

RESOLUTION NO. 2018-1

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NOVATO FIRE PROTECTION DISTRICT RATIFYING THE EMPLOYMENT AGREEMENT BETWEEN THE NOVATO FIRE PROTECTION DISTRICT AND FIRE CHIEF WILLIAM TYLER**

WHEREAS, Fire Chief William Tyler is a non-represented employee of the Novato Fire Protection District; and

WHEREAS, Fire Chief William Tyler provides a valuable service and leadership to the Novato Fire Protection District; and

WHEREAS, the District, via its representative, has negotiated with Fire Chief William Tyler regarding adjustments to the salary and benefits of Fire Chief William Tyler; and

WHEREAS, the Board of Directors finds that salary and benefit adjustments for Fire Chief William Tyler, as described in the Employment Agreement attached hereto as **Exhibit A**, are necessary to maintain a competitive salary and benefit plan and effectively retain District employees;

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

1. The President of the Board of the Directors is authorized to execute the Employment Agreement attached hereto as **Exhibit A** and bind the District to the terms thereof.

PASSED AND ADOPTED by the Board of Directors of the Novato Fire Protection District, County of Marin, State of California, this 25th day of January, 2018, by the following vote:

AYES:

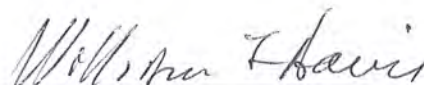
NOES:

ABSTAIN:

ABSENT:

Attest:



  
President, Board of Directors

## EMPLOYMENT AGREEMENT

This Employment Agreement is made and entered into as of 1-25-, 2018 (the "Effective Date") by and between the NOVATO FIRE PROTECTION DISTRICT ("District") and WILLIAM TYLER ("Fire Chief"). The District and Fire Chief are hereinafter collectively referred to as the "Parties," and individually referred to as a "Party."

### RECITALS

A. The District desires assurance of the association and services of Fire Chief in order to retain Fire Chief's experience, skills, abilities, background and knowledge, and is willing to engage Fire Chief's services on the terms and conditions set forth in this Agreement.

B. Fire Chief desires to be in the employ of the District, and is willing to accept such employment on the terms and conditions set forth in this Agreement.

### AGREEMENT

In consideration of the foregoing and the mutual promises and covenants hereof, and for other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

#### 1. Employment.

1.1 Full Understanding and Agreement. This Agreement will serve to memorialize the full understanding of the Parties regarding Fire Chief's terms and conditions of employment with the District. No modification or amendment of any of the provisions of this Agreement shall be effective unless approved in writing and signed by both Parties.

1.2 Term. Fire Chief's employment with the District shall not be for any particular term. Fire Chief's employment with the District is subject to the provisions of California Government Code Section 3254(c). In this regard, it is understood that Fire Chief's employment with the District may be terminated by the District for reasons, and in the procedural manner, provided by this Agreement and State law.

If, however, the District terminates Fire Chief's employment for any reason other than that specified in section 5.3 below, the District shall pay to Fire Chief Termination Benefits (as set forth in section 5.2 below).

1.3 Eligibility for Employment. For purposes of federal immigration law, Fire Chief shall be required to provide documentary evidence of his identity and eligibility for employment in the United States. Such documentation must be provided to the District within three (3) business days after the Effective Date.

1.3.1 Valid Driver's License. Fire Chief shall at all times maintain a valid Class-C California Driver's License. If at any time Fire Chief's California Driver's License has been suspended or revoked, for any reason, Fire Chief must notify the Board in writing within five (5) business days of the suspension or revocation, or as soon as Fire Chief is aware of the suspension or revocation, whichever is sooner.

1.3.2 Executive Fire Officer Program. Fire Chief shall enroll in the National Fire Academy Executive Fire Officer Program prior to February 1, 2020. The District shall pay for Fire Chief's travel expenses, including meal costs, for the Program. Fire Chief's time spent at the Program shall be paid as part of Fire Chief's Base Salary. It is understood that, during the Program, Fire Chief shall be reasonably available by phone and email.

1.4 Full-Time Best Efforts. The position of fire chief is a full-time, exempt position. This means that Fire Chief is expected to devote his full professional time and attention to the performance of his obligations under this Agreement, and shall at all times faithfully, industriously and to the best of his ability, experience and talent, perform all of his duties and responsibilities as fire chief of the District. However, the District and Fire Chief understand and acknowledge that, as an exempt employee, Fire Chief's working hours may vary, and that Fire Chief has discretion with respect to those hours so long as the position's duties are being fulfilled.

## 2. Compensation

2.1 Base Salary. Fire Chief's annual base salary ("Base Salary") shall be \$212,000, less payroll deductions and all required withholdings, payable in regular periodic payments in accordance with the District's current payroll policy. The Base Salary shall be prorated for any partial year of employment on the basis of a 365-day year.

2.2 Changes to Compensation. Fire Chief's Base Salary shall be reviewed annually and is subject to change. Notwithstanding the foregoing, Fire Chief's Base Salary shall not be reduced unless: (1) such reduction is implemented as a response to a decrease in revenues to the District and is consistent with an overall plan to mediate the loss; or (2) the Parties mutually agree to such reduction, which reduction is confirmed in writing as an amendment to this Agreement.

2.3 Overtime Compensation. As a full-time, exempt employee, Fire Chief is not eligible for overtime compensation.

2.4 Education Compensation. Fire Chief is eligible to earn an annual payment of a maximum of 3% of his Base Salary as educational compensation as follows:

- (1) Bachelor's Degree: 1%
- (2) Chief Officer Certification (California State Fire Services Training and Education System): 1%
- (3) Professional Credential as Chief Fire Officer (Center for Public Safety Excellence): 1%

Payment shall be made in the form of CTO hours. Payments made pursuant to this Section shall not be pensionable.

3. **Benefits.**

3.1 **Vehicle.** The District shall provide Fire Chief with a District-owned and maintained vehicle equipped for emergency response for Fire Chief's use while conducting District business. Fire Chief may use the District vehicle for incidental personal use. District shall also reimburse Fire Chief for any use of his personal vehicle when it is used for District business. Reimbursement shall be for mileage only at the current IRS mileage rates.

3.2 **Vacation.** Fire Chief shall receive vacation leave based upon his completed years of service, and in accordance with the District's vacation policy. For purposes of calculating years of service, hire date is considered to be January 1 of the year an employee is hired.

EXAMPLE: an employee hired on April 1, 2000 will have his/her years of service calculated for vacation leave purposes with a hire date of January 1, 2000.

Vacation leave must be used in eight (8) hour or greater increments.

If Fire Chief has a vacation hour balance of less than eight (8) hours, he may use the accrued hours in any increment up to the maximum of his accrued, unused vacation hours.

3.2.1 **Vacation Cap.** Vacation may not be accrued in excess of two times Fire Chief's annual accrual rate. Fire Chief will cease to accrue vacation once he has accrued twice his annual vacation accrual until such time as his accrued vacation is reduced below this limit.

3.2.2 **Vacation Cash Out.** The District may pay Fire Chief, at his request, up to 50% of his total accrued, unused vacation. Cash out will only take place during the last pay period of June each year.

3.3 **Compensatory Time Off.** In recognition of work that is regularly performed by Fire Chief after hours and on weekends, such as emergency responses and necessary civic engagement, as of the Effective Date, 100 hours of Compensatory Time (CTO) shall be deposited in Fire Chief's CTO account. Thereafter, 100 hours of CTO shall be deposited in Fire Chief's CTO account annually on January 1 of each year. CTO is non-pensionable. CTO time must be used in eight (8) hour or greater increments. If Fire Chief has a CTO balance of less than eight (8) hours, he may use the accrued hours in any increment up to the maximum of his accrued CTO hours.

3.4 **Sick Leave.** Fire Chief shall accrue sick leave at a rate of 8.5 hours per month. Accrued, unused sick leave may be applied to service time credit upon retirement to a maximum of 2,080 hours.



3.4.1 Sick Leave Incentive. Fire Chief shall receive the equivalent of 8.5 hours of pay for each quarter of the year in which sick leave is not used.

3.4.2 Excess Sick Leave Contribution to Deferred Compensation (457 Plan). Upon request by Fire Chief, the District shall contribute to Fire Chief's deferred compensation account an amount equivalent to the hours in his sick leave bank in excess of 500 hours. Fire Chief must request this transfer of excess sick leave hours by the first pay period in January each year.

If Fire Chief has less than 500 hours, he may not request a transfer; in addition, no transfer of sick leave hours shall cause his sick leave bank to contain less than 500 hours.

The transferred sick leave shall be calculated at 50% of Fire Chief's hourly rate, based on his Base Salary.

3.5 Floating Holidays. Fire Chief shall receive 16 hours of Floating Holiday time annually. Floating Holiday leave must be used in eight (8) hour or greater increments. If Fire Chief has a Floating Holiday leave balance of less than eight (8) hours he/she may use the accrued hours in any increment up to the maximum of his/her accrued vacation hours. Floating holiday hours may not be cashed out, and may only be used in the year in which they are awarded.

3.6 Deferred Compensation (457 Plan). The District shall contribute up to \$150.00 per month dollar for dollar match toward Fire Chief's deferred compensation (457 plan), provided Fire Chief contributes at least \$150.00 per month to his 457 plan.

3.7 Health Insurance.

3.7.1 Medical. The District requires all employees have a medical insurance plan, accordingly, District and Fire Chief agree to the following in regards to Fire Chief's health insurance (Fire Chief is an "employee" as that term is used through the remainder of this section): Employees choosing to waive District sponsored medical coverage shall submit a Waiver of Medical Insurance Coverage form.

The District has contracted with the California Public Employees Retirement System (CalPERS) Health Benefits Program for the purpose of providing the Fire Chief and his dependents with access to medical insurance benefits. The Fire Chief must comply with all applicable rules and regulations of the CalPERS Health Benefits Program and the Public Employees Medical and Hospital Care Act (PEMHCA).

The amount required by Government Code Section 22892 shall be the District's Employer Contribution for medical insurance benefits. The District agrees to pay this contribution only to the extent mandated by law and only as long as the District participates in the PEMHCA plan.

The District shall provide a maximum employer contribution that is equal to the minimum contribution required under the PEMHCA.

### Supplemental Benefit Allowance

The District provides a Supplemental Benefit Allowance to all full-time employees eligible to participate in the District's medical insurance benefits. Receipt of any Supplemental Benefit Allowance shall be in addition to the District Employer Contribution that is provided in the previous paragraphs.

The Supplemental Benefit Allowance provided to an employee shall be determined based on an employee's participation level. Any Supplemental Benefit Allowance can only be used by an employee to offset the cost of participation in District sponsored medical benefits that are available through an IRS Section 125 cafeteria plan. Upon the effective date of this Agreement, the District shall provide a Supplemental Benefit Allowance that when added to the PEMHCA contribution, totals 80% of the applicable Kaiser HMO premium for active employees who enroll in medical insurance for Employee Only, Employee + 1 Dependent, or Employee + Family.

The District's contribution towards medical insurance premiums is based upon the CalPERS Kaiser HMO premium in 2018. This rate shall be adjusted annually based upon the Kaiser HMO premium.

The Fire Chief is responsible for paying the difference between the cost of his selected medical insurance premium and the established Supplemental Benefit Allowance.

### Section 125 Cafeteria Plan

The District maintains a cafeteria plan pursuant to Section 125 of the Internal Revenue Code, for the purpose of providing employees with access to various health benefits.

3.7.2 Vision. The District shall pay 100% of the premium for VSP Vision Signature Plan or equal plan for Fire Chief and his dependents, if any.

3.7.3 Dental. The District shall pay 100% of the dental premium for up to \$1,500 in coverage per person, per year for Fire Chief and his dependents, if any. The District's dental plan covers orthodontia for adults and children. The orthodontia benefit is 50% to a maximum of \$1,500 and is subject to an annual deductible. The annual deductible is \$50 (\$150 for Family) and does not apply to Preventive care services. The deductible applies to Basic, Major and Orthodontia care.

3.7.4 Retirement Health Benefits. The District has contracted with the California Public Employees Retirement System (CalPERS) Health Benefits Program for the purpose of providing retired employees and their eligible dependents with medical insurance benefits, accordingly, District and Fire Chief agree to the following in regards to Fire Chief's retirement health benefits (Fire Chief is an "employee" as that term is used through the remainder of this section): For employees retiring under a contract or other employment agreement with the District while this provision is in place, said medical benefits shall be considered vested for the duration of life for employees and their eligible dependents.

Employees must comply with all applicable rules and regulations of the CalPERS Health Benefits Program and the Public Employees Medical and Hospital Care Act (PEMHCA); or any other health benefits organization contracted by the District to provide medical benefits.

The amount required by Government Code Section 22892 shall be the District Employer Contribution for Retiree Medical Insurance Benefits. The District agrees to pay this contribution only to the extent mandated by law and only as long as the District participates in the PEMHCA plan.

The District will provide a maximum retired employer contribution that is equal to the minimum contribution required under PEMHCA.

Any contribution provided to a retired employee under this provision shall not exceed the District Employer Contribution for Retiree Medical Insurance Benefit as described previously. The District contribution to retired employee's medical coverage shall be required only to the extent required by law.

The District provides a Supplemental Retiree Benefit Allowance to retired employees. Receipt of any Supplemental Retiree Benefit Allowance is in addition to any employer contribution that is provided in the previous paragraphs.

The District pays a Supplemental Retiree Benefit Allowance, equal to the difference between the PEMHCA minimum and the established percentage the District pays towards a medical insurance plan premium, into a plan that does not impact the retired employee's tax liabilities.

Any Supplemental Retiree Benefit Allowance can only be used by an employee to offset the cost of participation in District sponsored medical benefits.

Beginning February 1, 2018, the District will provide a Supplemental Retiree Benefit Allowance based upon a vesting formula. Each employee shall fall into a category below based on current years of service as of the date of adoption of the contract or other agreement governing the employee's employment with the District.

**Supplemental Retiree Benefit Allowance Vesting**

<b>Current Years of Service as of April 1, 2017</b>	<b>Vesting Base</b>
0 to 5	55%
5 to 10	60%
10 to 15	65%
15 to 20	70%
20 to 25	75%
25 to 30	80%

Each employee shall accrue additional coverage at 0.75% for each year of service. This accrual will be in addition to the vesting base percentage described above. The sum of these two calculations shall be the total percentage of healthcare premium that is paid for by the District covering family, employee and spouse or single of the Kaiser HMO Premium to a maximum of 80% on January 1, 2011, 75% on April 1, 2023 and 70% on April 1, 2028.

The District has established a Retirement Health Savings (RHS) plan for the Fire Chief that will provide tax advantaged income to pay for retirement medical insurance premiums. At the time of the effective date of this Agreement, the District shall contribute a \$150 per month to the mandatory employee contribution of \$75.00 per month for a total of \$225 per month.

Both employee and District contributions shall be adjusted annually beginning June 30, 2018, at a percentage rate equal to the United States Department of Labor, Bureau of Labor Statistics, San Francisco-Oakland-San Jose annual consumer price index (CPI).

3.8 Life Insurance. The District shall contribute twelve dollars (\$12.00) per month toward life insurance plan(s) and will deduct the remaining required premium from Fire Chief's paycheck. Fire Chief will be responsible for the full premium amount of additional voluntary life insurance coverage through the District plan.

3.9 Employee Assistance Program. Fire Chief shall be afforded the opportunity to utilize the District's Employee Assistance Program (EAP) services in accordance with the District's EAP plan.

3.10 Holidays. Fire Chief is entitled to paid holidays observed by the District's management and administrative support staff members: New Years' Day, Martin Luther King Jr.'s birthday (observed), Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving and the Friday following Thanksgiving, Christmas Eve (4-hours/p.m.) and Christmas Day.

3.11 Leaves of Absence. Fire Chief is entitled to all leaves of absence provided employees of the District, including but not limited to bereavement, fitness, catastrophic, and FMLA leave. More information on the various leaves of absence provided the District's employees by policy and state and federal law can be found in the District's Policy Manual.

4. Retirement. The District shall pay 75% of Fire Chief's subvention amount to the Marin County Employee's Retirement Association (MCERA). Fire Chief shall be eligible for retirement benefits from the Marin County Public Employee's Retirement Agency (MCERA) as a "Safety Classic Tier 1" member. Retirement tier is determined upon entry into the MCERA retirement system. Following 30 years of contributions of MCERA, employee contributions cease. MCERA is subject to any changes in the PEPR and the definition of "pensionable compensation."



## 5. Termination.

5.1 Termination by the District. Fire Chief's employment shall not be terminated by the District unless the District complies with state law, including Government Code Section 3254(c). In doing so, the District shall provide Fire Chief written notice, the reason or reasons for removal, and an opportunity for administrative appeal consistent with Section 3254(c). A sufficient reason or reasons for removal under this provision include, but are not limited to: (1) removal for the purpose of implementing goals or policies, or both, of the District; (2) removal for incompatibility of management style; and (3) removal as a result of a change in administration.

5.1.1 Reversion to Battalion Chief. If Fire Chief's employment as fire chief of the District is terminated for reasons other than those described in Section 5.3 below, Fire Chief shall automatically revert to the position of Battalion Chief within the District, with the pay and benefits described in the MOU between the Novato Fire Chief Officers Association and District in effect at the time of the termination. The reversion to the position of Battalion Chief shall not be considered a "demotion" triggering any right of appeal beyond those rights set forth in Government Code Section 3254(c).

5.2 Termination Benefits. If Fire Chief's employment is terminated and he is removed from office by the District, the District shall pay to Fire Chief a severance payment equal to six months' base salary. For example, if Fire Chief's base salary is \$212,000 at the time of termination, he shall be entitled to receive from the District a one-time gross lump sum payment of \$106,000. Payment of the Termination Benefits shall be made within sixty (60) days of the effective date of the Termination.

5.3 Forfeit of Termination Benefits and Position Reversion. Fire Chief shall not be entitled to the Termination Benefits described in Section 5.2 above, or the return to the position of Battalion Chief as described in Section 5.1.1 above, if Fire Chief's employment is terminated and he is removed from office by the District for any of the following reasons:

- (1) Fire Chief's gross negligence or willful misconduct in the performance of his duties to the District;
- (2) Fire Chief's repeated unexplained or unjustified absence from the District, or Fire Chief's willful neglect of his duties which Fire Chief does not cure or correct within 30 days of the District's written notice of the identified problem;
- (3) Fire Chief's commission of any act of fraud or dishonesty with respect to the District;
- (4) Fire Chief's material breach of or noncompliance with the terms of this Agreement, the District's policies or procedures, or any other agreement between Fire Chief and the District which Fire Chief does not cure or correct within 90 days of District's written notice of the identified breach; or

- (5) Fire Chief's conviction of a felony or a crime involving moral turpitude or Fire Chief's causing material harm to the standing or reputation of the District.

5.4 Termination by Fire Chief. Fire Chief may terminate this Agreement and his employment with the District for any reason and at any time. The District requests that, when possible, Fire Chief provide sixty (60) days advance written notice prior to ending his relationship with the District, though he is under no obligation to do so. In the event Fire Chief terminates his employment with the District, for any reason, he shall not be entitled to the Termination Benefits, defined in Section 5.2 above.

5.5 Termination of Obligations. In the event of the termination of Fire Chief's employment, the District shall have no further obligation whatsoever to pay Fire Chief's Base Salary, or any other compensation or benefits provided Fire Chief under this Agreement.

**6. Existing District Policies and Procedures.**

Unless changed by the express terms of this Agreement, all terms and conditions of employment established by written District personnel rules, policies and procedures in effect as of the Effective Date shall remain in full force and effect unless and until changed in accordance with State law.

**7. Dispute Resolution.**

7.1 Informal Resolution. In the event of any dispute arising between the Parties under this Agreement, Fire Chief agrees to notify the Board of Directors of the District of the Dispute, and the Parties agree to work in good faith to informally resolve the dispute. If the dispute is not resolved informally, the District and Fire Chief agree to resolve the dispute through mediation or binding arbitration as specified below.

7.2 Mediation. In the event a dispute arises between the Parties with respect to this Agreement that cannot be resolved informally, the Parties shall participate in mediation.

7.2.1 A written request for mediation must be made within thirty (30) days after the aggrieved party became aware of, or should have been aware of, the dispute (which time frame may be extended during such time as the parties were working in good faith to informally resolve the issue);

7.2.2 The Parties agree to participate in at least four (4) hours of mediation. Each party agrees to participate in good faith in the mediation with the intent to resolve the dispute. The mediation shall be conducted within thirty (30) days after the request for mediation is made;

7.2.3 The parties may either agree upon a mediator or agree to have one chosen for them. If the parties do not agree upon a mediator within ten (10) calendar days of the request for mediation, a request may be made by either or both parties to JAMS to have a mediator chosen for the dispute and both agree to accept the mediator chosen through the process that JAMS uses for selecting a mediator;

7.2.4 The District shall pay all costs unique to mediation, including, without limitation, the mediator's fees and administrative fees. Fire Chief is not responsible for any expenses unique to mediation. Each party shall pay for the fees and expenses of its or his own attorneys, experts, witnesses, and other costs associated with the mediation.

7.3 Arbitration. If the dispute, or a portion of the dispute, is not resolved by mediation and to the extent permitted by law, that portion of the dispute not resolved by mediation is subject to final and binding arbitration under the Federal Arbitration Act ("FAA") before a single neutral arbitrator.

7.3.1 Arbitrable Claims shall include, but are not limited to, contract (express or implied) and tort claims of all kinds, as well as all claims based on any federal, state, or local law, statute, or regulation and includes without limitation the determination of the scope and applicability of this arbitration provision. By way of example and not in limitation of the foregoing, Arbitrable Claims shall include (to the fullest extent permitted by law) any claims arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act, as well as any claims alleging wrongful termination, retaliation, harassment and/or discrimination (including, but not limited to those on the basis of, race, sex, sexual orientation, gender identity, religion, national origin, age, marital status, medical condition, and disability), breach of contract, breach of the covenant of good faith and fair dealing, defamation, libel, slander, invasion of privacy and/or negligent or intentional: a) infliction of emotional distress; b) misrepresentation; c) interference with contract; or d) interference with prospective economic advantage.

7.3.2 The parties hereby knowingly and intentionally waive any right they may otherwise have to trial by jury or court of such claims or disputes. The parties agree that this waiver of any right they may otherwise have to trial by jury or court of such claims or disputes, applies to and waives any right to participate as a representative or member of any class of claimants. The arbitrator shall determine all challenges to the legality or enforceability of this arbitration provision. Any arbitration shall take place in the County of Marin, California.

7.3.3 To the extent permitted by law, the initiation, existence, and outcome of any arbitration-including without limitation any material filed with the arbitrator, the contents of all depositions or testimony, all documents produced during the course of the arbitration, the written decision, and any remedy imposed or damages awarded by the arbitrator-are strictly confidential and shall not be disclosed with any other persons, entities, organizations, whether within or without the District, except as may be required by applicable law or in accordance with any court order or subpoena. To the extent permitted by law, this

provision applies during Fire Chief's employment pursuant to this Employment Agreement, and survives after the termination of this Employment Agreement.

7.3.4 Within 30 days after written demand for arbitration, the parties shall select a single neutral arbitrator by any method mutually agreed or, if the parties cannot agree, then in accordance with the then existing JAMS Employment Arbitration Rules & Procedures [www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS\\_employment\\_arbitration\\_rules-2014.pdf](http://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS_employment_arbitration_rules-2014.pdf) A hardcopy of the JAMS arbitration rules is also available for review in the District office. The Rules may be amended by JAMS after the execution of this arbitration provision and the parties agree to use the current version of the JAMS Rules at the time arbitration is commenced. The decision or award of the arbitrator shall be final and binding upon the parties.

7.3.5 In the event a single neutral arbitrator is not appointed within 30 days, any party may petition either JAMS or the appropriate court to appoint, in its discretion and without the consent of all the parties, a single neutral arbitrator. The arbitrator shall have the power to control discovery and to make all other determinations that the parties' mutual agreement or the then-existing JAMS Comprehensive Arbitration Rules & Procedures may permit. The arbitrator shall have the power to grant all types of relief and remedies that are available in a civil action. The arbitrator will issue a written decision with findings and conclusions.

