

EXHIBIT A

AMENDED AND RESTATED
GOODYEAR VOLUNTEER AND
RESERVE FIREFIGHTER
ALTERNATE PENSION &
BENEFIT PLAN

June __, 2016

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GOODYEAR VOLUNTEER AND RESERVE FIREFIGHTER ALTERNATE PENSION & BENEFIT PLAN

GOODYEAR FIRE DEPARTMENT, organized under the laws of the State of Arizona as a Department of the City of Goodyear, a municipal corporation, makes this Agreement with the Board of Trustees of the Goodyear Volunteer and Reserve Firefighter Alternate Pension and Benefit Plan. This Amended and Restated Agreement shall be referred to herein as the "Agreement" and is an amendment of the Agreement entered into on February 13, 1990, which established the alternate pension and benefit plan under Arizona Revised Statutes § 9-981 and revised by action of the Goodyear Volunteer and Reserve Firefighter Retirement Trust Advisory Committee on April 19, 2001 and approved by the Goodyear city Council on June 25, 2001. The initial 1990 document as amended in 2001 shall be referred to herein as the "Prior Agreement." Notwithstanding any language to the contrary in the Prior Agreement, this Agreement shall set forth the mechanism for establishing the alternate pension and benefit plan.

WITNESSETH

Through the Prior Agreement, the Goodyear Fire Department established a Plan for the administration and distribution of contributions made by the Sponsor to provide retirement benefits for eligible volunteer Firefighters. The Sponsor and the Board of Trustees entered into the Prior Agreement to provide an alternative pension and benefit plan for the firefighters pursuant to Arizona Revised Statutes § 9-981. Before this Plan was established, the Firefighters participated in a pension and benefit plan established by Arizona Revised Statutes § 9-951 et seq. The Sponsor and the Board of Trustees now desire to enter into this Agreement as a result of the Plan no longer providing any benefits to active firefighters employed by the City of Goodyear ("City").

In consideration of their mutual covenants, the Sponsor and Board of Trustees agree as follows:

ARTICLE I DEFINITIONS

1.1 "Account" means the separate accounts that the Board of Trustees shall maintain for a Participant under the Plan.

1.2 "Account Balance" means the amount standing in a Participant's Account as of any date derived from both Sponsor contributions and Firefighter contributions.

1.3 "Accounting Date" shall be the last day of the Plan Year. The Board of Trustees shall make all Plan allocations for a particular Plan Year as of the Accounting Date of that Plan Year.

1.4 "Article 4 Plan" means this alternate pension and benefit plan created by authority of Arizona Revised Statutes§ 9-981.

1.5 "Beneficiary" means a person designated by a Participant who is or may become entitled to a benefit under the Plan as provided in Section 8.1.

1.6 "Board of Trustees" means the Board of Trustees established by Section 9.1 of this Agreement and required by Arizona Revised Statutes§ 9-954.

1.7 "City Council" means the Goodyear City Council.

1.8 The "Effective Date" of this Plan shall be March 1, 1989.

1.9 "Fire Department" means the Goodyear Fire Department.

1.10 "Firefighter" means a Volunteer Firefighter or Reserve Firefighter with the Goodyear Fire Department formerly providing volunteer firefighting service to the City.

1.11 "Fund Assets" means all property of every kind (other than incidental benefit insurance contracts) held or acquired by the Board of Trustees under this Agreement.

1.12 "Participant" means any Firefighter who is eligible to be and becomes a Participant in accord with the provisions of Section 2.1 of this Agreement.

1.13 "Plan" means the retirement plan initially established by the Sponsor in the form of this Agreement, designated as the Goodyear Fire Department Alternate Pension and Benefit Plan and now implemented by the Board of Trustees.

1.14 "Plan Entry Date" means the Effective Date and every March 1st and September 1st after the Effective Date.

1.15 "Plan Year" means the fiscal year of the Plan, a period of 12 consecutive months ending every February 28th.

1.16 "Retirement" means termination of service after Normal Retirement Age, as that term is defined in Section 5.1.

1.17 "Service" means any period of time the Firefighter was a volunteer firefighter with the Goodyear Fire Department.

1.18 "Sponsor" means the Goodyear Fire Department.

1.19 "Suspense Account" means a discretionary account that the Board of Trustees may establish for future funding of the Plan, as detailed in Section 3.4.

1.20 "Year of Service" means a Plan Year during which a Participant completed 12 consecutive months of service with the Sponsor.

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ARTICLE II

FIREFIGHTER PARTICIPATION

2.1 ELIGIBILITY.

a. A Firefighter shall become a Participant in the Plan on the Plan Entry Date after he (1) reaches 18 years of age or (2) completes one Year of Service. If a Firefighter becomes eligible to be a Participant on the Plan Entry Date, he shall become a Participant on the Plan Entry Date.

b. Pursuant to Arizona Revised Statutes § 9-981(B), a former Firefighter may elect in writing to become a Participant in the Plan if he was a Participant in the Article 3 Plan on the Effective Date.

2.2 **YEARS OF SERVICE - PARTICIPATION.** For purposes of participation under Section 2.1, the Plan shall take into account all of a Firefighter's Years of Service with the Sponsor, including the Years of Service before the Effective Date of the Plan.

2.3 **PARTICIPATION AFTER BREAK IN SERVICE.** A Firefighter shall become a Participant in the Plan immediately after a break in Service if he has satisfied the eligibility conditions of Section 2.1 but has terminated his Service before becoming a Participant.

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ARTICLE III

SPONSOR CONTRIBUTIONS AND FORFEITURES

3.1 **PAYMENTS IN LIEU OF CONTRIBUTION.** Under the Prior Agreement in lieu of making contributions following the withdrawal of active firefighting personnel from the Plan as permitted by A.R.S. Section 9-972, the City provided all administrative services to operate the Plan, except for third party benefit administration services...

3.2 **FUTURE ADMINISTRATIVE SERVICES PROVIDED BY CITY.** Following the effective date of this Agreement, the City shall provide the Plan the administrative services set forth in 9.24.

3.3 **ALLOCATION FOR PRIOR SERVICE.** The monies held as part of the Prior Agreement for the current Plan Participants were transferred into the Article 4 Plan. The ending Account Balances under the Prior Agreement at the time of the creation of the Article 4 Plan became the beginning Account Balances for the Participants under the Article 4 Plan hereunder.

3.4 **FORFEITURE ALLOCATION.** The Board of Trustees shall allocate the amount of a Participants Account Balance forfeited under the Plan as a part of and in the same manner as the Sponsor contribution for the Plan Year in which the forfeiture occurs. If there are no Sponsor contributions in a Plan Year for the current Plan Participants, the amount forfeited shall be used to pay for the cost of implementing the Plan. Any amount not needed to pay for such costs, shall be allocated pro rata to other Plan participants. The Board of Trustees shall continue to hold the undistributed, non-vested portion of a terminated Participants Account Balance in his Account solely for his benefit until a forfeiture occurs at the time specified in Section 5.6.

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ARTICLE IV**PARTICIPANT****CONTRIBUTION**

4.1 **ACCOUNT BALANCE.** The Board of Trustees shall maintain separate Accounts in the name of each Participant to reflect the Participant's Account Balance under the Plan derived from his Participant contributions. A Participant's Account Balance derived from his Participant contributions is the balance of his separate Participant contribution Accounts on any applicable date.

[END OF PAGE]

ARTICLE V

TERMINATION OF SERVICE - PARTICIPANT VESTING

5.1 **NORMAL RETIREMENT AGE.** Normal Retirement Age is the earlier of (1) the date a Participant turns 50 years old or (2) the date he completes 15 Years of Service with the Sponsor. When a Participant's service is terminated for any reason after he has attained Normal Retirement Age, the Board of Trustees shall begin paying the Participant his Account Balance. The Board of Trustees shall begin making the payments of the Participant's Accrued benefits not later than 60 days after the close of the Plan Year in which the Participant's service terminates, unless the Participant elects otherwise in writing as provided in Section 6.2.

5.2 **PARTICIPANT DISABILITY.** For purposes of this Plan, a Participant shall be considered disabled on the date the Board of Trustees determines the Participant will be unable to serve as a volunteer firefighter for an indefinite period. Alternatively, the Board of Trustees may consider a Participant to be disabled if he is unable to engage in any substantial gainful activity. A Participant may be considered disabled because of either a physical or mental disability that the Board of Trustees considers will be of long continued duration. The Board of Trustees also shall consider a Participant disabled if he incurs the permanent loss or loss of use of a member or function of the body, or is permanently disfigured. The Board of Trustees may require a Participant to submit to a physical examination in order to confirm a disability.

The Board of Trustees shall apply the provisions of this Section 5.2 in a nondiscriminatory, consistent, and uniform manner.

5.3 **TERMINATION OF SERVICE BEFORE NORMAL RETIREMENT AGE**

When a Participant terminates his service before he attains Normal Retirement Age (for any reason other than death or disability), the Board of Trustees may begin paying the Participant his Vested Account Balance. The Board of Trustees shall make any decisions about paying a Participant subject to the consent requirements of this section. Any time after the Participant terminates his service, the Board of Trustees may begin making payments in any of the modes and forms allowed by Section 6.4(a), (b), or (c) and Section 6.5. If a Participant returns to service before the Board of Trustees actually makes a distribution, the Board of Trustees shall not make distributions to the Participant.

The Participant must consent in writing both to the decision to distribute and to the form of the distribution.

a. Deferral of Distribution of Account Balance.

If the Participant does not file his written consent with the Board of Trustees the Board of Trustees shall continue to hold the Participant's Account Balance in trust until the close of the Plan Year in which the Participant reaches Normal Retirement Age. At that time, the Board of Trustees shall begin paying the Participant's Vested Account Balance in accordance with the provisions of Article VI. If the Participant dies or becomes disabled after terminating employment but before attaining Normal Retirement Age, however, the Board of Trustees, upon notice of the death or disability and subject to the consent requirements of this Section 5.3 and of Article VJ, shall begin paying the Participant his Vested Account Balance pursuant to the provisions of Article VJ.

b. Termination of Service Because of Death or Disability

If the Participant terminates service before attaining Normal Retirement Age because of death or disability, the Board of Trustees shall begin paying the Participant his Account Balance in accordance with the provisions of Article VJ, subject to the consent requirements of this Section 5.3 and of Article VI.

5.4 VESTING SCHEDULE. If Participant is a volunteer Firefighter with the Department when he reaches Normal Retirement Age, the Participant shall have a 100 percent vested interest in his Account Balance from prior Sponsor contributions. The Participant's Account Balance from Sponsor Contributions also is 100 percent Vested when he dies or terminates his service because of a disability. If a Participant's service terminates before Normal Retirement Age for any reason other than death or disability, he shall receive a vested interest in his Account Balance derived from Sponsor contributions equal to the following schedule:

Years of Service	Vested Interest in
<u>With the Sponsor</u>	<u>Account Balance</u>
Any service Less than Five Years	0%
At least Five Years	50%
At least Six Years	60%
At least Seven Years	70%
At least Eight Years	80%
At least Nine Years	90%
At least Ten or more Years	100 %

The Participant shall forfeit the percentage of his Account Balance that is not vested when he terminates his employment. The forfeiture shall be allocated pursuant to Section 3.3.

