

SEPARATION AGREEMENT AND GENERAL RELEASE OF CLAIMS

THIS SEPARATION AGREEMENT AND GENERAL RELEASE OF CLAIMS ("Agreement") is made and entered into by and between the Julian-Cuyamaca Fire Protection District (the "District"), and Rick Marinelli ("Employee").

RECITALS

- A. For the purposes of this Agreement, the Julian-Cuyamaca Fire Protection District, its elected and appointed officials, officers, employees, agents, attorneys, insurers, divisions, successors and assigns, and any related holding, parent, sister, or subsidiary entities shall be collectively referred to as "District." Any reference to "District" refers to the District itself and/or any of the individuals set forth herein.
- B. Employee has been employed by the District as Fire Chief since on or about June 1, 2013. At all times during his employment with the District, Employee serves at the pleasure of the Board of Directors ("Board").
- C. Employee will separate from District service at the close of business on June 1, 2018.
- D. To settle any and all claims that have arisen between District and Employee, and in exchange for compensation that Employee would not otherwise be entitled to receive, Employee desires to settle and compromise any and all claims he has against District, and to provide for a general release of any and all such claims.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants, and subject to the terms and conditions, as set forth in this Agreement, and other valuable consideration, the receipt of which is hereby acknowledged, Employee and District agree as follows:

1. Separation of Employee. Employee hereby separates from his employment with the District, and the District hereby accepts Employee's separation, to be effective at the close of business hours on June 1, 2018 ("Separation Date").

On or before Separation Date, Employee shall return any and all District-issued property, including but not limited to, Employee's District identification card and/or badge, police badges, weapons, keys, electronic key card(s), cell phone, pager, blackberry, laptop computer, vehicle, vehicle keys and computer data.

2. Severance Pay. While the District is not obligated to provide Employee any separation pay, in consideration for Employee entering into and abiding by this Agreement, the District shall pay Employee a lump sum payment in the amount of \$26,401.00, less applicable withholdings and deductions ("Severance Payment"). The

District also agrees to pay Employee a lump sum payment equal to his accrued but unused sick leave as of the Separation Date, up to a maximum of 100 hours, at a rate of \$42.31 per hour, less applicable withholdings and deductions ("Sick Leave Payment"). Employee shall not receive any additional payment for accrued sick leave upon his separation from the District.

Employee's last paycheck and accrued benefits, including accrued vacation hours, will be paid on Separation Date.

If Employee is removed from his position as Fire Chief for cause between the date that Employee executes this Agreement and the Separation Date, Employee will not be entitled to any portion of the Severance Payment or Sick Leave Payment, nor will the District be required to fulfill any other terms of this Agreement.

3. Best Efforts to Recruit Fire Chief.

Until the Separation Date, Employee agrees to use his best efforts to recruit a fire chief to replace him after the Separation Date. Best efforts include, but are not limited to, advertising the position on appropriate channels, reviewing candidates' résumés and providing honest analysis and feedback to the Board, and scheduling and participating in interviews. If a new fire chief begins employment before Employee's Separation Date, Employee shall facilitate the least disruptive transition in order to timely complete District projects currently in progress and assist the new fire chief in assuming office.

4. Release of All Claims Except ADEA Claims.

a. Release. In consideration of the promises made herein, specifically District's agreement to pay employee the Separation Pay as stated above, Employee, on behalf of himself and his representatives, agents, estate, successors and assigns, agrees to release and forever discharge the District and its elected and appointed officials, officers, employees, attorneys and/or agents, and all other individuals and/or entities, collectively referred to herein as District, both individually and in their official capacities, from any and all actions or causes of action, suits, claims, complaints, contracts, liabilities, agreements, promises, demands, debts, and damages, whether in law and/or in equity, related directly or indirectly, or in any way connected with any transactions, affairs, occurrences between the parties as of the Separation Date, including but not limited to Employee's employment with District and/or the separation from said employment.

This is a complete general release, which shall forever bar Employee from pursuing any claims against the District relating to his employment or the separation thereof. Employee understands and agrees that he is waiving any rights he may have had, now has, or in the future may have, to pursue any and all remedies available to him under any cause of action arising directly or indirectly from his employment with the District. This Agreement specifically applies to, but is not limited by, any and all wage claims; claims for unpaid expenses; claims of wrongful discharge, retaliation, and/or

constructive termination; tort claims including but not limited to emotional distress, and/or defamation; breach of contract; breach of covenant of good faith and fair dealing; violation of the provisions of the California Labor Code, violations of District ordinances, regulations, resolutions, personnel rules and other enactments; violations of the Meyers-Millias Brown Act; violations of any memoranda of understanding covering Employee; and claims under Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act and comparable state statutes and regulations, the Family Medical Leave Act, the California Family Rights Act, and comparable state statutes and regulations, the Fair Labor Standards Act, the Equal Pay Act of 1963, any and all state and federal whistleblower statutes and/or freedom of speech causes of action, the California and United States Constitutions, the Civil Rights Act of 1866, and any other laws and regulations relating to employment and/or discrimination, except the federal statute specifically excluded hereafter. This release specifically excludes any and all loss, liability, claims, demands, and causes of action or suits of any type under the Age Discrimination in Employment Act of 1967 (ADEA) and related federal statutory, regulatory, and case law authority. Employee's release of ADEA claims shall be addressed separately in Section 5 of this Agreement.