7.3.6 The District shall pay all costs unique to arbitration, including, without limitation, the arbitrator's fees and administrative fees. The Fire Chief is not responsible for any expenses unique to arbitration. Each party shall pay for the fees and expenses of its own attorneys, experts, witnesses, and preparation and presentation of proof and briefing, except that the arbitrator may award such fees and costs to a prevailing party on a claim for which attorneys' fees and costs are recoverable by law. The arbitrator shall also have the power to award reasonable attorneys' fees and costs to the prevailing party in any action to enforce this arbitration provision, including but not limited to those attorneys' fees and costs associated with the filing of a petition to compel arbitration in civil court. Any court of competent jurisdiction shall, upon the petition of any party, confirm the award of the arbitrator and enter judgment in conformity therewith. Any such judgment shall be final, binding and non-appealable.

7.3.7 In the event that multiple claims are asserted, some of which are found not subject to this arbitration provision, the parties agree to stay the proceedings related to the claims not subject to this arbitration provision until all the claims subject to this arbitration provision are resolved in accordance with it. In the event that claims are asserted against multiple parties, some of whom are not subject to this arbitration provision, Fire Chief and the District agree to sever the parties not subject to this arbitration provision and to resolve all claims between the parties subject to this arbitration provision in accordance with this arbitration provision.

7.3.8 Except as provided in this arbitration provision, the District makes no other waiver or election of rights and remedies pursuant to this Employment Agreement and reserves the right to waive or assert rights and remedies in its sole discretion.

7.3.9 If any aspect of this arbitration provision is found by an arbitrator or a court to be incomplete or unlawful, that determination will not render any other portion of the provision invalid or unenforceable, and the balance of the provision shall remain in full force and effect. In addition, the parties authorize the arbitrator or court to add to or revise ("blue pencil") the language of this arbitration provision in order to make the provision complete and lawful, so as to effectuate to the maximum extent possible the parties' mutual intent to have all disputes subject to this provision be resolved solely by final and binding arbitration.

7.3.10 Nothing in this arbitration provision shall be construed to prohibit the Fire Chief from filing a charge with or participating in any investigation or proceeding conducted by the U.S. Equal Employment Opportunity Commission (EEOC) or a comparable state or local agency or from filing a claim for unemployment or workers' compensation benefits. Notwithstanding the foregoing, the Fire Chief agrees to waive his right to recover monetary damages in any charge, complaint, or lawsuit filed by the Fire Chief or by anyone else on the Fire Chief's behalf.

## **8. Miscellaneous Provisions.**

8.1 Severability. It is the desire of the Parties that this Agreement be binding and enforceable to the maximum extent permitted by law. Should any term or provision of this Agreement be declared or determined by a final and binding arbitrator or by a court of law or other tribunal of valid jurisdiction to be invalid or unenforceable in whole or in part, that adjudication shall not affect the validity of the remainder of the Agreement, which shall remain in force.

8.2 Modification, Amendment, Waiver. Except where stated above, no modification or amendment of any of the provisions of this Agreement shall be effective unless approved in writing and signed by Fire Chief and the District. The failure of Fire Chief or the District to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of either Party thereafter to enforce each and every provision hereof in accordance with its terms.

8.3 Governing Law. This Agreement has been negotiated and entered into in the State of California and shall be governed by, construed, and enforced in accordance with the laws of the State of California.

8.4 Counterparts. This Agreement may be executed by the Parties in counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties specifically agree that signatures on this Agreement received by facsimile or electronic transmission (i.e., a PDF version) shall be legally binding and that each party is entitled and authorized to rely on the signatures transmitted by facsimile or electronically of the other parties as if they were original signatures.

Dated: 1-25-2018

**Novato Fire Protection District**

William F Davis  
Signature

WILLIAM F DAVIS  
Print Name

President  
Title

Dated: 1-25-2018

**William Tyler**

William Tyler  
Signature