be in a format and process developed and mutually agreed upon by the TFD Governing Board and the Chief. Said performance criteria may be amended from one year to the next as agreed upon by both parties. The performance review process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results.

**6. Professional Development and Other Expenses.**

6.1. Subject to regular TFD Governing Board review and approval, the Fire District agrees to pay the professional dues, subscriptions, travel, and subsistence expenses of the Chief for professional participation and travel, meetings and occasions adequate to continue his professional development. Said participation on Fire District time to include, but not to be limited to the International Association of Fire Chiefs, Arizona Fire District Association, Arizona Fire Chiefs Association, and such other national, regional, state and local governmental groups and committees thereof which the Chief serves as a member, or which said participation is beneficial to the Fire District, as well as associated short courses, institutes, and seminars. The Fire District agrees to budget for and pay for travel and subsistence expenses of the Chief for short courses, institutes, and seminars that are necessary for the Chief's professional development and for the good of the Fire District, subject to review and approval by the Board.

6.2. The Fire District recognizes that certain job-related expenses will be incurred by the Chief and agrees to reimburse or pay such expenses. The Fire District recognizes the value of having Chief participate and be directly involved in local civic clubs or organizations. Accordingly, the Fire District shall pay for the reasonable membership

fees and/or dues to enable the Chief to become an active member in local civic clubs or organizations and the Chief shall be permitted to participate in such activities on Fire District time. Said reimbursements, fees, dues and/or participation shall be subject to regular Board review and approval.

6.3. Subject to regular TFD Governing Board review and approval, the Fire District agrees to provide the Chief with certain technological and communication devices as are appropriate for his to carry out his duties and maintain communication, such as, but not limited to, a laptop computer.

**7. Indemnification.** The Fire District shall defend, save harmless, and indemnify Chief Guerrero against any judgment, charge, liability, proceeding, claim, demand or other legal action, whether civil, criminal, administrative or investigative, brought or threatened against the Chief arising out of or related to any act or omission of the Chief in the performance of his duties on behalf of the Fire District. The Fire District shall advance funds to pay defense expenses where indemnification is so permitted or not otherwise excluded as set forth in the next sentence. This indemnification shall not apply to a final non-appealable judgment that the Chief engaged in intentional, wrongful acts outside the scope of the Chief's employment or the Chief's intentional violations of criminal or regulatory law.

**8. Termination for Cause.** TFD may terminate the Chief's employment for any of the reasons set forth in Section 8.1 - Section 8.6 below. In the event that the Chief is terminated for cause, the Fire District shall pay the Chief all compensation and accrued and unused PTO as described at Section 4.7 for services provided by the Chief through the effective the date of termination. The Chief shall return all Fire District- issued property upon termination.

8.1. Material violation of TFD's rules, regulations, mandates, resolutions, directives of the Governing Board, or policies which may be applicable to the Chief, as amended from time to time, or a material violation of any term of this Agreement.

8.2. Gross incompetency or inattention to, or dereliction of, duty.

8.3. Dishonesty, insubordination, willful misconduct, or gross negligence in the performance of the Fire Chief's duties.

8.4. Theft, misappropriation or misuse of TFD's property or funds.

8.5. Use of alcohol or legal intoxicating drugs while on duty, or the use of illegal drugs, or violation of the TFD's drug or alcohol policy.

8.6. Conviction of a felony or a conviction of a misdemeanor involving dishonesty, fraud or theft.

If the basis of termination is pursuant to Sections 8.1, 8.2, or 8.3 above, the Chief may be terminated for cause only if he has been given at least thirty (30) days written notice of the alleged breach and the Chief fails to remedy same during such thirty (30)

day period; the determination of whether or not the remedy is acceptable shall be at the sole discretion of the TFD Governing Board. Nothing herein is intended to or shall be interpreted as limiting TFD's obligation to comply with any applicable laws and regulations, including without limitation applicable provisions of the Americans with Disabilities Act.

**9. Termination Without Cause.** In the event the Chief's tenure as Fire Chief is terminated by the TFD without cause at any time during the initial fifteen month term or any renewal term, then the Chief shall be entitled to payment of severance equal to four (4) month's salary or until the ending date of the Agreement, whichever is lesser; such payment shall be based on the Chief's then established salary, subject to withholding, and shall be made in a lump sum payment within seven business days following the effective date of termination. Additionally, any unused, accrued PTO shall be paid as set forth in Section 4.7 above. The Chief shall return all Fire District-issued property upon termination.

In the event of death or disability preventing the Chief from performing his duties under this Agreement, the Agreement shall terminate pursuant to this provision.

**10. Notices.** All notices, including notice of termination, with or without cause, shall be given, in writing, and delivered personally, or by first class mail, to the listed addresses, as follows:

Tubac Fire District Attention:  
Board Chair P.O. Box 2881  
Tubac, AZ 85646  
info.boardchair@tubacfire.org

Benjamin Guerrero  
800 East Baffert Drive, H206  
Nogales, AZ 85621  
Bguerrero2@hotmail.com

Mailed notices shall be deemed delivered three (3) days after deposit in the US mail postage prepaid. If the notice is not personally delivered, an additional courtesy copy of the notice shall be emailed, and the emailed copy shall not be deemed official notice under this paragraph.

**11. No Third-Party Beneficiaries.** This Agreement shall inure solely to the benefit of the Chief and the Fire District and shall create no rights in any other person or entity.

**12. Further Assurances.** The Fire District and the Chief shall make, execute and deliver any and all such resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intent of this Agreement or to facilitate the performance of this Agreement.

**13. Modifications.** Any modifications to this Agreement shall be effective only if in writing and signed by both the parties hereto.

**14. Effect of Waiver.** The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed

a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver of relinquishment of that right or power for all or any other times.

**15. Partial Invalidity.** If any provision of this Agreement is found to be unenforceable under existing regulations or statutes and/or is held by a court of competent jurisdiction to be invalid, void, or unenforceable, that part will be amended to achieve, as nearly as possible, the same effect as the original. The remaining provisions shall nonetheless continue in full force without being impaired or invalidated in any way unless such invalidity or unenforceability would materially alter the consideration due a party, in which event, the affected party may elect to rescind or terminate this Agreement.

**16. Legal Limitations.** To the extent that applicable Arizona state law limits the effect of any provision or requires any termination of this Agreement, such law shall control. This Agreement is also subject to cancellation by the Fire District for conflicts of interest, pursuant to A.R.S. §38-511.

**17. Entire Agreement.** This Agreement constitutes the entire agreement between and reflects the reasonable expectations of the parties pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations and understandings of the parties are merged herein and/or expressly declared void and are superseded by this Agreement. No change, addition or modification shall be made to this Agreement except by a written agreement executed by the party intended to be bound thereby.

**18. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

**19. Dispute Resolution and Waiver of Jury Trial.** The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration pursuant to the Uniform Arbitration rules as adopted in the State of Arizona, after exhausting applicable administrative review, if any. In any-event, the parties hereto waive any rights to a trial by jury. The parties hereto further expressly covenant and agree that each party initially shall be responsible for their own attorneys' fees incurred in conjunction with any dispute or arbitration arising from this Agreement; provided, however, that the prevailing party may be reimbursed all such costs and fees in the sole judgment of the arbitrator.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

APPROVED:

TUBAC FIRE DISTRICT:

FIRE CHIEF:

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Mary Dahl, Chairman

Benjamin Guerrero