b. Section 1542 Waiver. Employee expressly waives all of the benefits and rights granted pursuant to California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know of or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Employee certifies that he has read all of this Agreement, including the release provisions contained herein and the cited and quoted Civil Code section, and that he fully understands and accepts all of the same. Employee expressly agrees that this Agreement shall extend and apply to all unknown, unsuspected, and unanticipated injuries and damages, as well as those that are now disclosed.

c. No Further Action. Employee expressly, absolutely, and irrevocably agrees that he will not prosecute nor allow to be prosecuted on his behalf, in any administrative agency, whether federal or state, or in any court, whether federal or state, any claim or demand of any type related to the matters released above, it being the intention of the parties that with the execution of Employee of this release, District, its elected officials, appointed officials, officers, employees, agents, attorneys, insurers, divisions, successors and assigns, and any related holding, parent, sister or subsidiary entities will be absolutely, unconditionally, and forever discharged of and from all obligations to or on behalf of Employee related in any way to the matters discharged herein.

5. Release of All ADEA Claims.

a. ADEA Claims. This section of the Agreement exclusively addresses Employee's release of claims arising under federal law involving discrimination on the basis of age in employment. This section is provided separately, in compliance with federal law, including but not limited to the Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers' Benefit Protection Act of 1990 ("OWBPA") and related federal statutory, regulatory, and case law authority to ensure that Employee clearly understands his rights so that any release of age discrimination claims under federal law is knowing and voluntary on the part of Employee.

b. Review Period. Employee represents, acknowledges, and agrees that District has advised him, in writing, to discuss this Agreement with an attorney, and to the extent, if any, that Employee has desired, Employee has done so; that District has given Employee twenty-one (21) days from receipt of this Agreement to review and consider this Agreement before signing it and Employee understands and acknowledges that he may use as much of this twenty-one (21) day period as he desires prior to signing the Agreement; and that no promise, representation, warranty, or agreement not contained herein has been made by or with anyone to cause Employee to sign this Agreement; that Employee has read this Agreement in its entirety, and fully understands and is aware of its meaning, intent, content, and legal effect; and that Employee is executing this release voluntarily and free of any duress or coercion.

c. Effective Date of Agreement. The parties acknowledge that for a period of seven (7) days following the execution of this Agreement, Employee may revoke the Agreement, and the Agreement shall not become effective or enforceable until the revocation period has expired. This Agreement shall become effective eight (8) days after Employee, and District have signed it, and in the event the parties do not sign on the same date, then this Agreement shall become effective eight (8) days after the date it is signed by Employee.

d. Release. In consideration of the promises made herein, specifically the District's agreement to pay Employee the Separation Pay as stated above, Employee does hereby unconditionally, irrevocably, and absolutely release and discharge District, its elected officials, appointed officials, officers, employees, agents, attorneys, insurers, divisions, successors and assigns, and any related holding, parent, sister or subsidiary entities from any and all loss, liability, claims, demands, causes of action or suits of any type, whether in law and/or in equity, arising under the ADEA, the Older Workers Benefit Protection Act, and related laws and regulations, and related directly or indirectly to Employee's employment with District and the separation of said employment as of the Separation Date.

e. Section 1542 Waiver. Employee does expressly waive all of the benefits and rights granted to him pursuant to California Civil Code section 1542, which reads as follows:

A general release does not extend to claims which the creditor does not

know of or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Employee certifies that he has read all of this Agreement, including the release provisions contained herein and cited and quoted Civil Code section, and that he fully understands all of the same. Employee hereby expressly agrees that this Agreement shall extend and apply to all unknown, unsuspected, and unanticipated ADEA injuries and damages, as well as those ADEA injuries and damages that are now disclosed.

6. Non-Disparagement. Employee and District will not disparage one another nor any of the officers, agents or employees of one another, or otherwise take any action which could reasonably be expected to adversely affect the personal or professional reputation of either or any of them. For purposes of this Section, "disparage" shall mean any negative statement, whether written or oral.

7. No Undue Influence. Employee represents and acknowledges that in approving this Agreement he has not received nor relied upon any representation or statement not set forth herein made or given by the District, or any of its officers, employees, attorneys or agents, with regard to the subject matter, basis, or effect of this Agreement, and that Employee is entering into agreement of his own free will and choosing, and without any duress, threat or undue influence of any kind whatsoever, and that he has the legal capacity to enter into this Agreement.