5.5 YEAR OF SERVICE • VESTING. For purposes of vesting under

Section 5.4, Year of Service shall mean any Plan Year during which a Firefighter completes not less than 12 consecutive months of service with the Sponsor, including Plan Years prior to the Effective Date of the Plan.

5.6 **FORFEITURE OCCURS.** A Participant forfeits the non-vested portion of his Account Balance from Sponsor contributions when he terminates his participation in the Plan by receiving a cash-out distribution of the vested portion of his Account Balance.

The Board of Trustees shall determine the percentage of a Participant's forfeiture, if any, under this Section 5.4 solely by reference to the vesting schedule of Section 5.4. A Participant shall not forfeit any portion of his Account Balance for any other reason, except as expressly provided by this Section or by Section 9.20.

5.7 **BREAK IN SERVICE.** Notwithstanding any provisions *in* this Agreement to the contrary, the Board of Trustees may enact uniform procedures for handling a Participant's Account during a break in Service of up to five consecutive one-year periods.

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ARTICLE VI

PAYMENT OF BENEFITS

6.1 **DISTRIBUTION TO PARTICIPANTS AND THEIR BENEFICIARIES.**

Subject to the provision of Section 6.2, the balance credited to the account of a Participant shall be, or shall commence to be, distributed not later than 60 days after the close of the Plan year in which he retires, dies, or terminates his service with the Sponsor. If a Participant continues his service beyond his normal Retirement Age but dies before actual retirement, he shall, unless he has otherwise elected in writing, have a survivor annuity payable on his death to his spouse in such amount as can be purchased with his account balance.

6.2 **OPTIONAL DEFERRAL OF DISTRIBUTIONS.** Notwithstanding.

Section 6.1, the Board of Trustees may allow a Participant to defer the commencement of payment of his benefits. By written statement filed with the Board of Trustees, a Participant may elect that distribution be made, or commence, in a year after the year designated by Section 6.1, but no later than the tax year in which he attains age 70 1/2. Any election shall be subject to rules of uniform application prescribed by the Board of Trustees.

On request of the Participant, the Board of Trustees shall furnish the Participant an appropriate form for making the election. The Participant shall make the election by filing the election form with the Board of Trustees at any time before the Board of Trustees otherwise would begin paying a Participant's Account Balance under the requirements of Section 6.1.

6.3 **MODES OF DISTRIBUTION.** Distribution pursuant to Section 6.1 or Section 6.2 shall be made in any one or any combination of the following modes:

- a. in a lump sum payment;
- b. in monthly, quarterly, semi-annual or annual payments commencing in such year and made either (i) over the life of the Participant or (ii) over a period selected by the Participant not extending beyond the Participants life expectancy; or
- c. in monthly, quarterly, semi-annual or annual payments beginning in the year specified in Section 6.1 or 6.2 and made either (i) over the joint lives of the Participant and his spouse or (ii) over a period selected by the Participant not extending beyond the joint life and last survivor expectancy of the Participant and his spouse.

The Participant may elect one of the above modes of distribution by written notice to the Board of Trustees at least 45 days before the date on which distribution is to be made or is to commence, as provided in Section 6.1 and Section 6.2. The election shall specify (i) a mode of distribution described in (a), (b), or (c) above; (ii) the period, if

distribution is to be made under (b)(ii) or (c)(ii) above; and (iii) a form of distribution permitted by Section 6.4. If the Participant fails to make an election, the Board of Trustees determine the mode and form of distribution.

6.4 **FORM OF DISTRIBUTION.** Distribution in a single payment under Section 6.3(a) shall be in cash or in kind, as specified in the election. If the Participant elects distribution in installments, distribution shall be in cash or in kind as specified by the Participant in the election. The form of any distribution elected by a Participant is subject to the approval of the Board of Trustees.

6.5 **CALCULATION OF INSTALLMENT DISTRIBUTIONS.** The Board of Trustees shall determine any annual payment under Section 6.3(b)(i) or (c)(i) by dividing the Participant's Account Balance at the beginning of the year for which the payment is to be made by either (i) the then life expectancy of the Participant or of the Participant and his spouse, as the case may be; or (ii) if the Participant so specifies, by the life expectancy of the Participant or the Participant and his spouse in the year in which distribution commenced, reduced by the number of whole years elapsed since the beginning of such year. Life expectancies shall be calculated for this purpose by use of the expected return multiples in Section 1.72-9 of the Income Tax Regulations. If distributions are to be made in annual installments over a fixed period, pursuant to Section 6.4 (b)(ii) or (c)(ii), the amount of any annual payment shall be the amount determined by dividing the Participant's interest in his account at the beginning of the year for which the payment is made by the number of years remaining in the fixed period. Monthly, quarterly, or semi-annual payments pursuant to Section 6.3(b) or (c) will be one-twelfth, one-quarter or one-half, of the relevant annual payment.

6.6 **DISTRIBUTION AT DEATH OF A PARTICIPANT OR SURVIVING SPOUSE.** The Board of Trustees shall distribute the entire amount credited to the account of the Participant to his spouse, or if he has elected a Beneficiary other than his spouse, to his Beneficiary pursuant to one of the modes of distribution provided in Section 6.3 when either of the following occurs:

- a. A Participant dies before the entire balance credited to his account by the Sponsor has been distributed and distribution is not then being made to the Participant and his spouse as provided in Section 6.3(c); or
- b. Distribution has commenced, as provided in Section 6.3(c) to the surviving spouse of a Participant and the surviving spouse dies before the entire balance has been distributed to the spouse.

