San Simon Fire District

Post Office Box 244
2249 W. Firehouse Lane
San Simon, AZ 85632
520-845-2439

Proudly Serving the Community Since 1966

EMPLOYMENT AGREEMENT
FIRE CHIEF

This Employment Agreement ("Agreement") is entered into by and between the San Simon Fire District of Cochise County ("District") and John Novak ("Employee") (collectively referred to as "Parties).

RECITALS

WHEREAS, the District, through its Board of Directors ("Board"), desires to employ Employee as the Fire Chief of the District; and

WHEREAS, Employee is currently employed as Fire Chief of the District and desires to continue to serve as Fire Chief of the District; and

WHEREAS, it is the desire of the Parties to provide the terms and conditions by which the District shall receive and retain the services of Employee as Fire Chief; and

NOW, THEREFORE, in consideration of the respective mutual covenants contained in this Agreement and the faithful performance of the terms and conditions set forth below, the Parties agree as follows:

SECTION 1: APPOINTMENT AND AT-WILL EMPLOYMENT STATUS

_____ 1.1 The Board hereby appoints, and the District employs, Employee as Fire Chief for the District. Employee accepts the appointment effective as of the date set forth below.

_____ 1.2 Employee acknowledges and agrees that Employee's appointment to the position of Fire Chief is at-will and that Employee serves at the pleasure of the Board. The Parties agree that Employee's employment with the District may be suspended or terminated by the Board, at any time, before, during, or after the term of this Agreement, and; with or without cause, as provided in this Agreement. The Parties further agree that Employee may end his employment with the District for any reason and at any time subject to the notice requirements set forth in Section 9.1 below.

_____ 1.3 The Parties agree that Employee does not have a "property interest" in continued employment and Employee's employment with the District shall remain at-will regardless of the

length of employment, past or current performances, raises, or representations of continued employment by any agent or employee of the District. The at-will nature of Employee's employment with the District may only be modified by a written agreement that is approved and signed by the Board.

SECTION 2: TERM

_____ 2.1 The District agrees to employ Employee and Employee accepts employment with District under the terms and conditions set forth in this Agreement for the period of August 18, 2022 through December 31, 2025 or until Employee's employment is terminated by either Party in accordance with the provisions set forth in Section 9 of this Agreement.

_____ 2.2 In the event of a merger or consolidation involving the District and another public agency during the term of this Agreement, the Parties agree that all terms of this Agreement, including but not limited to a reduction in rank from the position of Fire Chief, shall be subject to renegotiation.

SECTION 3: DUTIES

_____ 3.1 Employee shall faithfully, diligently and to the best of Employee's abilities, perform all of the duties of the Fire Chief as established by and in conformance with Arizona law, District rules and regulations and the attached job description. Employee will perform these duties in accordance with the policy direction of the Board. Employee will also perform any additional duties which are assigned by the Board and which are legally permissible and proper duties. At all times during the term of this Agreement, Employee shall be directly responsible to and report to the Board.

_____ 3.2 Employee agrees that Employee has a duty of loyalty to the District and 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. Employee shall not engage, without the express prior written consent of the Board, in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial or professional nature to any other person or organization, whether for compensation or otherwise, that may cause a conflict of interest with the District or that might otherwise interfere with the business or operations of the District or the satisfactory performance of Employee's duties.

_____ 3.3 Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under Arizona law. Employee shall comply fully with the reporting and disclosure obligations under any regulations, resolution, or policy regarding an actual or potential conflict of interest.

_____ 3.4 In the performance of assigned duties, Employee is expected to conduct himself in a manner that is appropriate for the position of the Fire Chief and which complies with all applicable District policies and procedures, including the District's Equal Employment Opportunity and Substance Abuse policies.

SECTION 4: HOURS OF WORK

_____ 4.1 The position of Fire Chief is exempt from overtime under the Fair Labor Standards Act.

_____ 4.2 Employee's regular, consistent attendance at District offices during the business hours of the District and meetings of the Board is expected as part of Employee's fulfillment of the duties of the position of Fire Chief.

_____ 4.3 Employee's normal work schedule shall be 9 a.m. to 5 p.m. Monday through Friday, except that Employee's working hours may be amended to provide for alternative Friday's off (a 9/80 styles schedule) so long as such a schedule does not impact Employee's ability to complete all required duties in a satisfactory manner. Employee is expected to engage in those hours of work that are necessary to fulfill the obligations of the Fire Chief position.

_____ 4.4 It is recognized that Employee must sometimes devote time to the business of the District outside of the District's customary business hours. Employee's schedule of work each day and week may therefore vary in accordance with the work required to be performed and in accordance with any specific direction provided by the Board. On those occasions when Employee performs more than 40 hours of work in a week, Employee may be permitted to flex his schedule in a future workweek.

SCHEDULE 5: COMPENSATION

_____ 5.1 The District agrees to compensate employee for services rendered under this Agreement at an annual salary of the amount agreed upon at Employee's performance evaluation. Such salary shall be paid in installments on the District's normal paydays and in accordance with the District's normal pay practices and shall be subject to customary withholding for taxes and other required or authorized deductions. Employee's salary rate shall be effective August 18, 2022.

_____ 5.2 Beginning January 1, 2023 and then once a year therefore on January 1 of each year, during the term of this Agreement, the annual salary for the position of Fire Chief will be adjusted for salary raises or Cost of Living Adjustment ("COLA") allowance (federal/state rate which is 1.3%) depending upon the performance evaluation done each year by the Board during the first week of December.

_____ 5.3 The Board and Employee agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 8 of this Agreement. Such annual salary review shall include consideration of those benefits to Employee under this Agreement. The Board may, but is not required to consider or approve merit increases or other compensation enhancements in conjunction with the annual salary review. Other than the COLA adjustment provided in Section 5.2 of this Agreement, an affirmative vote of a majority of the Board shall be required to effectuate any increase in salary or compensation enhancement pursuant to this Agreement. Unless otherwise provided by the Board, any approved increase or enhancement will be effective the first day of the payroll period in the new calendar year following the Board's final approval of the increase or enhancement.

_____ 5.4 Employee shall not receive overtime payment or any additional compensation for excess hours worked, except in the case where hours worked in excess of forty (40) hours per week

during times of declared disaster, either State or Federal and only if and when the District is reimbursed for such time. In such instances, Employee will be compensated for the additional hours worked in connection with the declared disaster at Employee's hourly rate.

SECTION 6: EDUCATIONAL INCENTIVE PAY AND PROFESSIONAL DEVELOPMENT

_____ 6.1 The District recognizes the need for, and encourages Employee to participate in continuing education classes relevant to the Fire Service and to associate himself with industry-related professional organizations. To that end, the District will:

1. Provide Employee with reasonable leave time for professional development and education;
2. Budget and pay professional dues and subscriptions on behalf of Employee which are reasonably necessary for Employee's participation in national, regional, state or location professional organizations; and
3. Budget and pay the reasonable travel and subsistence expenses of Employee for official travel, meetings and occasions, including but not limited to annual Association meetings. Employee shall be responsible for complying with the District's travel and expense reimbursement policies, including providing copies of all receipts, and will not receive more than the maximum reimbursements provided under those policies.
4. Travel and expense reimbursements will need to be approved by the Board per incident and during regular Board meetings.

SECTION 7: HEALTH AND WELFARE BENEFITS

_____ 7.1 The District's only health and welfare benefit is workers' compensation. This may change if the District's budget allows. If any changes occur, the Parties will amend this Agreement as necessary.

SECTION 8: PERFORMANCE EVALUATION

_____ 8.1 The Parties acknowledge that periodic performance evaluations are an important means by which the Board and Employee may ensure effective communications regarding expectations and performance. To this end, the Board will review and discuss Employee's performance and set performance goals for Employee on an annual basis. Employee acknowledges and accepts that the Board has the right to schedule an evaluation session more frequently than once a year.

_____ 8.2 Employee will request and schedule the annual performance evaluation as appropriate under the Board's agenda procedures, or as otherwise directed by the Board which at this time is the first week in December each year.

SECTION 9: TERMINATION OF EMPLOYMENT

Notwithstanding anything in this Agreement to the contrary, the Parties may terminate this Agreement as follows:

_____ 9.1 Termination by Employee. Employee may terminate employment with the District at any time and for any reason upon at least sixty (60) calendar days advance written notice to the Board. If Employee terminates employment with the District, the District shall not pay, and Employee is not entitled to receive, any severance payment as set forth in Section 9.3 below.

_____ 9.2 Termination by District. Employee is an at-will employee serving at the pleasure of the Board. The Board may terminate Employee's employment at any time, either with or without

cause, by a majority vote of the Board's members.

_____ 9.3 Severance. Except as otherwise provided in this Agreement, if the Board terminates Employee's employment during the term of this Agreement, then Employee is eligible to receive a severance payment from the District in an amount equal to two (2) months of pay in a lump sum cash payment. Employee's eligibility for any severance payment is expressly conditioned upon Employee's execution of: (1) a waiver and release of any and all of claims against the District and its Board Members, employees, and agents, and (2) a covenant not to sue the District or its Board members, employees, and agents. If Employee elects not to sign the waiver or the covenant not to sue, Employee will not be eligible to receive any severance payment.

_____ 9.4 Ineligibility for Severance Due to Termination for Cause. If the Board terminates Employee's employment for "cause", Employee shall not be eligible to receive any severance payment set forth in Section 9.3 above. Any determination of cause requires a vote of majority of Board members sitting in full session and voting for termination. "Cause" is defined as any of the following:

1. A conviction, plea bargain, judgement or adverse determination against Employee by any court, the Attorney General's Office, a grand jury, or any other state of federal agency and which involves any felony, intentional tort, crime of moral turpitude or violation of any statute or law constituting misconduct in office, misuse of public funds or conflict of interest.
2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
3. Employee's willful abandonment of duties;
4. A pattern of repeated, willful and intentional failure by Employee to carry out a significant and legally-constituted policy decision of the Board, or a persistent and willful violation by Employee of properly established rules and procedures;
5. Any act of dishonesty or fraud by Employee; or
6. Any other action or inaction by Employee that materially and substantially harms the District's interest.

_____ 9.5 Death or Disability. This Agreement shall terminate automatically without triggering any severance payment obligations, upon death of Employee or upon separation of Employee from employment due to a disability **which prevents** Employee from performing the essential functions of the Fire Chief position, even with or without reasonable accommodations. *For clarity, this Agreement shall not terminate automatically if Employee can perform the essential functions of the Fire Chief position with a disability.* As used here, "disability" shall have the same meaning applicable under federal/state law. Neither Employee, nor Employee's heirs, administrators, or assigns shall have any rights under this Agreement to salary for periods after such death or disability except, as otherwise provided by law.

_____ 9.6 Compensation Upon Termination. Upon any separation from employment, Employee will be compensated for all accrued but unused vacation leave and any other leave time that is eligible for payment upon separation under the District's rules and procedures.

SECTION 10: GOVERNMENT CODE SECTION

_____ 10.1 In the event the District determines to place Employee on paid leave pending an

investigation, Employee shall fully reimburse such pay if he is subsequently convicted of, or pleads guilty to, a crime involving an abuse of his office or position.

_____ 10.2 In the event the District determines to fund all or part of a legal criminal defense for Employee, Employee shall fully reimburse such funds if Employee is subsequently convicted of, or pleads guilty to, a crime involving an abuse of Employee's office or position.

_____ 10.3 In the event Employee receives a cash payment under the provisions of Section 9.3 above, Employee shall fully reimburse those funds if he is subsequently convicted of, or pleads guilty to, a crime involving an abuse of Employee's office or position.

SECTION 11: OTHER BENEFITS

_____ 11.1 Sick Leave. Employee shall be entitled to accrue sick leave at the rate of 8 hours for each full month of continuous service, and up to 96 hours (12 days) of sick leave in a year. Sick leave may be used for any reason allowed by law. Unused sick leave hours carryover from year to year, up to a maximum of 2,080 hours. After 3 days sick taken consecutively, Employee must provide a doctor's note to the Board.

_____ 11.2 Bereavement Leave. Employee shall be entitled to 7 days paid leave for bereavement leave for immediate family. Immediate family includes: A spouse or former spouse, de facto partner or former de facto partner, child, parent, grandparent, grandchild or sibling of an employee, or a child, parent, grandparent, grandchild or sibling of an employee's spouse or de facto partner, including all step-relations.

_____ 11.3 Vacation Leave. Employee is eligible to accrue vacation hours as Employee works. Employee will accrue vacation at the rate of 2 weeks (80 hours) of vacation leave in a year, up to a maximum balance of 30 days (240 hours). Once Employee reaches the maximum accrual, Employee will cease accruing additional vacation time until Employee's leave balance is less than the maximum accrual. Employee is not eligible to cash-out accrued vacation during employment. Employee will be paid for unused vacation hours upon termination of this Agreement.

_____ 11.4 Holidays. Employee will be permitted to take off those holidays recognized by the District and on which the District's Business Office is closed. The District follows federal holidays consisting of New Year's Day, Civil Rights Day (MLK Day), Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

_____ 11.5 Executive Leave Days. Employee is entitled to Executive Leave days which are those explained in Section 4.3 above because the Fire Chief is exempt from overtime.

_____ 11.6 Clothing Allowance. Employee shall wear a uniform or business casual attire or as appropriate during the work week. The District shall provide required uniform elements and equipment, as well as appropriate replacements and maintenance. Employee shall receive an annual clothing allowance of $500.00. This allowance will be paid in two installments of $250 each, with the payments being made in January and July. A definition of what constitutes uniforms/clothing will be given to the employee in the policies written and therefore, no other purchases can be made for clothing allowance without prior approval Receipts for any purchases made for with the clothing allowance must be provided to the District.

_____ 11.7 Expense Reimbursement. The District recognizes that Employee may incur certain

expense of a business-related nature. Unless stated otherwise in this Agreement, the District agrees to reimburse or to pay such reasonable business-related expenses which are incurred and submitted according to the District's normal expense reimbursement procedures or such other procedure as may be designated by the Board. To be eligible for reimbursement, all expenses must be supported by documentation meeting the District's normal requirements, submitted within time limits (90 days) established by the Board and approved by a Quorum of the Board. All reimbursements are approved at monthly Board meetings

_____ 11.8 District Vehicle. The District will provide Employee with a District vehicle for Employee's use in conducting District business. The 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, including commuting to and from work. If the District vehicle is not a feasible option and the personal vehicle must be used, then reasonable mileage will be reimbursed upon submission of appropriate documents from Employee to the Board.

_____ 11.9 Cellular Telephone. The District shall provide Employee use of a District-issued cell phone for business use.

_____ 11.10 Family Medical Leave Act. The District provides Employee with family medical leave act as provided by the law. (Handout provided to Employee)

SECTION 12: MISCELLANEOUS

_____ 12.1 Indemnification. The District shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of Employee's duties. In its sole discretion, the District may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom.

_____ 12.2 Bond. The District agrees to pay the cost of any fidelity or other bond required by law for the Fire Chief position.

_____ 12.3 Notices. Any notices to be given hereunder by either party to the other shall be in writing and be transmitted by personal delivery or by mail, postage prepaid, address as follows:

To the District:
Board Chair
San Simon Fire District
PO Box 244
San Simon, AZ 85632

To Employee:
Lucas Reynolds
Address on File with the District

Notices delivered personally shall be deemed communicated as of the date of actual receipt and should be signed by Employee. Notices delivered by mail shall be deemed communicated as of the date of the postmark.

_____ 12.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and contains all agreements between them with respect to the subject matter thereof. It also supersedes any and all other agreement or contracts, either oral or written, between the Parties with respect to the subject matter hereof.

_____ 12.5 Amendments. This Agreement may be amended at any time by mutual agreement of the District and the Employee. Any amendments must be in writing and signed by both Parties.

_____ 12.6 Binding Effect. This Agreement shall be binding on the District and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

_____ 12.7 Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement or portion thereof, shall be deemed severable, and shall remain in full force and effect. The Parties shall discuss what, if any, amendments to make to this agreement if any portion of it is held unconstitutional, invalid or unenforceable by a court of law.

_____ 12.8 Governing Law. This Agreement shall be governed and enforced according to the law of the State of Arizona.

_____ 12.9 Failure to Act. No failure to exercise and no delay in exercising any right, remedy or power set forth in this Agreement shall operate as a waiver to the exercise of that right, remedy or power in the future.

_____ 12.10 Ambiguities and Uncertainties. This Agreement and any ambiguities or uncertainties herein, or the documents referenced herein, shall be equally and fairly interpreted and construed without reference to the identity of the party preparing this document or the documented referred to herein, on the express understanding and agreement that the parties participated equally in the negotiation and preparation of this Agreement and the documents referred to herein, or have had equal opportunity to do so.

_____ 12.11 Employee's Independent Review. Employee agrees and acknowledges Employee has had an opportunity to consult legal counsel in regards to this Agreement, that Employee has read and understands this Agreement, that Employee is fully aware of its legal effect, and the Employee has entered into it freely and voluntarily and based on Employee's own judgment and not on any representation or promises other than those contained in this Agreement. Each party will bear

its/his own costs including attorney's fees, in connection with the negotiation and execution of this Agreement.

_____ 12.12 Execution. The District and Employee may execute separate copies of this Agreement, but those separate copies will constitute one agreement and each signed copy will be fully effective as if it were a single original document. A facsimile or Adobe portable document format ("pdf") copy of this Agreement shall be as effective as an original

_____ 12.13 Effective Date. This agreement shall be effective commencing August 18, 2022.

IN WITNESS WHEREOF, and by signing below, the Parties agree to the terms and conditions of this Agreement.

San Simon Fire District

Board Chair

Date

Board Clerk

Date

Employee

9-1-22

Date