8. Knowing and Voluntary Agreement. Employee acknowledges that he has carefully read and fully understands all of the provisions and effects of this Agreement. Employee further acknowledges that he has been given the opportunity to consult with his own independent legal counsel, at his expense, with respect to matters referenced in this Agreement. Employee acknowledges that he has fully discussed this Agreement with his attorney or has voluntarily chosen to sign this Agreement without consulting an attorney, fully understanding the consequences of this Agreement. Employee further acknowledges that he is entering into this Agreement without coercion or duress from District and that neither District nor any of its agents or attorneys has made any representations or promises concerning the terms or effects of this Agreement other than those set forth in this Agreement.

9. Confidentiality. Employee acknowledges that this Agreement itself is subject to disclosure pursuant to the California Public Records Act.

10. Release of Information. Employee shall not disclose any confidential information, documents, or other materials obtained through the course of his employment. Further, Employee shall not render any opinions or ideas that he may have regarding the District's business to anyone when the underlying basis of that opinion or idea is based on knowledge not available to the public that was obtained during his tenure as a District employee. District agrees that it will follow its existing policies regarding reporting on Employee's tenure as a District employee to any

prospective employers who inquire in the future which are to disclose dates of employment, salary and duties.

11. Integration. This Agreement sets forth the entire Agreement between the parties hereto and fully supersedes any and all prior agreements or understandings, whether expressed or implied, in writing or orally stated, pertaining to the subject matter hereof, including specifically any previous employment agreement or written memorandum of understanding between Employee and District. Any and all such previous agreements are hereby rescinded.

12. Governing Law, Venue. This Agreement is made and executed between the parties in the City of Julian, State of California, and shall in all respects be interpreted and enforced, and be governed by, the laws of the State of California. In the event any legal action is brought by either party against the other for any reason, said legal action shall be filed in the court of competent jurisdiction located nearest to Julian, California.

13. Counterparts. This Agreement may be executed by the parties in counterpart form. When approved and executed by both parties, all counterpart forms of this Agreement together shall constitute one and the same Agreement.

14. Complete Defense. This Agreement may be pleaded as a full and complete defense against any action, suit, or proceeding, which may be prosecuted, instituted, or attempted by either party in breach thereof.

15. Prevailing Party Right to Attorneys Fees and Costs. In any legal action commenced by one party against the other brought to enforce any of the provisions of this Agreement, the party deemed by the adjudicating court or tribunal to be the prevailing party shall have the right to recover its costs of suit, including legal fees in an amount determined by the court or tribunal to be fair and reasonable, from the non-prevailing party, in addition to the right to any other judgments, awards or amounts to be paid by either party to the other.

16. Severability. If any word, phrase, sentence, paragraph, section or portion of this Agreement shall be held by a court of competent jurisdiction to be invalid, null or void for any reason, the parties hereto declare their intent and agreement that the part determined to be invalid, null or void provision shall be severed from the remaining Agreement and that all remaining portions of this Agreement not determined to be invalid, null or void shall remain in full force and effect, and the Agreement shall be effective without such invalid, null or void portion within it, as if originally drawn and executed in such manner.

17. No Admission of Liability. It is understood that this Agreement is not an admission of any liability by either party, but is in compromise of any and all claims.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives,

successors, and assigns.

IN WITNESS WHEREOF, the undersigned assert they have authority to enter in this Agreement and have executed this Agreement on the dates shown below.

CAUTION: THIS AGREEMENT CONTAINS A RELEASE. READ BEFORE SIGNING.

EMPLOYEE REPRESENTS THAT HE HAS CAREFULLY READ THIS AGREEMENT AND KNOWS ITS CONTENTS AND FULLY UNDERSTANDS IT; THAT HE HAS HAD THE OPPORTUNITY TO HAVE THIS AGREEMENT FULLY EXPLAINED TO HIM BY AN ATTORNEY OF HIS PREFERENCE AND HAS EITHER DISCUSSED THIS AGREEMENT WITH AN ATTORNEY OR HAS VOLUNTARILY ELECTED TO SIGN IT WITHOUT HAVING FIRST CONSULTED AN ATTORNEY; THAT HE FULLY UNDERSTANDS ITS FINAL AND BINDING EFFECT; THAT THE ONLY PROMISES MADE TO HIM BEFORE SIGNING THIS AGREEMENT ARE THOSE CONTAINED IN THIS AGREEMENT.

Employee's Initials: R.M.

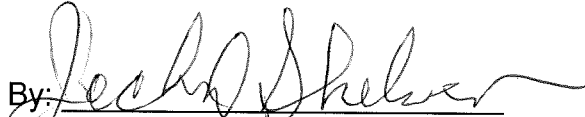
DATE: 3-20-18

EMPLOYEE:


Rick Marinelli

DATE: 3/20/18

JULIAN-CUYAMACA FIRE
PROTECTION DISTRICT

By: 
Jack Shelver, Board President