Distribution made on the death of the surviving spouse shall be made to the Beneficiary in a single sum or in equal monthly installments over the life of the Beneficiary.

6.7 DISTRIBUTIONS UNDER DOMESTIC RELATIONS ORDERS.

Nothing contained in this Plan shall prevent the Board of Trustees from complying with the provisions of a qualified domestic relations order as determined under federal law. This Plan specifically permits distribution to an alternate payee under a qualified domestic relations order at any time. Nothing in this Section 6.7 shall permit a Participant a right to receive a distribution at a time otherwise not permitted under the Plan, nor shall it permit the alternate payee to receive a form of payment not permitted under the Plan.

The Board of Trustees shall establish reasonable procedures to determine the qualified status of a domestic relations order. The Board of Trustees also shall establish reasonable procedures for paying benefits under a qualified domestic relations order.

The Board of Trustees shall make any payments or distributions required under this Section 6.7 by separate benefit checks or other separate distribution to the alternate payee(s).

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ARTICLE VII

ADMINISTRATIVE PROVISIONS

7.1 **INFORMATION TO BOARD OF TRUSTEES.** The Sponsor has provided the Board of Trustees with the following information for each Firefighter who is eligible to be a Participant under the Plan: (a) name, (b) date of birth, (c) first date of service, (d) leaves of absence, (e) Years of Service, (f) date of termination of service, and (g) any other information which the Board of Trustees considers necessary. The Sponsor's records as to the current information the Sponsor furnishes to the Board of Trustees shall be conclusive as to all persons.

7.2 **NO LIABILITY.** The Sponsor assumes no obligation or responsibility for any act or failure to act by the Board of Trustees.

7.3 **INDEMNITY OF BOARD OF TRUSTEES.** For actions and/or omissions occurring prior to the date of this Agreement, the Sponsor indemnifies and saves harmless the members of the Board of Trustees (collectively "the indemnities") from and against any and all loss resulting from liability to which any of the indemnities may be subjected by reason of any act or conduct in their official capacities in the administration of this Plan. The indemnification includes all expenses reasonably incurred in the defense of the indemnities if the Sponsor fails to provide a defense. This section specifically excludes indemnification for willful misconduct or gross negligence by the indemnities. The indemnification provisions of this Section shall not relieve the indemnities from any liability or breach of a fiduciary duty. Furthermore, the indemnities and the Sponsor shall sign a letter agreement delineating the indemnification agreement of this Section.

7.4 **AMENDMENT TO VESTING SCHEDULE.** The Board of Trustees has the right to amend the vesting schedule at any time. Notwithstanding this right, the Board of Trustees shall not apply the amended vesting schedule to reduce a Participant's vested portion of his Account Balance derived from prior Sponsor contributions to a percentage less than his vested portion under the Plan before the amendment. For purposes of this section, the Board of Trustees shall determine the Participant's vested portion of his Account Balance as of the later of the date the Sponsor adopts the amendment or the date the amendment becomes effective.

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ARTICLE VIII

PARTICIPANT ADMINISTRATIVE PROVISIONS

8.1 DESIGNATION OF BENEFICIARY. A Participant may designate any person or persons as his Beneficiary. The designation shall be in writing, and the Participant may designate contingent or successive Beneficiaries. If the Participant designates a Beneficiary, the Board of Trustees shall pay the Beneficiary the Participant's Account Balance (including any life insurance proceeds payable to the Participant's Account) on death of the Participant.

A married Participant may not designate a Beneficiary other than his spouse unless the Participant's spouse consents to the designation or unless the Participant and his spouse are not married throughout the year ending on the date of the Participant's death. If a Participant designates his spouse as his Beneficiary, the designation does not require spousal consent.

The Board of Trustees shall prescribe the form for the written designation of Beneficiary. When the Participant files the form with the Board of Trustees, the form shall revoke all designations the Participant has filed previously.

8.2 NO BENEFICIARY DESIGNATION. The Board of Trustees shall pay a Participant's Account Balance to his heirs in the manner provided by Arizona law for intestate succession when any of the following occur:

- a. The Participant fails to designate a Beneficiary
- b. The Beneficiary named by the Participant predeceases him;
or
- c. The Beneficiary named by the Participant dies before complete distribution of the Participant's Account Balance.

If there is no taker under Arizona law of intestate succession, the Board of Trustees shall pay the Participant's Account Balance to the estate of the Participant or the Beneficiary, whoever died the last.

The Board of Trustees shall pay the Participant's Account Balance in one or any combination of the forms of distribution specified in Section 6.3.

8.3 PERSONAL DATA TO BOARD OF TRUSTEES. Each Participant and each Beneficiary of a deceased Participant must furnish to the Board of Trustees any evidence, data, or information the Board of Trustees considers necessary or desirable for administering the Plan. The provisions of this Plan are effective for the benefit of each Participant on the condition precedent that each Participant promptly will furnish full, true, and complete evidence, data, and information when requested by the Board of Trustees.

The Board of Trustees shall advise each Participant of the effect of his failure to comply with its request.

8.4 **ADDRESS FOR NOTIFICATION.** Each Participant and each Beneficiary of a deceased Participant shall give the Board of Trustees written notice of his post office address and of any change of post office address. The Participant or Beneficiary shall be bound for all purposes of this Plan by any communication, statement, or notice addressed to him at his last post office address filed with the Board of Trustees or shown on the records of the Sponsor.

