

JOB CREATION AGREEMENT TERMINATION AND RELEASE AGREEMENT

This Job Creation Agreement Termination and Release Agreement (the “**Agreement**”) is made effective as of October ____, 2020 (the “**Effective Date**”), by and between NIKE IHM, Inc., a Missouri corporation, d/b/a Air Manufacturing Innovation (“**Air MI**”), for and on its own behalf and that of its Affiliates (as defined below), and the City of Goodyear, an Arizona municipal corporation (the “**City**”). Air MI and the City may be referred to in this Agreement individually as a “**Party**” and collectively as “the Parties.”

RECITALS

A. Air MI and the City are parties to that certain Job Creation Agreement, dated July 29, 2019 (the “**Job Creation Agreement**”), relating to Air MI’s planned opening of a new manufacturing facility to be located at 575 S. 143rd Avenue, Goodyear, Arizona (the “**Goodyear Facility**”).

B. Air MI notified the City on August 3, 2020, of its decision not to move forward with the Goodyear Facility (the “**Goodyear Facility Termination**”).

C. The City acknowledged the Goodyear Facility Termination by way of a letter dated August 11, 2020, in which it requested that Air MI reimburse the City for certain Plan Fees waived by the City in connection with Development Process Assistance and that Air MI remove certain temporary trailers from the Goodyear Facility site.

AGREEMENT

In consideration of the mutual promises, covenants and agreements hereafter set forth and the exchange of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

1.1. “Affiliate” means, as to either Party, any individual or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with that Party.

1.2. Capitalized terms that are not defined in this Agreement will have the meanings set forth in the Job Creation Agreement.

2. Termination of Job Creation Agreement. The Job Creation Agreement is hereby terminated.

3. Reimbursement of Waived Plan Fees. Air MI acknowledges that the City incurred certain costs by waiving certain Plan Fees in connection with the Development Process Assistance provided for under Section 9 of the Job Creation Agreement and that, pursuant to that Section, the City is entitled, as its sole and exclusive remedy, to reimbursement of such costs as a result of the Goodyear Facility Termination (the “**Plan Fee Reimbursement**”). The Parties acknowledge that the amount of the Plan Fee Reimbursement is \$286,566.39, which amount Air MI paid to the City in full on September 1, 2020.

4. Removal of Temporary Trailers. On or before October 12, 2020, Air MI shall remove all temporary trailers that it placed on the Goodyear Facility site.

5. Taxes. The City will be solely responsible for all federal, state and local sales and use taxes, ad valorem taxes, value added taxes, tariffs and duties assessed on the Plan Fee Reimbursement. The City will indemnify, defend and hold harmless Air MI against any resulting government penalties and interest arising in connection with therewith.

6. Release and Discharge.

6.1. The Parties hereby agree that the terms of this Agreement are in full and final settlement of, and completely release and forever discharge each other from, any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, lost earnings, loss in value, punitive damages, property damage, waste, expenses and compensation or profit of any nature whatsoever, whether based on tort, contract or other theory of recovery, which each Party now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of the Goodyear Facility Termination, including, without limitation, claims arising in connection with Development Process Assistance and any and all other claims for monetary damages or equitable relief (collectively, “**Claims**”).

6.2. The release and discharge described in Section 6.1 above (the “**Release**”) also applies to the Parties’ past, present and future officers, directors, members, attorneys, agents, insurers, servants, representatives, employees, parent corporations, subsidiaries, Affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated and shall also apply to any and all other third persons whether or not specifically named herein, it being the express intent of this Agreement to release all other such persons, firms or corporations and the whole world, whether or not such persons, firms or corporations are specifically named herein.

6.3. This Agreement is fully binding and the complete settlement by and between the Parties regarding the matters set forth herein.

6.4. The Parties acknowledge and agree that the Release is a general release. Each Party expressly waives and assumes not only the risk of any and all claims for damages which may exist as of the Effective Date, but of which each Party does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect that Party’s decision to enter into this Agreement. Each Party further agrees that it has accepted the consideration specified herein as a complete compromise and full satisfaction of matters involving disputed issues of law and fact. The Parties assume the risk that the facts or law may be other than each Party believes.

