

**THE OREGON FIRE DISTRICT DIRECTORS ASSOCIATION**  
**LENGTH OF SERVICE AWARD PLAN**

**DECLARATION OF TRUST**

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This Declaration of Trust, by and between the Oregon Fire District Directors Association, an Oregon nonprofit corporation (the "OFDDA"), and those Districts organized under Oregon Revised Statute Chapter 198 (hereinafter each District is separately referred to as the "District" and collectively as the "Districts") who have executed an Accession Instrument substantially in the form attached hereto as Exhibit A, and the Trustees named on the signature page of this Declaration of Trust (hereinafter referred to as "Trustees"), is effective to create this Trust as of the date of the first contribution by the OFDDA or any District and is effective with respect to each District as of the date of the Accession Instrument entered into by that District.

**RECITALS**

- A. WHEREAS, each District has adopted The Length of Service Award Plan for Volunteers attached to this Declaration of Trust as Exhibit B.
- B. WHEREAS, each District has incurred or expects to incur liability under the terms of the Plan with respect to the volunteers participating in the Plan.
- C. WHEREAS, it is the intention of each District to make contributions to the Trust to provide itself with a source of funds to assist it in the meeting of its liabilities under the Plan.
- D. WHEREAS, each District wishes to make contributions to a trust (hereinafter called the "Trust") to be held therein.
- E. WHEREAS, the share of the Trust assets belonging to each District is subject to the claims of that District's creditors in the event of that District's Insolvency, as defined in Section 3.1, until paid to that District's Plan participants and their beneficiaries in such manner and at such times as specified in the Plan.
- F. WHEREAS, it is the intention of the parties that this Trust shall constitute an unfunded arrangement and shall not affect the status of the Plan as an unfunded plan maintained for the purpose of meeting the Districts' obligations under the Plan.

NOW, THEREFORE, the parties do hereby establish the Trust and agree that the Trust shall be comprised, held and disposed of as follows:

## ARTICLE I

### ESTABLISHMENT OF TRUST

1.1 Initial Principal. Each District shall hereby deposit with the Trustees in trust the sum stated on its Accession Instrument, which shall become part of the principal of the Trust to be held, administered, and disposed of by the Trustees as provided in this Declaration of Trust.

1.2 Additional Deposits. Each District, in its sole discretion, may at any time, or from time to time, make additional contributions in cash (or with the prior consent of the Trustees and Plan Administrator, in the form of other property) in trust with the Trustees to augment the principal to be held, administered and disposed of by the Trustees as provided in this Declaration of Trust. Neither the Trustees nor any Plan participant or beneficiary shall have any right to compel a District to make such additional contributions.

1.3 Separate Shares. The principal of the Trust, and any earnings thereon, attributable to each District shall be held as a separate share of the Trust, separate and apart from funds of other Districts, and shall be used exclusively for the uses and purposes of Plan participants and general creditors of that District as herein set forth. The Trustees may, in their discretion, further subdivide each share into subshares allocable to individual Plan Participants.

1.4 Grantor Trust. The Trust is intended to be a grantor trust, of which each District is a grantor with respect to its share, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Internal Revenue Code of 1986, as amended, and shall be construed accordingly.

1.5 Allocations Among Plan Participants. Whenever a District makes a contribution as described in Section 1.2, it must inform the Trustees in writing of the proper allocation of such contribution among Plan Participants of the District and provide such additional information as reasonably requested by the Plan Administrator to make such allocation. The District's determination of allocation of its contribution among Plan participants shall be determinative and the District retains all responsibility for insuring that such allocation is correct.

1.6 Rights of Third Parties. Plan Participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of the Trust. Any rights created under the Plan and this Declaration of Trust shall be mere unsecured contractual rights of the Plan Participants and their beneficiaries against their respective District. In the event of Insolvency, as defined in Section 3.1, the assets held by the Trust will be subject to the claims of each separate District's general creditors under federal and state law in proportion to that District's share of assets of the Trust.

## ARTICLE II

### PAYMENTS TO PLAN PARTICIPANTS

2.1 Payments to Plan Participants and Their Beneficiaries. Each District, through the Administrator of the Plan, shall deliver to the Trustees a schedule (hereinafter referred to as the "Payment Schedule") that indicates the amounts payable in respect of each Plan Participant (and his or her beneficiaries), that provides a formula or other instructions acceptable to the Trustees for determining the amounts so payable, the form in which such amount is to be paid (as provided for or available under the Plan), and the time of commencement for payment of such amounts. Except as otherwise provided herein, the Trustees shall make, or arrange to have made, payments to the Plan participants and their beneficiaries in accordance with such Payment Schedule. Unless the Trustees inform a District otherwise in writing, the Trustees shall make provisions for the reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of benefits pursuant to the terms of the Plan and shall pay amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by such District. If the principal of a District's share of the Trust, and any earnings thereon, are not sufficient to make payments of benefits in accordance with the terms of the Schedule, the Trustees shall notify the District that principal and earnings are not sufficient.

2.2 Benefits Under Plan. The entitlement of a Plan Participant or his or her beneficiaries to benefits under the Plan shall be determined by the District or such party as it shall designate under the Plan, and any claim for such benefits shall be considered and reviewed under the procedures set out in the Plan.

2.3 Payment of Benefits. Upon written request to the Trustees, each District may make payment of benefits directly to its Plan participants or their beneficiaries as they become due under the terms of the Plan, in lieu of having the Trustees make these payments. Each District shall notify the Trustees of its decision to make payment of benefits directly prior to the time amounts are payable to participants or their beneficiaries.

## ARTICLE III

### INSOLVENCY OF DISTRICT

3.1 Payment of Benefits Cease on Insolvency. The Trustees shall cease payment of benefits to Plan Participants and their Beneficiaries of any District which is Insolvent. A District shall be considered "Insolvent" for purposes of this Declaration of Trust if (i) the District is unable to pay its debts as they become due, or (ii) the District is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

3.2 Trust Funds Subject to Claims of General Creditors. At all times during the continuance of this Trust, as provided in Section 1.3 hereof, the principal and income of a District's share of the Trust shall be subject to the claims of the general creditors of a District.

3.2.1 Duty to Notify Trustees of District's Insolvency. The Board of Directors and the Chief Executive Officer of each District shall have the duty to inform the Trustees in writing of the District's Insolvency.

3.2.2 Trustees' Duty to Discontinue Payments. If a person claiming to be a creditor of a District alleges in writing to the Trustees that the District has become Insolvent, the Trustees shall determine whether the District is Insolvent and, pending such determination, the Trustees shall discontinue payment of benefits to Plan Participants or their Beneficiaries.

3.2.3 No Actual Knowledge of Insolvency. Unless the Trustees have actual knowledge of a District's Insolvency, or have received notice from a District or a person claiming to be a creditor alleging that the District is Insolvent, the Trustees shall have no duty to inquire whether the District is Insolvent. The Trustees may in all events rely on such evidence concerning a District's solvency as may be furnished to the Trustees and that provides the Trustees with a reasonable basis for making a determination concerning a District's solvency.

3.2.4 Trustees to Hold Assets of Trust for General Creditors. If at any time the Trustees have determined that a District is Insolvent, the Trustees shall discontinue payments to the Plan Participants and Beneficiaries of that District and shall hold such District's share of the Trust assets for the benefit of that District's general creditors. Nothing in this Declaration of Trust shall in any way diminish any rights of the Plan Participants or their Beneficiaries to pursue their rights as general creditors of a District with respect to benefits due under the Plan or otherwise.

3.2.5 Benefits Resume When District Is No Longer Insolvent. The Trustees shall resume the payment of benefits to Plan Participants or their Beneficiaries in accordance with Section 2 of this Declaration of Trust only after the Trustees have determined that the District is not Insolvent (or is no longer Insolvent).

3.3 Amount of First Payment After Discontinuance. Provided that there are sufficient assets in a District's share of the Trust, if the Trustees discontinue the payment of benefits from the Trust pursuant to Section 3.2 hereof and subsequently resume such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to Plan Participants or their Beneficiaries under the terms of the Plan for the period of such discontinuance, less the aggregate amount of any payments made to Plan Participants or their Beneficiaries by the District in lieu of the payments provided for hereunder during any such period of discontinuance.

## **ARTICLE IV**

### **PAYMENTS TO DISTRICTS**

4.1 No Payment to Others. Except as otherwise provided in this Declaration of Trust, a District shall have no right or power to direct the Trustees to divert to others any of the Trust assets before all payment of benefits have been made to that District's Plan Participants and their Beneficiaries pursuant to the terms of the Plan. This provision shall not prohibit a District from terminating its participation in the Plan and Trust pursuant to Section 11.1 of this Trust Agreement.

4.2 Payment to Districts. The Trustees will pay to a District such amounts on such schedule as directed by the Administrator of the Plan for payment to Plan Participants. Upon direction by the District, the Trustees may make payment directly to Plan Participants or Beneficiaries in such amount and on such schedule as provided by a District to the Plan Administrator.

## **ARTICLE V**

### **INVESTMENT AUTHORITY**

5.1 Investment Provider. The Trustees shall forward contributions from Districts to the entity designated as the "Investment Provider" by the Plan Administrator.

5.2 Options for Investment. The Trustees will choose, from time to time, the options for investment of District assets from those available through the Investment Provider.

5.3 Districts' Investment Decisions. The Districts shall provide to the Trustees, in a manner specified from time to time by the Trustees, instructions regarding the allocation of contributions among the various options made available by the Investment Provider and approved by the Trustees. The Trustees shall have no discretion to alter or modify the choices made by the Districts, except as options are changed by the Trustees pursuant to Section 5.2.

5.4 Legally Permitted Investments. In no event may the Districts direct the Trustees to invest in securities of a District (including stock or rights to acquire stock) or obligations issued by a District, other than a de minimis account held in common investment vehicles in which the Trustees invest. In addition, all investments made by the Trustees must be in accordance with Oregon law relating to proper investments by Districts. If the Trustees are uncertain about the propriety of an investment, they shall return a contribution to the District with instructions to obtain an opinion of counsel regarding the propriety of the investment under Oregon law.

5.5 Delegation of Authority. A District may delegate authority to Plan Participants to

select specific investments for subshares of a District's share of Trust assets, within the range of investment choices determined by the District. Such delegation, however, will not confer on Plan Participant any rights of ownership with respect to Trust assets, nor relieve the District of responsibility for exercise of investment authority.

5.6 Hold Harmless. Each District will indemnify and hold harmless the Trustees from any loss or damage resulting from the investment of its contributions to the Trust with the Investment Provider according to the District's or its designees' investment instructions.

## **ARTICLE VI**

### **DISPOSITION OF INCOME**

During the term of this Trust, all income received by the Trustees within each share of the Trust, net of expenses and taxes, and obligations for distributions, shall be accumulated and reinvested within such share.

## **ARTICLE VII**

### **ACCOUNTING BY TRUSTEES**

7.1 Trustees' Duty of Accounting. The Trustees shall keep records of all activities of the Trust, and shall provide each District annually with a trustee's report with respect to its share of the Trust and the names, addresses, and telephone numbers of all Trustees. The Administrator's annual statement to the Districts shall serve as sufficient record of the activities of the Trust and each District waives any right it may have to any other reports or notices.

7.2 Individual Trustee's Duty. Upon removal or resignation of a Trustee, that Trustee shall provide to the remaining Trustees such records and reports as required by the remaining Trustees to show the activities of the departing Trustee with respect to Trust assets in the period prior to removal or resignation.

## **ARTICLE VIII**

### **RESPONSIBILITY OF TRUSTEES**

8.1 Duty of Trustees. The Trustees shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. No Trustee will incur liability to any person for any action taken pursuant to a direction, request or approval given by a District which is contemplated by, and in conformity with, the

terms of the Plan or this Trust.

8.2 Indemnification for Litigation Costs. If the Trustees undertake or defend any claim arising in connection with this Trust, the Districts agree to indemnify the Trustees against the Trustees' costs, expenses and liabilities (including, without limitation, reasonable attorneys' fees and expenses) relating thereto and to be primarily liable for such payments. If the Districts do not pay such costs, expenses and liabilities in a reasonably timely manner, the Trustees may obtain payment from the Trust, which payment shall be allocated among the Districts in proportion to the relative fair market values of their shares of the Trust assets as determined by the Trustees.

8.3 Authority to Hire. The Trustees may hire agents, attorneys, accountants, actuaries, investment advisers, financial consultants or other professionals to assist the Trustees in performing any of their duties or obligations hereunder.

8.4 Powers of Trustees. The Trustees shall have, without exclusion, all powers conferred on a trustee by applicable law, unless expressly provided otherwise herein, provided, however, that if an insurance policy is held as an asset of the Trust, the Trustees shall have no power to name a beneficiary of the policy other than the Trust, to assign the policy (as distinct from conversion of the policy to a different form) other than to a successor Trustee, or to loan to any person the proceeds of any borrowing against such policy.

8.5 Limitations on Trustees' Powers. Notwithstanding any powers granted to the Trustees pursuant to this Declaration of Trust or to applicable law, the Trustees shall not have any power that could give this Trust the objective of carrying on a business and dividing the gains therefrom within the meaning of section 301.7701-2 of the Procedure and Administrative Regulations pursuant to the Internal Revenue Code.

8.6 No Bond Required. No Trustee shall be required to post a bond.

## **ARTICLE IX**

### **COMPENSATION AND EXPENSES OF TRUSTEES**

The Oregon Fire District Directors Association shall pay the ordinary administrative costs associated with the Trust and the Trustees' duties. Extraordinary expenses will be allocated as provided in Section 8.2.

## **ARTICLE X**

### **APPOINTMENT, RESIGNATION AND REMOVAL OF TRUSTEES**

10.1 Appointment. There shall be five (5) Trustees of the Trust, two (2) of whom shall be appointed by the Board of Directors of the Oregon Fire District Directors Association, an Oregon nonprofit corporation, and two (2) of whom shall be appointed by the Board of Directors of the Oregon Volunteer Firefighters Association, an Oregon nonprofit corporation and one (1) of whom shall be appointed by the Board of Directors of the Oregon Fire Chiefs Association.

10.2 Qualification. As a qualification for appointment and continued service, each Trustee shall be an elected or appointed official, employee, volunteer or other official representative of a unit of local government, or a person previously holding such a position who has retired from service.

10.3 Petition of Removal. Any District that is a grantor under this Trust Agreement may petition the Board of the Oregon Fire District Directors Association in writing stating facts constituting sufficient grounds for removal of a Trustee. A copy of the petition shall be mailed to the Trustee within five (5) days of filing of the petition with the Oregon Fire District Directors Association. The Board of the Oregon Fire District Directors Association shall set a date for a hearing to be held on the matter not more than 45 days from the date of filing of the petition and notify the petitioner and all Trustees of the time and place of hearing. All Trustees may be heard at the time and place of hearing and testimony and other evidence shall be received as the Board of the Oregon Fire District Directors Association decides. The hearing may be adjourned by the Oregon Fire District Directors Association Board from time to time for an aggregate period of not to exceed two (2) weeks. Following the hearing, the Oregon Fire District Directors Association Board shall make a final decision on the petition and such decision shall be binding on the Trustees, the individual Trustees and the Districts.

10.4 Terms. The Trustees shall be appointed for a fixed term. Terms shall be three (3) years and shall be staggered so that no more than two (2) Trustee's terms expire during any calendar year. There shall be assigned position numbers to each of the five (5) Trustee positions. The initial tenure of each numbered position shall be as follows:

Position No. 1 (OFDDA)	Inception of the Trust through June 30, 2010
Position No. 2 (OVFA)	Inception of the Trust through June 30, 2011
Position No. 3 (OFCA)	Inception of the Trust through June 30, 2011
Position No. 4 (OFDDA)	Inception of the Trust through June 30, 2012
Position No. 5 (OFVA)	Inception of the Trust through June 30, 2012

After expiration of each of the terms set forth above, succeeding terms for the respective Trustees positions shall be for three (3) years, commencing the date following the expiration of the preceding term. A Trustee may serve any number of consecutive terms.

10.5 Just Cause Removal. In order to insure the faithful, independent, and impartial exercise of judgment and discharge of their obligations, Trustees shall during their terms of office, be subject to removal by the Oregon Fire District Directors Association Board only for just cause. For purposes of this paragraph, "just cause" shall mean loss of qualifications to service, failure or refusal to act, repeated failure to attend the meetings and activities of the Trustees, malfeasance or misfeasance in office, gross misconduct, or conviction of a felony.

10.6 Acceptance. No Trustee shall serve, and no appointment shall be effective until such appointee acknowledges in writing full and unconditional acceptance of the terms of this Declaration of Trust.

10.7 Successor Trustee. In the event of a Trustee's resignation, incapacity, inability to serve (including disqualification) or removal, a successor Trustee shall be appointed as provided in Section 10.1. The successor Trustee shall be appointed to serve the remainder to the unexpired term.

10.8 Vacancy Effect. Should a vacancy exist among the Trustees, the remaining Trustees shall have full power to act as Trustees.

10.9 No Compensation. A Trustee will serve without compensation, but his or her reasonable expenses shall be reimbursed.

## **ARTICLE XI**

### **REVOCATION, AMENDMENT AND TERMINATION**

11.1 Revocation. This Trust is revocable. At any time, a District may revoke its participation in the Trust, by giving written notice to the Administrator pursuant to the terms of the Plan. In the case of revocation, a District shall have the right to receive its share of contributions and earnings under the Plan, less any withdrawal fees imposed by the Investment Provider and a termination fee established from time to time by the Trustees. The Trustees shall make payment to the District within 90 days of receipt of written notification from the District that the Plan has been terminated. The termination fee is in addition to any withdrawal fees imposed by the Investment Provider, and shall be payable by the Trustees to the Administrator.

#### 11.2 Amendment.

11.2.1 The Districts may amend this Declaration of Trust by a written instrument executed by the Trustees and each participating District. Notwithstanding the foregoing, no such amendment shall conflict with the terms of the Plan.

11.2.2 From time to time the Plan Administrator may propose amendments to the Declaration of Trust to the Trustees. If the Trustees approve such amendments, they will become effective 45 days after the date the Plan Administrator sends the amendments to the Districts for

ratification.

11.3 Termination of Trust. Except as otherwise provided below, the Trust shall not terminate until the date on which Plan Participants and their Beneficiaries are no longer entitled to benefits pursuant to the terms of the Plan.

11.3.1 If all participating Districts revoke their participation pursuant to Article 11.1, the Trust will terminate.

11.3.2 If the Administrator of the Plan determines that the Length of Service Award Plan is no longer viable, and terminates the Plan pursuant to Section 8.09 of the Plan Document, the Trust will terminate.

11.3.3 Distribution of Assets. All assets in the Trust at termination shall be returned to the grantor Districts, and each District will receive the Trust assets attributable to its share of the Trust, less any applicable termination fees.

## **ARTICLE XII**

### **DEFINITIONS**

The following terms shall for purposes of this Trust have the meanings set forth below:

12.1 “Administrator” means the Oregon Fire District Directors Association, a § 501(c)(3) Oregon not-for-profit corporation, which has been appointed by each District to administer the Plan.

12.2 “Beneficiary” means the person properly designated by a Participant to receive benefits under the Plan in the event of a Participant’s death.

12.3 “Contribution” means funds or other property transferred to the Trustees by a District pursuant to the Plan.

12.4 “District” means the District named in an Accession Instrument or any of its agencies, departments, subdivisions, or instrumentalities designated by the District.

12.5 “Investment Provider” means the company which has been selected by the Administrator to invest contributions on behalf of the Trustees.

12.6 “Participant” means a volunteer who has satisfied and continues to satisfy their requirements for participation in the Plan.

12.7 “Plan” means the Length of Service Award Plan for Volunteers adopted by a District, as amended from time to time.

12.8 "Trust Assets" means the assets held pursuant to this Declaration of Trust, including Contributions and all earnings and profits on Contributions.

**ARTICLE XIII**

**MISCELLANEOUS**

13.1 Severability. Any provision of this Declaration of Trust prohibited by law shall be ineffective to the extent of any such prohibition, without invalidating the remaining provisions of the Trust; except that if the remaining provisions of the Trust would not substantially achieve the purpose of the Districts in establishing the Trust, then the Trust shall terminate.

13.2 Governing Law. This Declaration of Trust shall be governed by and construed in accordance with the laws of the state of Oregon.

13.3 Plan Consistency. To the extent possible, this Declaration of Trust shall be interpreted to be consistent with the provisions of the Plan.

IN WITNESS WHEREOF, the Trustees have executed this Declaration of Trust as of the dates indicated below.

*Position No. 1:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

*Position No. 2:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

*Position No. 3:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

*Position No. 4:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

*Position No. 5:*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A

**Form of Accession Instrument**

By resolution dated \_\_\_\_\_, \_\_\_\_\_ (the "District")  
adopted the Oregon Fire District Directors Association Length of Service Award Plan for  
Volunteers (the "Plan").

The District desires to become a grantor under the Declaration of Trust and agrees to each and  
every provision of such Declaration of Trust, a copy of which is attached hereto.

\_\_\_\_\_  
President, Board of Directors

Date: \_\_\_\_\_

District: \_\_\_\_\_

Exhibit B

**Plan Document**