8.5 **ASSIGNMENT OR ALIENATION.** Neither a Participant nor a Beneficiary shall anticipate, assign, or alienate (either at law or in equity) any benefit provided under the Plan, except for instances required by a domestic relations order issued by a court of competent jurisdiction. The Board of Trustees shall not recognize any such anticipation, assignment, or alienation. Furthermore, a benefit under the Plan is not subject to attachment, garnishment, levy, execution, or other legal or equitable process.

8.6 **NOTICE OF CHANGE IN TERMS.** The Board of Trustees shall furnish all Participants a summary of any material amendment to the Plan or notice of discontinuance of the Plan without charge.

8.7 **LITIGATION AGAINST THE TRUST.** If any legal action filed against the Board of Trustees by or on behalf of any Participant results adversely to the Participant or the Beneficiary, the Board of Trustees shall reimburse itself, or its members for all costs and fees expended by it or them by surcharging all costs and fees against the sums payable under the Plan to the Participant or to the Beneficiary. The reimbursement shall occur only to the extent a court of competent jurisdiction specifically authorizes and directs the surcharges.

8.8 **INFORMATION AVAILABLE.** Any Participant may examine copies of documents under which the Plan is established or operated. The Board of Trustees will maintain copies of the following at its office or any other place it has designated: Plan description, latest annual report, any bargaining agreement, this Plan Agreement, and any contracts under which the Plan operates. A Participant may examine the documents during regular business hours on reasonable written notice. On the written request of a Participant, the Board of Trustees shall furnish him with a copy of any item listed in this Section 8.8. The Board of Trustees may make a reasonable charge to the requesting person for the copies furnished.

8.9 **APPEAL PROCEDURE FOR DENIAL OF BENEFITS.** The Board of Trustees shall provide adequate notice in writing to any Participant or Beneficiary ("Claimant") whose claim for benefits under the Plan the Board of Trustees has denied. The Board of Trustees' notice to the Claimant shall set forth the following:

- a. The specific reason for the denial;

b. Specific references to pertinent Plan provisions on which the Board of Trustees based its denial;

c. A description of any additional material and information needed for the Claimant to perfect his claim and an explanation of why the material or information is needed; and

d. Notice that the Claimant may appeal the adverse determination in writing to the Board of Trustees within 75 days after receiving the notice of denial of benefits. The notice also must advise the Claimant that his failure to appeal the action to the Board of Trustees in writing within 75 days will render the determination final, binding, and conclusive.

A Claimant may appeal to the Board of Trustees by submitting a written summary of any issues and comments he believes to be pertinent. The Claimant or his duly authorized representative may review pertinent Plan documents. The Board of Trustees shall re-examine all facts related to the appeal and make a final determination as to whether the denial of benefits is justified under the circumstances. The Board of Trustees shall advise the Claimant of its decision within 60 days of the Claimant's written request for review, unless special circumstances (such as a hearing) would make the rendering of a decision within the 60-day limit unfeasible. In no event, however, shall the Board of Trustees render a decision respecting a denial for a claim for benefits later than 120 days after it receives a request for review.

The notice of denial of benefits shall identify the name of each member of the Board of Trustees and the name and address of the member of the Board of Trustees to whom the Claimant may forward his appeal.

8.10 PARTICIPANT DIRECTION OF INVESTMENT. Each Participant has the right to direct the Board of Trustees on how to invest or re-invest the assets in his individual Account. The Participant shall have the right to direct the investment or re-investment only if the Board of Trustees consents in writing to the direction. If the Board of Trustees consents to Participant direction of investment, the Board of Trustees and the Participant shall sign a letter agreement as a part of this Plan containing any conditions, limitations and other provisions they deem appropriate. The Board of Trustees and the Participant shall sign the letter agreement before the Board of Trustees follows any Participant direction on how to invest or re-invest any part of the Participant's individual Account. The Board of Trustees shall not be liable for any loss resulting from a Participant's direction of the investment of any part of his individual Account.

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ARTICLE IX

BOARD OF TRUSTEES

9.1 **COMPOSITION OF BOARD.** The Board of Trustees shall be comprised of at least three (3) Plan Participants..

The Board of Trustees under the Prior Agreement shall determine a method for establishing the initial Board of Trustees under this Agreement, including the names of the initial Board of Trustees and shall determine the length of the terms for members of the initial Board of Trustees so that one Board member serves a one (1) year term, another Board member serves a two (2) year term and the third Board member serves a three (3) year term. Thereafter upon the anniversary of the date of this Agreement and each anniversary thereafter, as a Board member's term expires the remaining Board members shall vote to fill the position from among the then existing Plan participants.

9.2 **NEED FOR A QUORUM.** A majority of the members of the Board of Trustees shall constitute a quorum. The Board of Trustees can take no action without a quorum present.

9.3 **OFFICERS OF BOARD.** The Board of Trustees shall elect from its members the president, secretary and treasurer of the Board for the coming year.

9.5 **TIME OF MEETINGS.**

a. The Board of Trustees shall meet annually and at any other times the president may direct.

b. The Board of Trustees under the Prior Agreement shall call the initial meeting of the Board of Trustees under this Agreement, and shall provide reasonable notice of the meeting to the Board members and to the public. The City of Goodyear shall bear the expense of providing notice of the initial meeting of the Board of Trustees under this Agreement and thereafter provide the administrative services set forth in Section 9.24. For all later meetings, the Board of Trustees shall bear the expense of providing notice of the meetings which expense will be paid from the Fund Assets.

9.6 **AUTHORITY OF BOARD.** The Board of Trustees shall have authority to establish rules of operation not inconsistent with this Agreement or with federal or state law.