6.5. Each Party and its Affiliates covenant never to participate in any administrative proceeding, suit or action, at law or in equity, against the other Party by reason of any Claim known or unknown that is released in this Agreement.

6.6. Each Party acknowledges that it has entered into this Agreement of its own free will and has not relied upon any representations made by another Party, its attorneys or its employees or agents.

6.7. Nothing in this Agreement constitutes precedent or evidence in any other proceeding, with the exception that this Agreement shall be admissible evidence in any proceeding to enforce the terms hereof.

7. Public Disclosures. Nothing contained herein shall be deemed to prohibit or otherwise restrict the City's ability to disclose the existence or terms of this Agreement to the extent such disclosure is required by applicable law (to include the relevant rules governing the City's executive and administrative functions); provided, however, that, to the extent permitted under such applicable law, the City will provide Air MI with reasonable advance notice of any such public disclosures, to include the proposed content thereof.

8. Injunctive Relief. Each Party acknowledges that the other Party would be irreparably harmed and would have no adequate remedy at law in the event of a breach of Sections 6. Accordingly, each Party consents to the entry of a temporary restraining order, injunction or other similar order or action of any judicial authority, in addition to any other remedy available at law or in equity, to enforce such Sections.

9. Term and Termination. The term of this Agreement will begin on the Effective Date, and, unless earlier terminated as provided in this Agreement, will terminate on the day after Air MI performs its obligations under Sections 3 and 4 of this Agreement.

10. Miscellaneous Provisions.

10.1. Governing Law; Venue; Mediation. The terms of Sections 20, 21 and 23 of the Job Creation Agreement are incorporated into this Agreement by reference.

10.2. Rules of Construction. The Parties agree that this Agreement is the product of negotiation and that neither Party will be deemed to be the drafter thereof. In this Agreement, unless the context otherwise requires: headings are inserted for convenience only and will be ignored in construing any matter; references to the singular include the plural and vice versa; references to "persons" include corporations, firms and any other entity; reference to a section, clause or schedule is a reference to such in this Agreement unless otherwise stated; the words "includes" or "including" mean "includes without limitation" or "including without limitation;" and if there is any conflict or inconsistency between the body of this Agreement and the exhibits or schedules, the body of this Agreement will prevail.

10.3. Entire Agreement. This Agreement constitutes the entire Agreement between Air MI and the City with respect to the subject matter of this Agreement, and supersedes and replaces any prior or contemporaneous written or oral agreements or understandings concerning the Goodyear Facility Termination between Air MI and the City, including, any additional, inconsistent, or different terms or conditions appearing in any prior or subsequent documents or communications exchanged between the Parties.

10.4. Survival. The provisions of Sections 1, 5, 6, 7, 8, 9 and 10 will survive the termination or expiration of this Agreement.

10.5. No Assignment. Neither Party will assign any of its rights, delegate any of its duties, or subcontract all or any part of this Agreement, whether by transfer, merger, operation of law or otherwise, without the express written consent of the other Party. In the event the non-assigning Party consents to

any such assignment, delegation or subcontracting, the assigning Party will remain liable and responsible for the performance of its obligations under this Agreement.

10.6. Amendment; Waiver. Except as expressly provided in this Agreement, no term of this Agreement will be amended, supplemented, waived or modified except in a writing referring to this Agreement and signed by Air MI and the City. No delay or omission in the exercise of any right or remedy will be deemed a waiver of any right or remedy. No waiver will constitute a waiver of any other provision, breach, right or remedy, nor will any waiver constitute a continuing waiver.

10.7. Severability. Should any part of this Agreement for any reason be declared by any arbitrator or court of competent jurisdiction to be invalid, such decision will not affect the validity of any remaining portion, which remaining portion will continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

10.8. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of Air MI and the City and their respective permitted successors and assigns.

10.9. Third Party Beneficiaries. Air MI's Affiliates are intended third party beneficiaries of this Agreement. Nothing in this Agreement gives any person other than Air MI, Air MI's Affiliates, and the City any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement, except those rights that inure to a permitted successor or assignee under this Agreement. