

**COOPERATIVE ENDEAVOR AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**FOUNDATION FOR LOUISIANA**

**MONUMENT RELOCATION**

**THIS COOPERATIVE ENDEAVOR AGREEMENT** (the “**Agreement**”) is made and effective April 21, 2017, (the “**Effective Date**”), by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the “**City**”), and the Foundation for Louisiana, represented by Flozell Daniels (“**FFL**”), also sometimes collectively referred to as the “**Parties.**”

**RECITALS**

**WHEREAS**, the City is a political subdivision of the State of Louisiana;

**WHEREAS**, the FFL is a non-profit corporation domiciled in the State of Louisiana, whose office is located 4354 South Sherwood Forest Boulevard, Suite 100, Baton Rouge, Louisiana 70816;

**WHEREAS**, the Parties desire to enter into a cooperative endeavor agreement for the public purpose of funding and facilitating the relocation of four City owned statues which have been declared public nuisances pursuant to Ordinance No. 31,082, enacted pursuant to City Code Section 146-611;

**WHEREAS**, pursuant Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

**WHEREAS**, on June 26, 2015, Mayor Landrieu asked the City Council to initiate the legal process for removing four City monuments pursuant to section 146-611 of the City’s Code of Ordinances;

**WHEREAS**, on December 17, 2015, the New Orleans City Council adopted Ordinance declaring the four statues “public nuisances” requiring that they no longer be displayed on public property;

**WHEREAS**, FFL is committed to foster the relocation of the City’s monuments by funding and facilitating the Monument Relocation Project (“**Project**”), including covering the costs associated with the removal of the four monuments identified in and consistent with New Orleans City Council Ordinance No. 31,082;

**NOW THEREFORE**, the City and FLL, each having the authority to do so, agree as follows:

## ARTICLE I – OBLIGATIONS OF THE PARTIES

### **A. Obligations of FLL.** FFL will:

1. Establish and administer a private donation fund for the purpose of collecting private donations to be used solely toward the removal of the four monuments identified in and consistent with New Orleans City Council Ordinance No. 31,082.
2. Directly pay from the donation fund all costs associated with the removal of the four monuments identified in and consistent with New Orleans City Council Ordinance No. 31,082.
3. Administer, collect, and pay contractor and/or equipment invoices for the satisfactory performance of work under the Project.

### **B. Obligations of the City.** The City will:

1. Administer this Agreement through the Department of Homeland Security and the Chief Administrator's Office;
2. Provide program management services for the Project through the Capital Projects Administration and the Department of Homeland Security;
3. Provide documents deemed necessary for the performance of the Project services, including but not limited to any bid response relevant to the Project; and
4. Provide access to necessary or essential Department personnel for the performance of the Project services.

## ARTICLE III - DISPUTE

To the extent that there are any disputes between the City and FFL with respect to the Project, the Parties agree that they will reasonably work towards reaching an amicable and mutually acceptable resolution.

## ARTICLE IV – OWNERSHIP

**A. Ownership.** Title to the monuments and all of the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in any way appertaining, shall vest solely in the City.

## ARTICLE V – FUNDING

**A. Contribution by FLL.** FFL shall provide the exclusive funding for the Project, but shall not compensate City employees who provide services related to the Project while in the course and scope of their employment.

**B. Financial Support from Third Parties.** The City acknowledges and agrees that FFL shall have the right to solicit financial support from third parties before and during the Project. Said right is subject to the approval by the City as may be more fully set forth in subsequent cooperative endeavor agreements to be executed between the City and FFL.

## ARTICLE VI - DURATION

This Agreement will be effective for one (1) year from the Effective Date.

## ARTICLE VII – TERMINATION FOR CAUSE

Either party may terminate this Agreement for cause in the event of a material breach of this Agreement that is not cured within thirty (30) days following written notice from the party alleging such breach to the other party, or, if such breach cannot be cured within thirty (30) days, such longer period as may be reasonably required to cure such breach.