9.7 **POWERS.** In case of a vacancy in the membership of the Board of Trustees, the remaining members of the Board of Trustees may exercise any and all of the powers, authority, duties, and discretion conferred on the Board of Trustees pending the filling of the vacancy.

9.8 **ACCEPTANCE OF OBLIGATIONS.** The Board of Trustees accepts the obligations imposed under the Plan. The members of the Board of Trustees shall provide bond for the faithful performance of their duties under the Plan to the extent required by law. The expense of procuring any bond shall be paid from Fund Assets.

9.9 **RECEIPT OF CONTRIBUTIONS.** The Board of Trustees shall be accountable to the Sponsor for the funds the Sponsor contributes to the Plan if the Sponsor makes any contributions, but the

Board shall have no duty to see that the contributions received comply with the provisions of the Plan.

9.10 **GENERAL.** The Board of Trustees shall have the power and duty to do the following:

- a. Determine the rights of eligibility of a Firefighter to participate in the Plan, the value of a Participant's Account Balance, and the vested percentage of each Participant's Account Balance;
- b. Adopt rules of procedure and regulations necessary for the proper and efficient administration of the Plan, provided the rules are not inconsistent with the terms of this Agreement;
- c. Enforce the terms of the Plan and of the rules and regulations the Board of Trustees adopts;
- d. Credit and distribute the Fund Assets;
- e. Review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;
- f. Furnish the Sponsor with information, which the Sponsor may require for tax or other purposes;
- g. Engage the service of agents whom it may deem advisable to assist it with the performance of its duties;
- h. Engage the services of one or more Investment Managers;
- i. Have the option of establishing a nondiscriminatory policy it shall observe in making loans, if any, to Participants; and
- j. Establish and maintain a funding standard account and make credits and charges to the account to the extent required by law.

9.11 **FULL INVESTMENT POWERS.** The Board of Trustees shall have full discretion and authority over the investment of the Fund Assets, except with respect to (1) Fund Assets under the control or direction of a properly appointed Investment Manager; or (2) Fund Assets subject to Participant direction of investment as provided in Section 8.10.

The Board of Trustees is authorized and empowered, but not by way of limitation, with the following powers, rights, and duties:

- a. Invest any part or all of the Fund Assets in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts, mortgages, notes or other property of any kind, real or personal, and buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Board of Trustees in good faith shall be proper, but the investment must be of a kind constituting a diversification considered by law suitable for trust investments;
- b. Retain in cash as much of the Fund Assets as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Fund Assets in a bank account at reasonable interest.
- c. Manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Plan, and otherwise deal with all property, real or personal, in any manner;
- d. Credit and distribute the Fund Assets;
- e. Compromise, contest, arbitrate, or abandon claims and demands, in its discretion;
- f. Hold all rights of ownership of the Fund Assets, including the powers to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;
- g. Lease for oil, gas, and other mineral purposes and create mineral severances by grant or reservation; pool or utilize interest in oil, gas, and other minerals; and enter into operating agreements and execute division and transfer orders;
- h. Perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management,

investment and distribution of the Plan;

i. Retain any funds or property subject to any dispute without liability for the payment of interest, and decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

j. Comply with any tax regulations required of the Board of Trustees;

k. If requested by the Sponsor, furnish to the Sponsor an annual statement of account showing the condition of the Fund Assets and all investments, receipts, disbursements and other transactions affected by the Board of Trustees during the Plan Year covered by the statement and also -stating the assets of the Trust held at the end of the Plan Year. The statement of account shall be conclusive on all persons, including the Sponsor and the Board of Trustees, except as to any act or transaction concerning which the Sponsor file written exceptions or objections with the Board of Trustees within 90 days after receiving the statement of accounts; and

l. Begin, maintain, or defend any litigation necessary in connection with the administration of the Plan. The Board of Trustees shall not be obliged nor required to do so unless it is indemnified to its satisfaction.

9.12 **FUNDING POLICY.** At least annually, the Board of Trustees shall review all pertinent Firefighter information and Plan data in order to establish the funding policy of the Plan. At the same time, the Board of Trustees shall determine the appropriate methods for carrying out the objectives of the Plan. As it deems appropriate, the Board of Trustees periodically shall communicate to any Plan Investment Manager the Plan's short-term and long-term financial needs so that investment policy can be coordinated with Plan financial requirements.

9.13 **AUTHORIZED REPRESENTATIVE.** The Board of Trustees may authorize any two of its members to sign notices, directions, applications, certificates, consents, approvals, waivers, letters, or other documents on its behalf. The Board of Trustees must evidence this authority by an instrument signed by all its members.

9.14 **INTERESTED MEMBER.** No member of the Board of Trustees may decide or determine any matter concerning the distribution, nature, or method of settlement of his own benefits under the Plan.

9.15 **INDIVIDUAL ACCOUNTS.** The Board of Trustees shall maintain a separate Account in the name of each Participant to reflect the Participant's Account Balance under each Plan Sponsor Contribution formula. Furthermore, if a Participant re-

enters the Plan after having a forfeiture break in service, the Board of Trustees shall maintain a separate Account for the Participant's pre-forfeiture break in service Account Balance and a separate Account for his post-forfeiture break in service Account Balance, unless the Participant's entire Account Balance under the Plan is 100 percent vested. The Board of Trustees may maintain a temporary segregated investment Account in the name of a Participant to prevent a distortion of income, gain or loss allocations. The Board of Trustees shall maintain records of its activities.

