

**EMPLOYMENT AGREEMENT
FOR THE FIRE CHIEF OF THE
LATHROP-MANTECA FIRE PROTECTION DISTRICT**

July 1, 2017 – June 30, 2022

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into by the Lathrop-Manteca Fire Protection District (the "District"), a California public agency, and Gene Neely, Jr. (the "Fire Chief"), an individual, subject to approval by the Board of Directors of the District (the "Board") at a properly noticed public meeting.

RECITALS

WHEREAS, the Fire Chief is currently employed by the District as the Fire Chief under a contract set to expire on August 31, 2017; WHEREAS, the parties desire that the Fire Chief continue in the employment of the District as the Fire Chief; and WHEREAS, the parties desire to set forth in writing the terms and conditions of continued employment; NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

TERMS AND CONDITIONS

1. **TERM.** This Agreement shall be effective from July 1, 2017 (the "Effective Date") through and until June 30, 2022 (the "Term"). The parties may agree in writing to extend the Term of this Agreement for an additional five years subject to approval by the Board at a properly noticed public meeting. Notwithstanding the foregoing, the Fire Chief acknowledges that he does not have a "property interest" in continued employment with the District and that the obligations of the District to the Fire Chief are solely contractual.

2. **DUTIES.** The Fire Chief shall be employed by the District as the Fire Chief with full responsibility for the day-to-day management and operation of the District subject to the direction and control of the Board. The Fire Chief shall competently perform and discharge the duties and functions of the Fire Chief according to the highest professional standards and he shall comply with and carry out the District's ordinances, resolutions, and rules and regulations and the laws of the State of California and the United States of America as they apply to the performance of his duties. The Fire Chief shall make regular reports to the Board on his activities as the Fire Chief and he shall keep the Board Chair reasonably informed of his availability.

3. **NO CONFLICTS.** The Fire Chief shall devote his full energy, ability, and productive time to his performance as the District's Fire Chief and he shall not engage in any activity of any kind which would materially interfere with the performance of his duties except as approved by the Board. The Fire Chief shall not engage in any activity which is or may become a conflict of interest with the District or which might create an incompatibility of office as defined under California law.

4. **COMPENSATION.** Beginning on the Effective Date, the District shall pay the Fire Chief a base salary of \$150,000 per year, which is to be paid at the same intervals and in the same manner as other District employees. The base salary shall increase during the Term on every anniversary of this Agreement as set forth in the schedule contained in "Exhibit A." The Fire Chief acknowledges that he is an exempt employee and thus not subject to the overtime compensation requirements of the Fair Labor Standards Act.

5. **PERFORMANCE REVIEWS.** The Fire Chief shall participate in performance reviews conducted by the Board. The Fire Chief shall cause his performance review to be scheduled at least annually, but he may request a performance review more frequently. The Fire Chief may request bonus compensation in connection with a performance review. However, the parties are committed to the principle that no bonus shall be paid unless there has been exceptional performance by the Fire Chief that merits a bonus payment in the sole discretion of the Board.

6. **TIME-OFF AND LEAVES.**

6.1. *Vacation.* The Fire Chief shall accrue paid vacation time at the rate of thirty-six (36) eight-hour days or 288 hours per year provided, however, that the amount of unused, accrued vacation time shall not exceed 576 hours. The Fire Chief may receive a cash-out of unused, accrued vacation time not to exceed 300 hours once per year at his then-current hourly rate of pay upon notice to the Board. The Fire Chief shall be encouraged to take vacation regularly each year, preferably, a full week at a time and the Board may direct him to do so. Unused, accrued vacation time shall be payable to the Fire Chief upon separation as required by law.

6.2. *Sick Leave.* The Fire Chief shall accrue paid sick leave at the rate of eighteen (18) hours per month with no limitation on accrual. Sick leave shall be used for actual hours lost due to illness or off-duty injury and may also be used to attend to the illness or injury of a family member as required by law. Unused, accrued sick leave shall not be payable to the Fire Chief upon separation, except that he shall receive a cash-out of unused, accrued sick leave at his then-current hourly rate of pay in the event that he is terminated by the District under Section 11.3, below. Unused, accrued sick leave shall be converted to health insurance benefits upon retirement from the District as set forth in Section 8, below. The Fire Chief shall provide a report of his sick leave accruals, use, and balance to the Board at least annually.