## ARTICLE VII – INDEMNITY

### A. Indemnification In Favor of the City.

1. Duty to Indemnify the City. To the fullest extent permitted by law, and through the City's acceptance of the work, FFL shall protect, defend, indemnify and hold harmless the City, its agents, elected officials, and employees (collectively, the "City Indemnified Parties") from and against all claims, actions, liabilities, losses (including, without limitation, economic losses), and costs, arising out of or related to any actual or alleged act or omission in the performance of the service by FFL or any subcontractor. By way of illustration—not limitation, FLLs obligation to indemnify the City shall extend to the following, provided that such claims arise out of or relate to the performance of the service by FLL: (i) bodily injury claims, (ii) property damage or loss claims, (iii) fines or sanctions resulting from violations of any law, statute, ordinance, rule, regulation, or intellectual property rights by FLL, and (iv) liens, claims, or actions made by FLL, any subcontractors, or any employees thereof under workers compensation acts, disability benefits acts, other employee benefit acts, or any statutory bar. Notwithstanding the foregoing, NIKE's duty to indemnify the City terminates upon Final Acceptance. Further, FFL shall require that (i) any subcontractor agree to the same indemnification obligations in favor of the City as set forth in Article A. 1, 2, and 3, and (ii) that said indemnification obligations of any subcontractor survive the Final Acceptance.

2. Limit on Duty to Indemnify. Notwithstanding anything to the contrary herein, FFL shall not be required to indemnify the City Indemnified Parties to the extent of any loss that results from the gross negligence or willful misconduct of any of the City Indemnified Parties.

3. Independent Duty to Defend. FFL specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim that actually or potentially falls within this article, even if the allegations are or may be groundless, false, or fraudulent. This obligation shall remain in full force and effect even if Contractor is ultimately absolved from liability.

## ARTICLE IX – WARRANTIES

FFL agrees to assign to the City all transferable warranties, if any, delivered to FFL from contractors, subcontractors, materialmen, and vendors relating to the Project.

## ARTICLE XI - NON-DISCRIMINATION

A. Non-Discrimination in Employment. With regard to any hiring or employment decision made in connection with the performance of this Agreement, including without limitation employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other compensation, and selection for training including apprenticeship, FLL:

1. Will not discriminate or retaliate, in fact or in perception, against any employee or person seeking employment on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;

2. Will take affirmative action to ensure compliance with this section;
3. Will include statements in all solicitations or advertisements for employment that all qualified applicants will receive consideration for employment without regard to race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status;
4. Will post notices containing the provisions of this section in conspicuous places available to employees and persons seeking employment.

**B. Non-Discrimination.** In the performance of this Agreement, FLL:

1. Will not discriminate or retaliate, in fact or in perception, on the basis of race, color, national origin, religion, creed, culture, ancestral history, age, gender, sexual orientation, gender identity, marital or domestic partner status, physical or mental disability, or AIDS- or HIV-status against: any employee of the City; any employee of any person working on behalf of the City; or any person seeking accommodation, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by FLL.

2. Will comply with and abide all federal, state, and local laws relating to non-discrimination, including without limitation Title VII of the Civil Rights Act of 1964, as amended, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

**C. Subcontracts.** FFL will incorporate the provisions of this Article by reference into all subcontracts relating to the performance of this Agreement.

**ARTICLE XII - NOTICES**

**A. In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Aaron Miller  
 Director of the Department of Homeland Security  
 City of New Orleans  
 1300 Perdido Street  
 New Orleans, LA 70122

&

City Attorney  
 City of New Orleans  
 1300 Perdido Street, Suite 5E03  
 New Orleans, LA 70112

2. To FLL:

**B. Effectiveness.** Notices are effective when received, except any notice that is not received

due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. *Change of Address.* Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

#### ARTICLE XVIII - MISCELLANEOUS PROVISIONS

A. *Conflict of Interest.* The Parties agree that no public servant, public official, or any member of their immediate families or any legal entity in which any of the above exercises control or owns an interest in excess of twenty-five percent, as provided in La. R.S. 42:1112, shall bid on or enter into any contract, subcontract, or other transaction with FFL or bid on or enter into any contract, subcontract, or other transaction which would be in violation of any applicable ethical standard set forth in the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*

B. *No Conflict.* Nothing in this Agreement shall be construed or interpreted in such a fashion as to conflict with any ordinances of the City, and, any conflict between any provision of this Agreement and any ordinances of the City shall be resolved by interpreting such provision so as to not conflict with same.

C. *No Assignment Without Consent.* This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other party. Notwithstanding the foregoing, FFL shall not have the right to assign its right, title, and interest to this Agreement to an affiliate or subsidiary without the City's consent.