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9.16 VALUE OF PARTICIPANT'S ACCOUNT BALANCE. The value of each Participant's Account Balance shall consist of that proportion of the net worth (at fair market value) of the Fund Assets which the net credit balance in his Account (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants, plus the cash surrender value of any incidental benefit insurance contracts that the Board of Trustees holds on the Participant's life. For purposes of a distribution under the Plan, the value of a Participant's Account Balance shall be its value as of the Accounting Date or other valuation date immediately preceding the date of the distribution. Any distribution (other than a distribution from a segregated Account) made to a Participant more than 90 days after the Accounting Date, or other valuation date, immediately preceding the distribution shall include interest on the amount of the distribution as an expense of the Fund Assets. The interest shall accrue at the rate of five percent per annum from the Accounting Date or other valuation date to the date of the distribution.

9.17 ALLOCATION AND DISTRIBUTION OF NET INCOME GAIN OR LOSS. As of the Accounting Date of each Plan Year, the Board of Trustees shall reduce Accounts (excluding segregated Accounts) for any forfeitures arising under Section 5.6. Subject to the restoration allocation requirements of Section 9.20, the Board of Trustees then shall allocate the net income (or net loss) from the Plan and the increase or decrease in the fair market value of the assets of the Plan for the Plan Year pro rata to Accounts of the Participants under the Plan as the Accounts stood at the beginning of the current Plan Year. When calculating the change in the fair market value of the Participant's Accounts, the Board of Trustees shall exclude from the Accounts any segregated Accounts, amounts charged during the Plan Year to the Accounts in accordance with Section 9.19, the cash value of which the Board of Trustees has fully distributed since the immediately preceding Accounting Date. Any Suspense Account under the segregated Account shall receive all income it earns and shall bear all expense or loss it incurs. As of the Accounting Date of each Plan Year, the Board of Trustees shall reduce a segregated Account for any forfeiture arising under Section 5.6 after the Board has made all other allocations, changes, or adjustments to the Account for the Plan Year.

9.18 INDIVIDUAL STATEMENT. As soon as practicable after the Accounting Date of each Plan Year, the Board of Trustees will deliver to each Participant a statement reflecting the condition of his Account Balance in the Plan as of that date. The statement also may contain any other information the Board of Trustees, deems to

be pertinent. No Participant, except a member of the Board of Trustees shall have the right to inspect the records reflecting the Account of any other Participant.

9.19 **ACCOUNT CHARGED.** The Board of Trustees shall charge all distributions made to a Participant or to his Beneficiary; from his Account against the Account of the Participant when made.

9.20 **UNCLAIMED ACCOUNT PROCEDURE.** The Plan does not require the Board of Trustees to search for or ascertain the whereabouts of any Participant or Beneficiary. The Board of Trustees shall notify a Participant when he is entitled to a distribution under this Plan. The notice shall be sent by certified mail or registered mail to the last known address of record of the Participant, and the notice shall quote the provisions of this section. If the Participant fails to claim his distribution or make his whereabouts known in writing to the Board of Trustees within six months from the date of mailing of the notice, or before the termination or discontinuance of this Plan, whichever should first occur, the Board of Trustees shall treat the Participant's unclaimed payable Account Balance as forfeited and shall reallocate the unclaimed payable Account Balance in accordance with Section 5.6 for the Plan Year in which the forfeiture occurs.

If the Participant who has incurred a forfeiture of his Account Balance under the provisions of the first paragraph of this Section makes a claim, at any time, for his forfeited Account Balance, the Board of Trustees shall restore the Participant's forfeited Account Balance to the same dollar amount as the dollar amount of the Account Balance forfeited, unadjusted for any gains or losses occurring subsequent to the date of the forfeiture. The Board of Trustees shall make the restoration during the Plan Year in which the Participant makes the claim first from the amount, if any, of the Fund Assets net income or gain for the Plan Year. The Board of Trustees shall distribute the Participant's restored Account Balance to him not later than 60 days after the close of the Plan Year in which the forfeited Account Balance is restored. The forfeiture provisions of this Section shall apply solely to the Participant's Account Balance derived from prior Sponsor contributions.

9.21 **RECORDS AND STATEMENTS.** The records of the Board of Trustees pertaining to the Plan shall be open to the inspection of the Board of Trustees and the Sponsor at all reasonable times. The records may be audited from time to time by any person that the Sponsor or Board of Trustees specifies in writing. The Board of Trustees shall furnish the Sponsor with whatever information relating to the Fund Assets the Sponsor considers necessary.

9.22 **FEES AND EXPENSES FROM FUND.** The Board of Trustees shall use Fund Assets to pay all expenses it reasonably incurs in its administration of the Plan, unless the City pays the expenses pursuant to Section 9.24 of this Agreement.

9.23 **PARTIES TO LITIGATION.** The Board of Trustees shall be necessary parties to any court proceeding involving the Board of Trustees or the Fund Assets. No Participant or Beneficiary shall be entitled to any notice of service of process unless required by law. Any final judgment entered in any proceeding shall be conclusive upon the Sponsor, the Board of Trustees, the Participants, and the Beneficiaries.

9.24 **PROFESSIONAL AGENTS.** The Board of Trustees may employ and pay from the Fund Assets reasonable compensation to agents, attorneys, accountants, and other persons to advise the Board of Trustees as in its opinion may be necessary. The Board of Trustees may delegate to any agent, attorney, accountant, or other person selected by it any non-Trustee power or duty vested in it by the Plan. The Board of Trustees may act or refrain from acting on the advice or opinion of any agent, attorney, accountant, or other person so selected. The City has agreed to provide the Board of Trustees administrative support, such as providing meeting locations, open meeting law notices, documentation of meeting minutes, Board of Trustee elections and administrative distribution of payments at no cost to the Board of Trustees

9.25 **DISTRIBUTION OF CASH OR PROPERTY.** The Board of Trustees may make distributions under the Plan in cash or property, or partly in each, at its fair market value as determined by the Board. For purposes of a distribution to a Participant, a designated Beneficiary, or a surviving spouse, "property" shall include a non-transferable annuity contract, provided the payment period shall not extend beyond the longest permissible benefit payment period under Article VI.

9.26 **DISTRIBUTION DIRECTIONS.** If no one claims a payment or distribution made from the Trust, the Board of Trustees shall dispose of the payment in the manner it deems appropriate.

9.27 **THIRD PARTY.** No person dealing with the Board of Trustees shall be obligated to see to the proper application of any money paid or property delivered to the Board of Trustees, or to inquire whether the Board of Trustees has acted pursuant to any of the terms of the Plan. Each person dealing with the Board of Trustees may act upon any notice, request or representation in writing by the Board of Trustees or by its duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the Board of Trustees that it is acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate.

9.28 **RESIGNATION.** Any elected or appointed member of the Board of Trustees may resign at any time by giving 30 days written notice to Board of Trustees and to the remaining members of the Board of Trustees.

9.29 **SUCCESSOR MEMBERS OF BOARD.** The successors to the members of the initial Board of Trustees shall have all powers, rights, duties, and responsibilities of the members of the initial Board of Trustees.

9.30 **VALUATION OF TRUST.** The Board of Trustees shall value the Fund Assets as of each Accounting Date to determine the fair market value of each

Participant's Account Balance in the Plan. The Board of Trustees shall value the Fund Assets on any other dates it deems necessary.

9.31 **LIMITATION ON LIABILITY.** The Board of Trustees shall not be liable for the acts or omissions of any Investment Manager it appoints, nor shall the Board of Trustees be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Board of Trustees and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities, and liabilities of the Investment Manager with respect to any part of the Trust fund under the control of the Investment Manager.

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ARTICLE X

MISCELLANEOUS

10.1 **SOLE PROPERTY OF THE BOARD ON BEHALF OF PLAN.**

Notwithstanding any language to the contrary in the prior Agreement, all monies contributed to this Plan, all property and rights purchased with such monies, and all income attributable to such monies, property, or rights shall remain solely the property and rights of the Board of Trustees on behalf of the Plan

10.2 **EVIDENCE.** Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. The Board of Trustees shall be fully protected in acting and relying on any evidence described under the immediately preceding sentence.

10.3 **NO RESPONSIBILITY FOR SPONSOR ACTION.** The Board of Trustees shall not have any obligation or responsibility with respect to any action which the Plan requires the Sponsor pursuant to Section 9.24 of this Agreement, any Participant, or eligible Firefighter to take. Similarly, the Board of Trustees shall not have any obligation or responsibility for the failure of any of the above persons to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this Plan.

10.4 **FIDUCIARIES NOT INSURERS.** The Board of Trustees and the Sponsor in no way guarantee the Fund Assets from loss or depreciation. The Sponsor does not guarantee the payment of any money, which may be or becomes due to any person from the Fund Assets. The liability of the Board of Trustees to make any payment from the Fund Assets at any time and all times is limited to the then available Fund Assets of the Plan.

10.5 **WAIVER OF NOTICE.** Any person entitled to notice under the Plan may waive the right to notice.

10.6 **SUCCESSORS.** The Plan shall be binding on the following: (1) All persons entitled to benefits under the Plan, their respective heirs, and legal representatives; (2) The Sponsor, its successors and assigns; and (3) The Board of Trustees, and its successors.

10.7 **WORD USAGE.** Words used in the masculine shall apply to the feminine, where applicable. Wherever the context of the Plan dictates, the plural shall be read as the singular and the singular as the plural.

10.8 **STATE LAW.** Arizona law shall determine all questions arising with respect to the provisions of this Agreement.

10.9 **HEADINGS.** The headings on each section are not portions of this Agreement, but merely are provided for identification purposes.

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ARTICLE XI

AMENDMENT, DISCONTINUANCE, TERMINATION

11.1 **AMENDMENT** This Agreement may be amended by the Board of Trustees.

The Board of Trustees shall make all amendments in writing. Each amendment shall state the date to which it is either retroactively or prospectively effective.

11.2 **DISCONTINUANCE.** The Plan shall terminate:

- a. The Board of Trustees votes to terminate the Plan;
- b. The number of members of the Board of Trustees is less than three.

Upon discontinuance of the Plan, the provisions of Section 5.3 and of Article VI shall remain operative, and the Plan shall continue until the Board of Trustees has distributed all of the benefits under the Plan. On each Accounting Date, the Board of Trustees shall credit any part of a Participant's Account Balance retained in the Plan with its proportionate share of the Plan's income, expenses, gains and losses, both realized and unrealized. Upon discontinuance of the Plan, the Board of Trustees shall allocate any monies in a Suspense Account for the retirement benefits for volunteer firefighters.

11.3 **FULL VESTING ON DISCONTINUANCE.** On either full or partial discontinuance of the Plan, an affected Participant's right to his Account Balance shall be 100 percent Vested.

11.4 **TERMINATION OF PLAN.** Notwithstanding any provisions in this Agreement to the contrary, the Board shall retain the right to terminate the Plan at any time for any reason, with the approval of 75 percent of the Board members.

IN WITNESS WHEREOF, the Sponsor and the Board of Trustees have executed this Plan and Trust in Goodyear, Arizona, this__ day of _____, 2016.

CITY OF GOODYEAR

By: _____
Its _____

Attest:

BOARD OF TRUSTEES:

City Clerk

Trustee

Approved as to form:

Trustee

Board Attorney

Trustee

Trustee

Trustee

Trustee

Trustee