

FIRE CHIEF EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into on this 28 day of March 2017, between the LEHIGH ACRES FIRE CONTROL AND RESCUE DISTRICT, hereinafter referred to as "District" and Mr. Robert A. Dilallo, hereinafter referred to as "Chief".

WHEREAS, the parties wish to enter into this Employment Agreement to continue the employment of Robert A. Dilallo as Fire Chief of the District; and,

WHEREAS, the parties desire to provide for certain procedures, benefits, requirements and other terms of employment of the Chief by the District in a written Employment Agreement in order to enhance administrative stability, continuity, and the provision of fire protection and rescue services within the District.

NOW, THEREFORE, the District and the Chief, for the consideration herein specified, agree as follows:

SECTION 1 – DUTIES AND RESPONSIBILITIES

The Chief shall have charge of the administration and management of the District as provided by Florida law and all District ordinances, resolutions and policies. The Chief shall devote sufficient time, attention and energy to the business of the District to insure the delivery of fire protection and rescue services of the District. The duties and responsibilities of the Chief shall be in accordance with Florida law and all ordinances, resolutions and policies that shall be adopted from time to time by the District Board of Commissioners. The duties and responsibilities of the Chief shall include, but not be limited to, those enumerated in the *Job Description – Fire Chief* of this District, as finally adopted by the Board of Fire Commissioners (hereinafter "Board") and which may be changed, modified or updated by the Board from time to time.

SECTION 2 – TERM AND RENEWAL

- (a) **Term:** The District hereby employs and the Chief hereby accepts the continuance of employment as Fire Chief for the District with an effective date of March 28, 2017 ("Effective Date") and expiring at 11:59 p.m. on March 31, 2021 ("Expiration Date") subject, however, to prior termination as provided in Section 3.
- (b) **Renewal upon Expiration Date:** If this Agreement is to be renewed, such renewal shall occur prior to the Expiration Date of this Agreement as a result of a majority vote of the Board. If this Agreement is not renewed by a majority vote of the Board prior to the Expiration Date of this Agreement, then this Agreement shall terminate as of the Expiration Date, without further obligation to the Chief, except that the terms and benefits

of Section 3(K) hereunder will be triggered if the Chief fails to remain employed with the District in any other role after the Expiration Date.

**SECTION 3 – TERMINATION; PAYMENT OBLIGATIONS UPON
TERMINATION**

This Agreement may be terminated immediately (or as otherwise noted) by and/or upon:

- A. Mutual Understanding. A mutual agreement of the parties, which shall be governed by Section 3(K) below regarding payment about separation.
- B. Chief's retirement.
- C. Chief's resignation.
- D. "Cause" Termination. For purposes of this Agreement, "Cause" shall be defined as:
 - (1) Chief's material breach, default or violation of any provision of this Agreement;
 - (2) Chief's conviction for any felony, or crime of moral turpitude;
 - (3) Chief's willful, repeated failure to perform his duties hereunder or breach of any material written rule, policy, and/or procedure of District;
 - (4) Chief's commitment of an act of material fraud against District;
 - (5) Chief's misappropriation of a material amount in District's assets or a material breach of a fiduciary duty involving the assets or business of District;
 - (6) Chief's use, at any time, of unlawful drugs or the unlawful use of prescription drugs, or the abuse of alcohol that poses a direct threat to the health and safety of himself, to District employees, to the public, or which otherwise impairs the ability of Chief to perform Chief's duties and obligations under this Agreement with or without a reasonable accommodation;

The District may terminate the Chief for "Cause" only upon an affirmative vote of four (4) Commissioners. If terminated for "Cause," the Chief will be eligible to receive accrued benefits as described in Section 3(K), but at no time shall Chief be entitled to receive severance pay upon a termination for "Cause."

Nothing herein restricts or prohibits a majority of the Board from considering or taking disciplinary action other than termination against the

Chief. At its discretion, the Board may direct that a review or investigation be undertaken by an outside investigator into matters relating to a possible basis for disciplinary action, up to and including termination. The Board shall afford the Chief an opportunity to respond prior to any vote being taken on a possible termination for "Cause" or unpaid suspension. There shall be no severance pay for a termination for "Cause."

- E. "Without Cause" Termination. The District shall have the right to terminate the Chief for any reason or no reason (i.e. Without Cause) upon an affirmative vote of four (4) Commissioners. If the Chief is terminated Without Cause, then the District shall review job opportunities with Dilallo and return Dilallo into the position of at least Battalion Chief or other equivalent position. Dilallo shall have seven (7) days to decide whether to accept any offer to return to his previous position or into any other position. Upon Dilallo's acceptance (referred to as "New Position Acceptance"), Dilallo's salary in such new position will be commensurate to at least a Step 5 Battalion Chief position and all vacation, education, longevity and sick time earned but unused by Dilallo up through the termination of his job as Fire Chief shall be retained by Dilallo in the new position. Except as otherwise provided for herein, Dilallo acknowledges that upon New Position Acceptance, Dilallo will thereafter be entitled to the terms and benefits available for the new position, and that this Fire Chief Employment Agreement will be terminated (with the terms, benefits and conditions contained herein immediately being deemed null and void without any further effect) upon Dilallo's New Position Acceptance.

If the Chief declines the offer to go into any available Battalion Chief position and/or go into a new position as referenced above, then the Chief's employment with the District will be terminated Without Cause. Upon such termination Without Cause, the Chief will be entitled to severance pay in the amount of the Chief's base pay for the remaining weeks of this Employment Agreement, as limited by and pursuant to applicable laws in existence as of the date of termination, including but not limited to the statutory cap on severance pay provided for in Section 215.425, *Florida Statutes*, as may be amended from time to time. In addition, the Chief shall be entitled to accrued benefits as described in Section 3(K).

- F. Job Elimination. If the Chief is terminated by the Board because of job elimination (consolidation, privatization or establishment of a municipal department), the District will pay the Chief a single lump sum cash payment as severance pay in the amount of the Chief's base pay for the remaining weeks of this Employment Agreement, as limited by and pursuant to applicable laws in effect at the time of termination, including but not limited to the statutory cap on severance pay provided for in Section 215.425, *Florida Statutes*, as may be amended from time to time.

In addition, the Chief will be entitled to accrued benefits described in Section 3(K).

- G. In the event the Chief is offered and accepts employment in a consolidated, privatized or municipal department, incorporating all or part of the boundaries of the District, the District may, but shall not be obligated to pay a single lump sum cash payment to the Chief in the amount of the difference between the salary offered to the Chief under the new arrangement for the remainder of the term hereof, so long as such amount does not exceed any limitations imposed by Section 215.425, *Florida Statutes*, as may be amended from time to time. The Chief, however, will be entitled to accrued benefits described in Section 3(K).
- H. The Chief shall give the District at least sixty (60) days advanced written notice of his intent to resign or retire from his position with the District. Chief shall not be entitled to any severance pay upon resignation or retirement, but will be entitled to the accrued benefits described in Section 3(K).
- I. Termination Because of Disability. This Agreement may terminate in the event the Chief becomes disabled (on or off-duty) and is unable to perform the essential functions of his job for at least one-hundred eighty (180) days, upon official action of the Board of Commissioners. This provision shall not supersede the requirements, entitlement or provisions of the American with Disabilities Act (ADA) or the Family and Medical Leave Act (FMLA), which laws (and applicable regulations) shall control to the extent that they may conflict with this provision. Furthermore, should the Chief become disabled, upon termination, the Chief shall be entitled to receive any disability benefits pursuant to any District-sponsored group insurance or health and welfare benefit plans to the extent such plans were elected by the Chief, and any applicable laws or statutes, as well as the accrued benefits described in Section 3(K). There shall be no severance payment upon disability.
- J. Termination Because of Death. This Agreement shall be terminated upon the death of the Chief. In that event, the Chief's estate shall be entitled to receive salary owed through the date of death, and a single lump sum cash payment in the amount of all benefits, including, but not limited to, life insurance benefits, and any accrued benefits as described in Section 3(K). There shall be no severance payment upon death.
- K. Payment Upon Termination. Upon the Chief's employment being terminated under this Agreement pursuant to Section 3(A through J) herein, the District will pay the Chief or his Estate a single lump sum cash payment in the amount of all earned and unused vacation hours (up to a maximum of 500 hours), and all earned and unused available sick hours (up to a maximum of 80 hours), using the Chief's hourly rate of pay of

\$66.59, so long as permitted by applicable law, as may be amended from time to time. Any District lump sum cash payments to the Chief pursuant to this Section 3(K) will be made within thirty (30) days of the Chief's termination date. Except as may otherwise be provided for herein in Section 3(K) and any other applicable terms of this Agreement, there shall be no further obligation and/or compensation owed to the Chief upon termination.

SECTION 4 – DISABILITY

The District will provide off-duty Long Term Disability (LTD) insurance at no cost to the Chief, as long as said coverage is in effect for all District employees. To the extent such LTD insurance is in effect at the District, the Chief will receive the compensation and benefits as provided for in the District's LTD policy. If the Chief is unable to return to work as a result of an on-duty or off-duty disability lasting at least or more than one-hundred eighty (180) days, the Chief's employment with the District may be terminated subject to Section 3(I). There shall be no severance payment upon disability termination.

SECTION 5 – SALARY

The Chief's beginning base salary ("Base Salary") shall be at least One-Hundred Thirty-Eight Thousand and Five-Hundred Dollars (\$138,500.00) annually, to be paid bi-weekly in equal amounts, unless increased by the Board of Commissioners, not including any available and/or additional bonuses or incentives. As an FLSA-exempt employee under the law, the Chief's annual base salary shall be for all hours worked, even though the Chief's regular work schedule is based on a forty-hour work week.

The District will furnish a direct deposit payroll plan, as long as there is no charge to the District, for payroll deposits of the Chief's wages at a bank or credit union of the Chief's choosing.

SECTION 6 – PERFORMANCE EVALUATION

- A. The Commissioners will make a good-faith attempt on an annual basis to review and evaluate the performance of the Chief, in advance of the adoption of the District's annual operating budget. Any such review and evaluation shall be in accordance with criteria developed jointly and mutually by the Commissioners and the Chief. The Chief shall be able to ask for an informal evaluation with each Commissioner as needed to discuss performance objectives.
- B. The Commissioners and the Chief shall define goals and performance objectives for the Chief which are determined to be necessary for the proper and effective operation of the District, and which shall also ensure that the short-term and long-term interests of the District are being served.

SECTION 7 – HOURS OF WORK

- A. It is recognized that the Chief is employed as an “exempt” employee in an executive level capacity which requires him to devote a great deal of time to the District. The Chief agrees to devote that amount of time and energy which is reasonably necessary to faithfully perform the duties of the Chief to accomplish and carry out the business of the District.
- B. The Chief’s regular work schedule is generally during normal business hours on Monday through Friday, though it is acknowledged by both parties that the Chief often performs longer hours outside the normal business hours and regular work schedule. The District agrees that any *de minimus* personal communications by the Chief during the normal work schedule shall not be considered a violation of this Agreement. Due to the nature of the Chief’s position which often will include hours of work beyond the regular work schedule, it is agreed that the Chief may work and take at his discretion flex time hours so long as District business and operations are being satisfactorily met, subject to Board input as it may deem appropriate.
- C. The Chief, as an “exempt” salaried employee, shall receive compensation at one and one-half (1½) times his current hourly rate of pay for hours worked in excess of forty (40) hours during declared states of Local, State, or National disasters and/or emergencies, including those declared by FEMA.
- D. The Chief will receive the same number of holidays as paid days off in the same manner as employees governed by the District’s Non-Bargaining Unit policies.

SECTION 8 – AUTOMOBILE

The Chief’s duties require the District to provide him with the use of an automobile in accordance with District policies and procedures. At all times during his employment as Chief with the District, Dilallo shall have use of an automobile, in good working order, to be used for purposes of maximum efficiency and responsiveness, both in the performance of his duty and while off duty. It is the express intention of the District to provide the Chief with a vehicle to be used while on duty and off duty, so that the Chief is readily available to respond in emergency situations. The off duty use of the vehicle shall be limited to a fifty (50) mile radius of the District, unless there is prior approval by the Board of Commissioners. The District shall be responsible for the purchase, operation, maintenance, repair and regular replacement of said automobile and for the payment of liability, property damage and comprehensive insurance coverage for said automobile. The automobile shall be equipped with appropriate Incident Command and Control

equipment (mobile and portable radios, cellular telephone, emergency lights and siren, public address system, infrastructure maps, hazardous material references, and other items as necessary).

The Chief understands that the provision of an automobile (and/or reimbursement of related expenses) may create a tax obligation under applicable Internal Revenue Service regulations (as may be amended from time to time). The Chief agrees to accept any tax-related determination made by District accountants relating to the tax treatment of this benefit, and agrees to be fully responsible and liable for the payment of any tax-related obligations that may arise as a result, even after the termination of this Agreement.

SECTION 9 – VACATION, SICK AND BEREAVMENT LEAVE

- A. The Chief shall receive and be entitled to the same educational, longevity, vacation, sick and bereavement leave benefits pursuant to the policies, procedures, and accrual rates for his years of service, as afforded to the District's non-bargaining unit management employees.
- B. The Chief may elect to receive payment for up to eighty (80) hours of his earned and unused available for pay sick hours and (40) available unused vacation hours annually using the Chief's hourly rate of pay at the time of the election, which is \$66.59/hour. The Chief shall submit a written request for such conversion by December 31st for the previous year. Payment will be made the second pay period in January.

SECTION 10 – INSURANCE BENEFITS

- A. The District will make available to the Chief the same health insurance, dental insurance, prescription program and life insurance, as provided to all District employees, at no cost to the Chief. The District will provide the same health insurance, dental insurance and prescription program for the Chief's family/dependents with premiums being paid in full by the District, if the Chief elects to have family/dependent coverage.
- B. Upon the Chief's retirement and/or separation of employment with the District, the Chief will be able to maintain for himself, and for any dependents the same health insurance, dental insurance and prescription program as outlined in this Agreement, at the Chief's sole expense, and as allowed by and in compliance with COBRA and other applicable law, including Medicare.
- C. The District agrees to pay the death benefits described in Florida law, especially §112.191, Florida Statutes, to the Chief's spouse/children/beneficiaries in the event the Chief is killed in the line of duty as outlined

under Florida law.

- D. During the Chief's employment, the District shall provide the Chief with group term life insurance in the policy coverage amount of twice (2x) the Chief's annual salary at no cost to the Chief. Upon the Chief's separation of employment with the District, the District agrees to provide the Chief with group term life insurance in the policy coverage amount of one hundred thousand dollars (\$100,000.00). The Chief shall pay a shared cost for the above referenced life insurance in the amount of fifty percent (50%) of the monthly life insurance premium, if the Chief elects to continue this coverage after termination of this Agreement. The District shall pay the premiums for the above referenced life insurance when said premiums are due and the Chief shall reimburse the District for his shared cost portion of the life insurance premium. Chief's failure to reimburse the District may lead to a default on the life insurance policy as a result of the Chief's failure or breach. Chief agrees that any such default and/or loss of benefits attributable to the Chief's failure to reimburse the District shall not create or impose any responsibility or liability for the District.
- E. The District may pay a H.I.S. (Health Insurance Subsidy) for the Chief in the event of retirement from the Lehigh Acres Fire Control and Rescue District with a minimum of twenty (20) years of service with the District. If so, any maximum amount will be \$5.00/month for each year of service in the FRS, (i.e., $\$5.00 \times 25 = \125.00 per month), up to the maximum allowed by applicable law, as may be amended from time to time. If the District chooses to pay a H.I.S. subsidy, then any such payments will be made to the Chief on a monthly basis only until the Chief reaches the earliest eligible age to collect Medicare.
- F. During employment, the District shall furnish and provide the Chief with comprehensive general liability insurance and errors and omissions coverage applicable to all acts or omissions of the Chief arising out of his employment. Policy limits of said insurance shall not be less than one million (\$1,000,000.00) dollars.

SECTION 11 - RETIREMENT

- A. The Chief shall be covered under the Florida Retirement System at the "Special Risk Class" and the District shall contribute 100% of the cost of such coverage. The District agrees to include the Chief in the Florida Retirement System at the "Special Risk Class" risk level.
- B. The District agrees to provide the Chief with the ability to participate in an IRS deferred compensation plan "457 Plan" at no cost to the Chief or the District so long as it provides this benefit to other District employees.

- C. There shall be no severance payment to Chief upon his retirement.

SECTION 12 – DUES AND SUBSCRIPTIONS

The District recognizes the benefit to the District of the Chief participating in professional organizations; therefore, the District will decide annually upon a budgeted amount of dollars ("Dues Money") to be communicated to the Chief which shall be used towards professional dues and subscriptions of the Chief necessary for his continuation and full participation in national, state and local associations and organizations necessary and desirable for his continued professional growth and advancement, as approved by the Board of Commissioners. The Chief shall have the discretion to utilize the Dues Money as he sees fit so long as the purchase relates to the Chief's professional activities during the fiscal year, but any unused Dues Money shall not be carried over into the next year.

SECTION 13 – PROFESSIONAL DEVELOPMENT

- A. The District hereby agrees to budget and pay the reasonable travel and expenses of the Chief for professional and official travel, meetings and occasions adequate to continue the professional development of the Chief and to adequately pursue necessary official functions and other functions for the District. All such expenditures shall be subject to prior review and approval by the Board of Commissioners in accordance with the policies and procedures of the District.
- B. The District also agrees to budget and pay for the reasonable travel and expenses of the Chief for short courses, re-certifications, institutes and seminars that are necessary and desirable for his professional development and for the good of the District in accordance with the policies and procedures of the District. All such expenditures shall be subject to prior review and approval by the Board of Commissioners in accordance with the policies and procedures of the District.
- C. The District and the Chief recognize the benefits to the District of higher education of the Chief. The District agrees to pay the tuition and expenses for education and education materials for accredited academic course work in a discipline related to the Chief's position, so long as the Chief obtains at least a grade of "B" or higher. All such expenditures shall be subject to prior review and approval by the Board of Commissioners in accordance with the policies and procedures of the District, including proof of course completion and the grades earned.
- D. The Chief acknowledges that he must satisfy the educational requirements for the Chief position, as outlined in the Fire Chief Job Description, including the obtaining of a Bachelor's Degree in a Fire-Science related

field. The Chief shall make good faith efforts to take and complete course work towards the required Bachelor's Degree prior to the calendar year end of 2018. From time to time, the District may request proof of any course completion.

SECTION 14 – UNIFORMS AND PROTECTIVE CLOTHING

- A. All uniforms, protective clothing and protective devices/equipment as may be deemed appropriate for the Fire Chief, at the District's discretion, shall be furnished at no cost to the Chief. At the District's discretion, it agrees to replace all uniforms, protective clothing and protective devices/equipment at no cost to the Chief.
- B. Upon appointment to the position of Chief, the Chief will receive up to five (5) uniform pants, five (5) Department golf type shirts and five (5) Department T-shirts. The place of purchase, style, fabric and quality of clothing shall be determined by the Chief.
- C. The District will provide the Chief with an annual clothing maintenance allowance of two hundred and fifty (\$250.00) dollars which shall be paid to the Chief during the 1st pay period of December of each year.
- D. The District will provide the Chief with all necessary safety equipment, including, but not limited to, NFPA approved structural firefighting protective coat, trousers, boots, gloves, P.A.S.S. device, and hood as well as OSHA approved helmet and goggles, to the extent such equipment is also made available to other District employees employed in safety-sensitive positions.

SECTION 15 – GENERAL EXPENSES

The District recognizes that certain expenses of a non-personal and generally job related nature are incurred by the Chief and hereby agrees to reimburse or pay said general expenses, subject to the review and approval by the Board of Commissioners in accordance with the policies and procedures of the District. In the event the District determines after an audit or otherwise that the Chief was incorrectly or inadvertently reimbursed, the District reserves the right to request repayment by the Chief. If repayment is requested, the Chief shall make repayment within thirty (30) days of the request.

SECTION 16 – INDEMNIFICATION AND BONDING

Except for criminal acts, the District shall defend, hold harmless and indemnify the Chief against any and all claims, torts, professional liability claims or demands or other legal actions, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Chief's duties. The Chief shall be covered under the

District's liability insurance policies for covered acts or omissions occurring in the performance of duties as a District official at no expense to the Chief. The District shall be responsible for all costs, including but not limited to lost time and wages of the Chief and the Chief's legal expenses for his separate legal counsel, incurred as a result of the defense, prosecution, judgment or settlement of claims and suits, during the term of this Agreement or thereafter, arising in connection with the performance of the Chief's duties as a District official. The District shall bear the full cost of a public official bond that is required of the Chief under any law or ordinance.

SECTION 17 – SAVINGS CLAUSE

In case any one or more of the provisions of this Agreement, or any amendment or supplement hereto, shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, or any amendment or supplement hereto, but this Agreement, or any amendment or supplement hereto, shall be construed and enforced as if such illegal or invalid provision had not been contained herein. The parties agree to immediately renegotiate any provision of this Agreement that is held to be illegal or invalid.

SECTION 18 – APPLICABLE LAW; DISPUTE RESOLUTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of any dispute, or threatened or actual litigation with respect to this Agreement, the parties agree to first enter into mediation with a Court-Certified Mediator to address, discuss and attempt in good-faith to resolve such dispute(s). Any such resolution shall be binding, in writing and signed by both parties. In the event the dispute(s) is not resolved and litigation is pursued, the parties will have the option of choosing a mutually acceptable arbitrator, or opting for a bench trial in Court. The parties agree that venue for the arbitration or bench trial shall be in Lee County, Florida. The prevailing party in any arbitration or bench trial, including on any appeal thereof, shall be entitled to its or his reasonable attorney's fees and costs.

SECTION 19 – BINDING EFFECT ON SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the successors of the parties hereto to the fullest extent authorized by law. In particular, the merger or consolidation of the District with any other party shall bind said party to the terms of this Agreement as a successor of the District.

SECTION 20 – NOTICES

Notices pursuant to this Agreement shall be given by registered or certified mail to the parties at their last known address. The date of delivery of such notice shall be deemed to be three (3) days after the date of mailing thereof. Alternatively, notices required

pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial District and notice shall be deemed given as of the date of personal service.

SECTION 21 – SECTION HEADINGS

The paragraph headings contained herein are for reference only and shall not in any way affect the meaning or interpretation of this Agreement.

SECTION 22 – ENTIRE AGREEMENT/SUPERSESSION

This Agreement contains the entire agreement concerning the terms and conditions of employment arrangements between the District and the Chief and supersedes any prior written or oral Agreements. No change, amendment or modification of this Agreement shall be valid unless it is made in writing and mutually agreed upon and signed by both parties.

SECTION 23 – EFFECTIVE DATE

This Agreement shall become effective commencing March 28, 2017.

**LEHIGH ACRES FIRE
CONTROL AND RESCUE
DISTRICT**

By: *Linda Carter*

Cathy Kruse, Chairman

VICE-

Linda CARTER

FIRE CHIEF

Robert A. Dilallo

Robert A. Dilallo