6.3. *Holiday Pay.* The Fire Chief shall be granted leave with pay on all holidays proclaimed by the Governor of the State of California or the President of the United States and on his birthday.

6.4. *Bereavement.* The Fire Chief shall be granted leave with pay not to exceed five (5) days per year upon the occasion of the death of his spouse or that of his or his spouse's child, parent, grandparent, grandchild, or sibling.

6.5. *Strike Team.* The Fire Chief shall be granted leave with pay for strike team deployments. If the Fire Chief is deployed out-of-county, he shall be additionally compensated on a straight-time hourly basis for all hours worked in excess of his regular workday(s). The Fire Chief acknowledges that the District may receive reimbursement from the State of California for wages paid to him for strike team services.

6.6. *Other.* The District shall comply with all local, state, and federal laws relating to the leave rights of employees as made applicable to the Fire Chief.

7. HEALTH INSURANCE. The District shall provide medical coverage to the Fire Chief and his qualified dependents through the PERS health insurance program payable by the District at the rate of the PERS Choice Plan. If the Fire Chief chooses a plan in excess of the coverage or rates of the PERS Choice Plan, he shall be responsible for any additional cost. The District shall also provide vision and dental coverages for the Fire Chief and his qualified dependents under plans that are as good as or better than existing.

8. RETIREMENT. The parties participate in the San Joaquin County Employee's Retirement Act of 1937 ("SJCERA"). The District shall continue to make the "Employer Contribution" and the Fire Chief shall continue to make the "Employee Contribution" toward the existing plan as required by SJCERA. The "Employee Contribution" shall be treated as a pre-tax deduction from wages, but shall not reduce the Fire Chief's income for purposes of retirement benefits. If the Fire Chief retires from the District on or before the last date of the Term of this Agreement, the District shall provide one-month of medical, vision, and dental coverages for the Fire Chief and his dependents (or, upon his death, those survivors who would have qualified as his dependents) for every twenty-four (24) hours of unused, accrued sick leave.

9. INDEMNIFICATION. The District shall reimburse the Fire Chief for all reasonable and necessary expenses incurred in connection with the performance of his duties subject to such procedures as the District may establish for other employees. The District shall indemnify and defend the Fire Chief against any claim, demand, or action arising out of an alleged act or omission occurring in the performance of his duties, except that the District shall not pay an award of punitive damages as a matter of law.

10. OTHER BENEFITS.

10.1. *Uniform Allowance.* The District shall provide the Fire Chief with a uniform allowance which shall be processed as supplemental pay.

10.2. *Deferred Compensation.* The Fire Chief shall enjoy participation in the deferred compensation program.

10.3. *Vehicle.* The District shall provide the Fire Chief with a District-owned vehicle for his day-to-day business use and to enable him to respond to calls and other matters requiring his immediate attention. The District shall maintain a minimum of \$250,000.00 in liability coverage for the Fire Chief's operation of District vehicles.

11. **TERMINATION.** This Agreement and the employment of the Fire Chief by the District shall terminate as follows:

11.1. *Automatically.* Termination shall occur automatically and without further action upon the expiration of the Term of this Agreement, the bankruptcy or dissolution of the District, or the death or disability of the Fire Chief. "Disability" for purposes of this Section shall mean the inability of the Fire Chief, by reason of a physical or mental condition, to perform the essential duties of the Fire Chief for a period of six (6) months. The parties acknowledge that the Fire Chief's inability to perform his essential duties for such a period would constitute an undue hardship on the District.

11.2. *By the Fire Chief.* The Fire Chief may terminate voluntarily by way of resignation or retirement. The Fire Chief shall make every effort to give the District the courtesy of no less than six (6) months notice of retirement.

