

K18-469

COOPERATIVE ENDEAVOR AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

NEW ORLEANS POLICE AND JUSTICE FOUNDATION

REAL TIME CRIME CENTER COLLABORATION

THIS COOPERATIVE ENDEAVOR AGREEMENT (the "Agreement") is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the "City"), and the New Orleans Police and Justice Foundation, represented by Melanie A. Talia, President and Chief Executive Officer (the "NOPJF"). The City and the Contractor may sometimes be collectively referred to as the "Parties." The Agreement is effective as of the date of execution by the City (the "Effective Date").

RECITALS

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

WHEREAS, the NOPJF is a 501c(3) nonprofit organization which principal address is located at 320 Metairie Hammond Highway, Suite 519, Metairie, LA 70005;

WHEREAS, pursuant to 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, the NOPJF is dedicated to reforming the criminal justice system and implementing comprehensive initiatives to achieve permanent reductions in crime;

WHEREAS, the City of New Orleans, as part of a comprehensive crime reduction strategy to aid the New Orleans Police Department, is implementing a citywide crime camera program;

WHEREAS, the NOPJF has successfully partnered with the City in such programs as Adopt a Block and SafeCam NOLA which provide valuable technology resources and public safety support in the community;

WHEREAS, the City and the NOPJF desire to accomplish a valuable public purpose of enhancing public safety and increasing participation in crime reduction programs;

WHEREAS, the NOPJF will provide valuable expertise and leverage their SafeCam NOLA program for the benefit of the City's crime camera and Real Time Crime Center initiatives;

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

ARTICLE I - NOPJF'S OBLIGATIONS

The NOPJF will:

- A. Develop and maintain a website to attract residents and business owners to participate in a public – private partnership for an expanded SafeCam NOLA offering;
- B. Advertise and promote the expanded SafeCam NOLA offering through active and passive marketing, including, but not limited to internet display, traditional media, paid search, and other means and methods; and
- C. Endeavor to expand SafeCam installations in areas most beneficial to the New Orleans Police Department.
- D. Consult with City prior to procurement of any professional services, non-professional services, or software related to NOPJF's obligations under this Agreement;
- E. Notify any vendors providing services or software related to NOPJF's obligations under this Agreement that the City is not obligated to contract with them, and that their contracts may terminate in the event that NOPJF and the City agree to transfer maintenance obligations to the City.

ARTICLE II - THE CITY'S OBLIGATIONS

The City will:

- A. Administer this Agreement through the Office of Homeland Security and Emergency Preparedness ("NOHSEP");
- B. Provide the NOPJF or its contractors or partners with a point of contact for connecting to the City's VMS and the necessary system or camera specifications, and other documents deemed necessary for the NOPJF performance of any work required under this Agreement;
- C. Provide access to NOHSEP personnel to discuss the required services during normal working hours, as requested by the NOPJF;
- D. Develop and maintain a list of vendors who are licensed and certified to install security cameras under the program for residents and businesses to select for services if they choose to participate in the program;
- E. Notify vendors of authorization to participate in the program and provide NOPJF list of authorized vendors; and
- F. Notify vendors of removal from the list of authorized vendors and notify NOPJF of said removal accompanied by updated list of authorized vendors.

ARTICLE III - COMPENSATION

- A. **Maximum Amount.** The maximum amount payable by the City under this Agreement is two hundred thousand dollars \$200,000.00.
- B. NOPJF will receive payment in two installments. The City will provide an initial payment of \$100,000.00 upon execution of this Agreement and the remaining funds will be paid to NOPJF after submission of two subsequent invoices.
- C. NOPJF acknowledges that it has received good and valuable consideration in exchange for the services to be provided under this Agreement and both parties reaffirm their

beneficial advantages that will result from their mutual cooperative endeavors as they execute the terms of this Agreement.

ARTICLE IV - DURATION AND TERMINATION

A. Term. The term of this agreement shall be for one year from the Effective Date.

B. Extension. The City can opt to extend the term of this Agreement provided that the City Council approves it as a multi-term cooperative endeavor agreement and that additional funding, if required, is allocated by the City Council.

C. Termination for Convenience. Either Party may terminate this Agreement at any time during the term of the Agreement by giving the Other Party written notice of the termination at least 30 calendar days before the intended date of termination.