D. *No Third-Party Beneficiaries.* This Agreement is entered into for the exclusive benefit of the parties, and the parties expressly disclaim any intent to benefit anyone not a party hereto.

E. *No Expectation of Benefit or Special Treatment.* FFL swears that, as a result of the donation of the services that are the subject of this Agreement or otherwise, it has no expectation of benefit or special treatment with regard to other contracts or potential contracts with the City.

F. *Remedies Cumulative.* No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

G. *Prohibition Against Financial Interest in Agreement.* No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of FLL, will render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the FFL pursuant to this Agreement without regard to Contractor's satisfactory performance.

H. *Non-Exclusivity for the City.* The City shall be free to engage the services of other persons for the performance of some or all of the obligations contemplated this Agreement.

I. *Acknowledgment of Exclusion of Worker's Compensation Coverage.* FFL expressly agrees and acknowledges that it is an independent contractor as defined in La. R.S. 23:1021 and as such, it is expressly agreed and understood between the parties hereto, in entering into this Agreement, that the City shall not be liable to FFL for any benefits or coverage as provided by

the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of La. R.S. 23:1034, anyone employed by FFL shall not be considered an employee of the City for the purpose of Workers' Compensation coverage.

**J. Acknowledgment of Exclusion of Unemployment Compensation Coverage.** FFL herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Agreement for hire as noted and defined in La. R.S. 23:1472(E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Agreement, or agreement for hire, and in connection with unemployment compensation only, that:

1. FFL have been and will be free from any control or direction by the City over the performance of the services covered by this contract; and

2. Services to be performed by FFL are outside the normal course and scope of the City's usual business; and

3. FFL have been independently engaged in performing the services listed herein prior to the date of this Agreement.

Consequently, neither FFL nor anyone employed by FFL shall be considered an employee of the City for the purpose of unemployment compensation coverage, which is expressly waived and excluded.

**K. Waiver of Benefits.** The City and FFL agree and understand that FFL, acting as an independent agent, shall not receive any sick and annual leave, health or life insurance, pension, or other benefits from the City.

**L. Jurisdiction.** FFL consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas of jurisdiction on account of the residence elsewhere.

**M. Governing Law.** Any dispute arising from or relating to this Agreement or the performance of any obligations under this Agreement shall be resolved in accordance with the laws of the State of Louisiana.

**N. Rules of Construction.** This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. The singular number includes the plural, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of or against either party on the basis of which party drafted the language.

**O. Severability.** The Parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, if a court of competent jurisdiction finds any provision to be unenforceable as written, the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If a court finds any provision is not subject to reformation, that provision shall be fully severable and the remaining provisions of this Agreement shall remain in full force and effect and shall be construed and enforced as if such illegal, invalid, or unenforceable provision was never included, and the remaining provisions of this Agreement shall remain in full force and effect.

**P. Survival of Provisions.** All representations and warranties and all responsibilities

regarding record retention, access, and ownership, cooperation with Office of Inspector General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect.

**Q. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right, or to seek any remedy upon discovery of any default or breach of the other party shall not affect or be deemed a waiver of any party's right to insist upon compliance with the terms and conditions of the Agreement, to exercise any rights, or to seek any available remedy with respect to any default, breach, or defective performance.

**R. Agreement Binding.** This Agreement is not assignable by either party unless authorized by a validly executed amendment.

**S. Modifications.** This Agreement shall not be modified except by written amendment executed by authorized representatives of the Parties.

**T. Voluntary Execution.** FFL has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

**U. Complete Agreement.** This Agreement supersedes and replaces any and all prior agreements, negotiations, and discussions between the parties with regard to the terms, obligations, and conditions of this Agreement.

**[SIGNATURES CONTAINED ON NEXT PAGE]**

IN WITNESS WHEREOF, the City, and FFL through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

  
BY: \_\_\_\_\_

MITCHELL J. LANDRIEU, MAYOR

FORM AND LEGALITY APPROVED:

Law Department

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

Printed Name: Rebecca Ditty \_\_\_\_\_

AND

FOUNDATION FOR LOUISIANA

BY:  \_\_\_\_\_

203-39-9944 \_\_\_\_\_

FEDERAL TAX I.D.