

**JOB CREATION AGREEMENT
FOR NIKE IHM, INC.**

This Job Creation Agreement for NIKE IHM, Inc., (the “Agreement”) is entered into as of the _____ day of _____, 2019 (the “Effective Date”) by and between NIKE IHM, Inc., a Missouri corporation, D/B/A Air Manufacturing Innovation. (“Air MI”), and the City of Goodyear, an Arizona municipal corporation (the “City”), and the City are sometimes referred to herein collectively as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, Air MI is an international manufacturer of footwear components with its United States corporate headquarters located in Saint Charles, Missouri; and

WHEREAS, Air MI has identified the need for a new manufacturing facility to serve its various product lines, both within the United States and internationally; and

WHEREAS, Air MI identified the City as its preferred location for its new manufacturing facility that will accommodate its immediate and long-term expansion plans and otherwise meet its business needs, and will purchase a building located in Goodyear, Arizona within the City of Goodyear (the “Goodyear Facility”); and

WHEREAS, the location of the Air MI manufacturing facility at the Goodyear Facility will involve the investment of at least \$184,500,000 in capital investments in “Phase I” of the Goodyear Facility, which capital investments will include the installation of tenant improvements within said building, the installation of equipment and other capital expenses pertaining to Phase I portion of the Goodyear Facility required for Air MI’s business and manufacturing operations at said Phase I portion of the Goodyear Facility. and

WHEREAS, the City recognizes that the location of Air MI within the City with Air MI’s resulting capital investment and job creation will provide a significant public benefit to the City and its citizens and that the City’s citizens will receive direct consideration from the Parties’ obligations under this Agreement; and

WHEREAS, the City recognizes that Air MI’s operations at the Goodyear Facility will have significant beneficial economic impacts on the City, including but not limited to: the quantity and quality of the jobs that will result from Air MI’s operations; tax revenues generated by the operations of Air MI, its employees, vendors, and service providers; increased economic activity, or multiplier effect, associated with its operations being located within the City; the qualitative value of the City having a high-profile, well respected company locate a critical piece of its business within the City; and the catalytic effect it will have on further development within the City, which will generate additional jobs and revenue within the City; and

WHEREAS, Air MI anticipates starting operations in 2020, and over the course of three (3) years thereafter, Air MI will add lines and operations to fully put the Phase I portion of the Goodyear Facility into service, and at the end of such period Air MI should cumulatively provide at least 505 full-time jobs to the City, paying each Qualified Employment Position (QEP) (as defined herein) 125% of the applicable state of Arizona Median Wage (\$42,614 annually), including overtime and bonuses ; and

WHEREAS, the City commissioned Applied Economics to conduct an economic and fiscal impact analysis of Air MI's operations at the Goodyear Facility; and

WHEREAS, Applied Economics estimates the direct tax benefit to the City of Goodyear from the construction sales tax, personal property tax, and real property tax generated by Air MI during the first five (5) years of operation will be approximately \$7,652,637; and

WHEREAS, Applied Economics estimates the total economic impacts of Air MI's operations in Goodyear will total approximately \$483,444,695 over the first five (5) years of operation; and

WHEREAS, the Parties understand that the decision of Air MI to locate in the City and purchase the property upon which the Goodyear Facility will be located is based on the City's willingness to provide assistance to Air MI regarding job creation, design review and permit fees, and an expedited development process; and

NOW, THEREFORE, in consideration of the premises, promises and mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties hereto, it is hereby agreed as follows:

AGREEMENT

1. Acknowledgement of Recitals. The Parties acknowledge the accuracy and importance of the Recitals to the Parties' obligations below, and that the Recitals are the factors upon which the Parties based their respective decisions to enter into this Agreement.
2. Term. The term ("Term") of this Agreement shall be for five (5) years from the date this Agreement is approved by the Goodyear City Council.
3. Definition. References to "Air MI" in this Agreement shall mean NIKE IHM, Inc., a Missouri corporation, D/B/A Air Manufacturing Innovation, its successors and/or permitted assignees.
4. Definition. References to "Phase I" in this Agreement shall mean that each of the following have been completed; (1) the minimum capital investment of \$184,500,000 in the Goodyear facility has been completed, (2) the company has hired at least 505 full time employees meeting the applicable requirements of Sections 7 and 8 of this Agreement, and (3) a final or temporary Certificate of Occupancy has been issued.
5. Location in Goodyear. In Phase I of the Goodyear Facility, Air MI will purchase a building within the corporate limits of the City of Goodyear and anticipates it will receive a final or temporary Certificate of Occupancy for the facility by June 1, 2020, and within three (3) years of the Effective Date of this Agreement, Air MI will have invested, or will cause to have been invested, a minimum of \$184,500,000 in improving the property upon which the Goodyear Facility will be located, which investment includes all costs incurred by Air MI related to tenant improvements build-out, the actual purchase price of the equipment placed in the building, as well as fixturing and equipping the building and property for the Goodyear Facility.

6. Operations and Job Creation. Air MI agrees that it shall operate the Goodyear Facility in the ordinary course of its business, which includes improving the property upon which the Goodyear Facility will be located, for a minimum period of five (5) years from the date the City issues a final Certificate of Occupancy authorizing Air MI's occupancy of Phase I of the Goodyear Facility. Additionally, over the course of three (3) years after issuance of said final Certificate of Occupancy for Phase I, Air MI will achieve Minimum Employment as defined in Section 8 below.
7. Job Funding. Subject to the terms and conditions set forth herein, and to reimburse the Company for its initial costs of hiring, training, relocation and related expenses, the City agrees to reimburse the Company \$3,923.07 for each Qualified Employment Position ("QEP") created for new employees hired before or after the Effective Date of this Agreement ("Job Creation Payment"), and who meet the conditions set forth below.
 - a. Qualified Employment Position (QEP). A QEP is a full time regular or contract position of the Company where that position meets the requirements of Section 7(d) below.
 - b. Maximum Payment. The Parties agree that the maximum amount payable by the City under Section 7 of this Agreement regardless of the number of Qualified Employment Positions (QEP) created is \$1,020,000 ("Maximum Job Funding Benefit"). The Parties also agree that the maximum per year is limited to \$204,000 annually ("Annual Maximum") until the earlier of the following: (i) the Maximum Job Funding Benefit is depleted (unless a portion is repaid to the City by Air MI and is again available for payment hereunder) or (ii) the Term of this Agreement expires, provided that any overage amount exceeding the Annual Maximum will carry over and be credited to Air MI in the for the following year, up to the Maximum Job Funding Benefit amount.
 - c. Payment Procedure. The payments provided for hereunder shall be made on an annual basis at the beginning of each fiscal year (July 1st through June 30th) of the City. The City will pay \$3,923.07 for the four quarter average of each Qualified Employment Position (QEP) that is listed on the Company's or temporary employment agencies state of Arizona Income Tax and Unemployment Insurance Quarterly Report for the prior four quarters of employment or the then-existing baseline year. For each twelve month period thereafter, the QEP increase over the prior twelve month period will be the QEP used to calculate the payment. The Company shall complete a payment request form provided by the City and shall provide any supporting documents requested by the City to document the Company's number of QEP's eligible for payments hereunder.¹

¹For Example, should the Company have the following QEP's listed on their Quarterly State of Arizona Income Tax and Unemployment Insurance report in the baseline year of 25 in the 1st quarter, 50 in the 2nd quarter, 50 in the 3rd quarter, and 50 in the 4th quarter, then the payment would be calculated as follows: $25 + 50 + 50 + 50 = 175/4 = 43.75 \times \$3,923.07 = \$171,634.31$ (annual payment). The following year's payment would be the amount of the four quarter average over 43.75 QEPs. Thus, if in the second year the four quarter average QEP is 90.00, then the calculation would be $(90.00 - 43.75) 46.25 \times \$3,923.07$.

- d. Eligibility Requirements for Job Creation Payments. To be eligible for the payments provided in Section 7, all of the following conditions must be met for each Qualified

Employment Position (QEP) for which the Job Creation Payment is being sought: (i) QEP must be a full time position with the Company (Company can be employing one or more employees in that position) with the company paying 125% of the applicable state of Arizona Median Wage (currently \$42,614 annually) for each QEP, including overtime pay and bonuses; and (ii) Employees at the Goodyear Facility must be offered health insurance through the Company, with the Company paying at least sixty-five percent (65%) of the premium costs. In the event that the national health care system becomes a single payer system, Section (d)(ii) above shall not apply.

8. Minimum Employment. Notwithstanding the other provisions of this Agreement, in consideration for the job funding provided in this Agreement in Section 7 Air MI will cumulatively hire and/or employ five hundred five (505) full time employees at the Goodyear Facility within sixty (60) months after obtaining a final Certificate of Occupancy for Phase I, and Air MI agrees to maintain an annual average of three hundred seventy nine (379) full time employees (“Minimum Employment”) at the Goodyear Facility each twelve month period commencing with the third (3rd) annual anniversary of issuance of the final certificate of occupancy. Air MI shall annually provide to Goodyear documentation that states the total number of employees who are employed at the Goodyear Facility each quarter.

Air MI agrees that all new employees at the Goodyear Facility who meet the following requirements will be counted towards the Minimum Employment figures in this section; (i) QEP employees must be employed by Air MI full-time; and (ii) full-time employees at the Goodyear Facility must be offered health insurance that is subsidized by Air MI, with Air MI offering to pay at least sixty-five percent (65%) of the premium costs. The weighted average annual base salary of Phase 1 employees counted towards the Minimum Employment figures must be at least \$48,514.00, including overtime and bonuses. Full-time employees are defined as working at least 36 hours per week. New employees are defined as employees hired to work at the Goodyear Facility before or after the Effective Date of this Agreement.

Should Air MI not meet the Minimum Employment requirements, the City shall send a Notice of Non-Compliance to Air MI Upon receipt of the Notice of Non-Compliance, Air MI shall have six (6) additional months to meet the Minimum Employment requirements at the Goodyear Facility. After the additional six (6) month period, should Air MI still not have met the Minimum Employment requirements, as the sole and exclusive remedy, if the City so requests then Air MI shall be obligated to reimburse the City for Job Creation Payments paid by the City to Air MI pursuant to the Schedule below. Should Air MI, subsequently meet the Minimum Employment requirements threshold prior to the expiration of this Agreement, the City shall return to Air MI any funds previously returned to the City under this provision. In determining the portion of the incentives to be returned, if any, the City will consider all relevant circumstances including whether Air MI continues to maintain operations in the City and force majeure as described in Section 17. The City will make its determination upon concluding joint discussions with the Air MI. In the event Air MI breaches this agreement, the City’s sole and exclusive remedy is to require reimbursement of Job Creation Payments that were actually paid and documented by the City.

- a) If the Company does not cumulatively hire five hundred five (505) full-time employees within forty-two (42) months after obtaining a final Certificate of Occupancy for

the entire Phase I or maintain an annual average of three hundred seventy nine (379) () full-time employees for the twelve month period ending on such forty-second (42nd) month, the Company shall be obligated to return 25% of the Job Creation Payments received from the City;

- b) If the Company does not cumulatively hire five hundred five (505) full-time employees within forty-eight (48) months after obtaining a final Certificate of Occupancy for the entire Phase I or maintain an annual average of three hundred seventy nine (379) () full-time employees for the twelve month period ending on such forty-eight (48th) month, the Company shall be obligated to return 50% of the Job Creation Payments received from the City;
- c) If the Company does not cumulatively hire five hundred five (505) full-time employees within fifty-four (54) months after obtaining a final Certificate of Occupancy for the entire Phase I or maintain an annual average of three hundred seventy nine (379) () full-time employees for the twelve month period ending on such fifty-fourth (54th) month, the Company shall be obligated to return 75% of the Job Creation Payments received from the City; and
- d) If the Company does not cumulatively hire five hundred five (505) full-time employees within sixty (60) months after obtaining a final Certificate of Occupancy for the entire Phase I or maintain an annual average of three hundred seventy nine (379) () full-time employees for the twelve month period ending on such sixteth (60th) month, the Company shall be obligated to return 100% of the Job Creation Payments received from the City.

9. Development Process Assistance. With regard to plan review and permit fees (collectively “Plan Fees”), the City agrees to waive (i) 75% of all non-expedited Plan Fees up to a maximum of \$652,233.00 for non-expedited fees and (ii) 100% of expedited Plan Fees up to a maximum of \$342,577.00 for expedited fees for a total of \$994,810.00 Plan Fees waived for Phase I, (collectively “Maximum Fee Waiver Benefit”), from the date of the Effective Date of this agreement related to the Goodyear Facility. The City will also process tenant improvements plans on an expedited basis for an existing building after only one review with a mutually agree upon submission and review schedule. To the extent that Air MI paid (or had third parties pay on its behalf) any Plan Fees to the City prior to the Effective Date of this Agreement, the City agrees to reimburse 75% of such non-expedited Plan Fees and 100% of such expedited Plan Fees to Air MI or a third party beneficiary designated by Air MI in a written notice to the City within six (6) months of the Effective Date of this Agreement. The City shall account for, and provide documentation to Air MI that expressly identifies the specific sums of fees waived.

Should Air MI not open the Goodyear Facility for business operations within twelve (12) months of the issuance of a final Certificate of Occupancy, or operate the Goodyear Facility for at least twenty-four (24) months prior to the expiration of this Agreement, then as the sole and exclusive remedy, Air MI shall reimburse the City for the cost of Plan Fees that were waived pursuant to this provision.

10. Minimum Capital Investment. As a term of this Agreement, Air MI agrees to make a “Minimum Capital Investment” of at least \$184,500,000 in constructing improvements in Phase I of the

Goodyear Facility within five (5) years after the Effective Date of this Agreement. The Minimum Capital Investment includes costs incurred by Air MI for tenant improvements build-out, which includes the actual purchase price of equipment placed in the building, as well as fixturing and equipping the building and property for the Goodyear Facility. Should Air MI not meet the Minimum Capital Investment within five (5) years after the Effective Date of this Agreement, then as the sole and exclusive remedy, Air MI shall return all actual Plan Fees waived by the City, up to a maximum of the actual aggregate Maximum Fee Waiver Benefit received by Air MI.

11. Joint Press Release. Air MI will issue a joint press release with the City of Goodyear, announcing on a mutually agreeable date with mutually agreeable content, the location of Air MI in Goodyear. The announcement will include the company name, expected number of jobs created, and a note about the capital investment.
12. Company Name and Logo. Air MI will install the company name and logo/graphic on a prominent area of the building where Air MI locates no later than six (6) months after receiving the full Certificate of Occupancy. The logo/graphic will include elements of the Nike trademark and/or logo, as proposed by Air MI and confirmed by the City. Design and placement of the logo/graphic and sign will be in accordance Article 7 of the Zoning Ordinance - Sign Regulations.
13. Incorporation of Exhibits. All exhibits attached hereto and referred to in this Agreement are incorporated herein by this reference and made a part of this Agreement.
14. Entire Agreement. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations, and understanding of the Parties, oral or written, are hereby superseded and merged herein.
15. Amendment of the Agreement. This Agreement may be amended or cancelled, in whole or in part, only by a written agreement or amendment fully executed by the Parties.
16. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties. No person other than the Parties has any right of action based upon any provision of this Agreement.
17. Force Majeure. The deadlines contemplated in this Agreement shall be extended if the delay is caused by an act of God, adverse weather conditions, casualty, third party malicious mischief, moratoriums imposed by any governmental entity, unreasonable delays by governmental authorities, civil or military disturbance, war, or other events that are not reasonably foreseeable and not within the reasonable control of Air MI. The amount of such extension shall be determined by the City after consultation with Air MI.
18. Cooperation and Further Acts. The Parties shall act reasonably with respect to any and all matters that require either Party to review, consent or approve any act or matter hereunder. Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform

any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

19. Representation of Counsel. The City and Air MI acknowledge that they were each represented by counsel in connection with the drafting of this Agreement, that each of them and their respective counsel reviewed and revised this Agreement, that each of them and their respective counsel have independently reached their own conclusions as to the enforceability of this Agreement, that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement and that the language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning.
20. Governing Law. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the substantive laws of the State of Arizona (without reference to conflict of law principles).
21. Venue. Any action arising from this Agreement, which includes by way of example, but not limitation, any action to enforce or interpret any provision of this Agreement, shall be commenced and maintained in a court of competent jurisdiction located within Maricopa County, Arizona, and the Parties hereby irrevocably waive any right to object to such venue.
22. Severability. Any provision of this Agreement that is declared void or unenforceable shall be severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect.
23. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through the impasse process, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request the presiding judge of the Superior Court of Maricopa County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.
24. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.
25. Attorneys' Fees and Costs. If either Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs.
26. No Personal Liability. No member, shareholder, partner, owner, manager, officer, director, representative, agent, official, or employee of the City or Air MI shall be personally monetarily liable to the other party, or any successor or assignee, (a) in the event of any default or breach by any Party, (b) for any amount which may become due to such Party or its successor or assign, or (c) pursuant to any obligation of any Party under the terms of this Agreement.

27. Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. This Agreement is subject to, and may be terminated by the City, in accordance with the provisions of A.R.S. § 38-511.
28. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Air MI represents and warrants that they are duly formed and validly existing under the laws of the State of Missouri and that they are duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. Air MI and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.
29. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
30. Notices. All notices and communications provided for herein, or given in connection with this Agreement, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

The City:	City of Goodyear Attn: City Manager 190 N. Litchfield Rd. P.O. Box 5100 Goodyear, Arizona 85358 and City of Goodyear Attn: City Attorney 190 N. Litchfield Rd. P.O. Box 5100 Goodyear, Arizona 85325
To Air MI:	<u>If by mail:</u> Air MI Attn: Lalit Monteiro 13630 SW Terman Road

	Beaverton, OR 97076 With a copy to: <u>If by personal service or overnight courier:</u> Air MI With a copy to: Air MI
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Notice of address may be changed by either Party by giving notice to the other Party in writing of a change of address. Such change will be deemed to be effective five days after date the written notice of change of address is personally delivered to the other Party or as of the seventh business day after mailing the written notice of change of address to the other Party by registered or certified United States Postal Service mail, return receipt requested, postage prepaid.

31. Date of Performance. If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday or legal holiday, then said obligation shall be due and owing, and said time period shall expire, on the first day thereafter which is not a Saturday, Sunday or legal holiday.

[signature page follows]

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as follows:

NIKE IHM Inc., D/B/A Air Manufacturing Innovation

By: _____

Name:

Its:

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2019, before me, personally appeared _____, the _____ of NIKE IHM, Inc., a Missouri corporation D/B/A Air Manufacturing Innovation, and he, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of such corporation, for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

NOTARY SEAL:

CITY

CITY OF GOODYEAR,
an Arizona municipal corporation

By: _____

Julie Arendall

Its: City Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, _____ 2019, before me, personally appeared Julie Arendall, the City Manager of the City of Goodyear, an Arizona municipal corporation, and she, in such capacity, being authorized to do so, executed the foregoing instrument on behalf of the City of Goodyear for the purposes contained therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARY SEAL:

ATTEST:

APPROVED AS TO FORM

City Clerk

City Attorney