D. Termination for Cause. Either Party may terminate this Agreement immediately for cause by sending written notice to the Other Party. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

ARTICLE V - INDEMNITY

A. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

B. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE VI - INSURANCE

A. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, NOPJF will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

1. Minimum Requirements. Commercial General Liability (CGL) – Insurance Services Office Form CG 00 01 or similar, acceptable to the city, covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Additional Insured Status. The Contractor will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “**Additional Insureds**” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificateholder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

b. Primary Coverage. For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor’s coverage.

c. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of five years after the termination of this agreement

d. Waiver of Subrogation. The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.

e. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City of no less than 60 days.

f. Acceptability of Insurers. Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

B. NOPJF will provide the City’s Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Crime Center Collaboration) at the City’s request the following documents:

1. Proof of coverage for each policy of insurance required by this Agreement;

2. Copy of the fully executed Agreement;
 3. Copies of all policies of insurance, including all policies, forms, and endorsements; and
 4. Statements disclosing any policy aggregate limit.
- C. Without notice from the City, NOPJF will:
1. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
 2. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
 3. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

ARTICLE VII - NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, NOPJF (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. **Non-Discrimination.** In the performance of this Agreement, the NOPJF will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the NOPJF in any of NOPJF's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The NOPJF agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

C. **Incorporation into Subcontracts.** NOPJF will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The City may terminate this Agreement for cause if NOPJF fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE VIII - INDEPENDENT CONTRACTOR

A. **Independent Contractor Status.** NOPJF is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

B. **Exclusion of Worker's Compensation Coverage.** The City will not be liable to NOPJF, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by NOPJF will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. **Exclusion of Unemployment Compensation Coverage.** NOPJF, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither NOPJF nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) NOPJF has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by NOPJF are outside the normal course and scope of the City's usual business; and (c) NOPJF has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. **Waiver of Benefits.** The NOPJF, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE IX - NOTICE

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:

Office of Homeland Security and Emergency Preparedness
1300 Perdido, Suite 9W03
New Orleans, LA 70112

&

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

2. To the Contractor:

Melanie A. Talia

Chief Executive Officer
320 Metairie Hammond Highway, #519
Metairie, LA 70005

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. Notification of Change. 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 X - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

B. Assignment. This Agreement and any part of NOPJF's interest in it are not assignable or transferable without the City's prior written consent.

C. Audit and Other Oversight. NOPJF will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires NOPJF to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, NOPJF agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

D. Choice of Law. This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

E. Conflicting Employment. To ensure that NOPJF's efforts do not conflict with the City's interests, and in recognition of NOPJF's obligations to the City, NOPJF will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. NOPJF will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on NOPJF's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

F. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. 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 the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the NOPJF on the basis of which party drafted the uncertain or ambiguous language. 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. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

G. Convicted Felon Statement. NOPJF complies with City Code § 2-8(c) and no principal, member, or officer of NOPJF has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds,

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bribery, or falsification or destruction of public records.

H. Employee Verification. NOPJF swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to NOPJF a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in NOPJF being ineligible for any public contract for a period of three years from the date the violation is discovered. NOPJF further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. NOPJF will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if NOPJF fails to provide such the requested affidavit or violates any provision of this paragraph.

I. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

J. Jurisdiction. NOPJF consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of NOPJF.

K. Limitations of the City's Obligations. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

L. 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 to this Agreement.

M. Non-Exclusivity. This Agreement is non-exclusive and NOPJF may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

N. Non-Solicitation Statement. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

O. 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 at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

P. **Ownership Interest Disclosure.** NOPJF will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in NOPJF and stating that no other person holds an ownership interest in NOPJF via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If NOPJF fails to submit the required affidavit, the City may, after 30 days' written notice to NOPJF, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

Q. **Ownership of Records.** Upon final payment, all data collected and all products of work prepared, created or modified by NOPJF in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. NOPJF shall retain ownership and shall have all right, title and interest to NOPJF's personnel and administrative records and any tools, systems, and information used by NOPJF to perform the services under this Agreement including computer software, object and source code, know how, methodologies, equipment, and processes and any related intellectual property. No Work Product that is the exclusive property of the City as defined above may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without NOPJF's consent and for no additional consideration to NOPJF. In case of request(s) made by federal or state authorities, or request(s) made for the purpose of an audit by a government or a non-government agency, the City's express written consent is waived, and NOPJF will notify the City of said reproduction.

R. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of NOPJF, shall 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 City to NOPJF pursuant to this Agreement without regard to NOPJF's otherwise satisfactory performance of the Agreement.

S. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

T. **Remedies Cumulative.** No remedy set forth in the 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.

U. **Severability.** Should a court of competent jurisdiction find any provision of this

Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

V. Subcontractor Reporting. NOPJF will provide a list of all natural or artificial persons who are retained by NOPJF at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with NOPJF's work for the City. For any subcontractor proposed to be retained by NOPJF to perform work on the Agreement with the City, NOPJF must provide notice to the City within 30 days of retaining that subcontractor. If NOPJF fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

W. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

X. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XI - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

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[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: 
MITCHELL J. LANDRIEU, MAYOR

Executed on this 25TH of April, 2018

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: J. J. [Signature]

NEW ORLEANS POLICE AND JUSTICE FOUNDATION

BY: 
MELANIE TALIA, PRESIDENT AND CHIEF EXECUTIVE OFFICER


FEDERAL TAX I.D.