11.3. *By the District.* The District may terminate upon a four-fifths vote of the Board at a duly noticed meeting, except that the District shall not terminate the Fire Chief in this manner within a "cooling-off period" of ninety (90) days before or after an election of a Board member. At the Fire Chief's option, the District shall be deemed to have constructively terminated the Fire Chief if it unilaterally reduces his base salary or any other material benefit provided for in this Agreement, unless the reduction is pursuant to a District-wide furlough.

11.4. *For Cause.* The District shall terminate upon the conviction of the Fire Chief of any public offense that is a felony, that demonstrates moral turpitude or an abuse of his office or position, and/or the punishment for which includes a prohibition against holding public office or public employment. In the event the Fire Chief is convicted of a crime involving abuse of his office or position, the Fire Chief shall reimburse the District for expenditures arising from the offense including any paid leave pending an investigation and legal defense fees.

11.5. *Merger or Consolidation.* In the event that the District merges into or is consolidated with another agency, and the Fire Chief does not accept an offer of comparable employment with the successor agency, the termination shall be treated the same as a voluntary resignation by the Fire Chief under Section 11.2, above. If there is no offer of comparable employment made by the successor agency, the termination shall be treated the same as a dissolution of the District under Section 11.1, above.

12. SEVERANCE. In the event that the District terminates under Section 11.3, above, the Fire Chief shall be entitled to a severance equal to his base salary for the months remaining on the Term not to exceed twelve (12) months and, except as otherwise provided by this Agreement or by law, he shall be precluded from recovering anything else of value from the District by reason of the termination. The parties acknowledge the provisions of Government Code section 53260, which are in relevant part:

(a) All contracts of employment between an employee and a local agency employer shall include a provision that provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract [except that:]

(1) If the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18. []

(c) The cash settlement formulas described in subdivision (a) are maximum amounts that may be paid by a local agency employer to an employee and not a target or example of the amount of the cash settlement to be paid by a local agency employer to an employee in all contract termination cases.

13. DISPUTES. Any litigation between the parties arising out of this Agreement shall be brought in San Joaquin County, California, and shall be resolved in accordance with the laws of the State of California. The Fire Chief waives any removal rights he may have under Code of Civil Procedure section 394.

14. SEVERABILITY. In the event that any provision of this Agreement is held or determined to be void or unenforceable by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void or unenforceable are wholly inseparable.

15. INTERPRETATION. The parties have had a sufficient opportunity to review and negotiate this Agreement and, whether or not they have done so, to consult with legal counsel of their choosing before executing it. This Agreement shall therefore be construed in accordance with its plain meaning and not in favor of or against any party.

16. SOLE AGREEMENT. This Agreement constitutes the sole and entire agreement between the parties relating to the employment of the Fire Chief by the District and supersedes, replaces, and subsumes any and all obligations under all prior agreements as of the Effective Date. The parties acknowledge that they are not entering into this Agreement in reliance on any agreement, promise, arrangement, representation, or understanding, whether written or oral, which is not fully expressed herein. This Agreement may only be modified by the parties in writing.

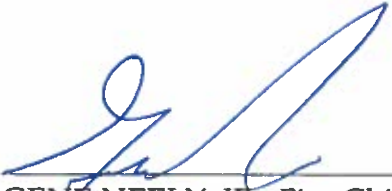
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated below.

Dated: 6/27/2017, 2017



LATHROP-MANTECA FIRE PROTECTION DISTRICT
By: Gloryanna Rhodes, Chair of the Board of Directors

Dated: 6/27/17, 2017



GENE NEELY, JR., Fire Chief

Exhibit A
Salary Schedule

July 1, 2017 – June 30, 2018 (Year 1)	\$150,000.00 per year
July 1, 2018 – June 30, 2019 (Year 2)	\$153,750.00 per year
July 1, 2019 – June 30, 2020 (Year 3)	\$157,593.75 per year
July 1, 2020 – June 30, 2021 (Year 4)	\$161,533.59 per year
July 1, 2021 – June 30, 2022 (Year 5)	\$165,571.93 per year

If the parties agree in writing to extend the Term for an additional five years, the base salary for the first-year of the additional term shall be no less than \$165,571.93 per year.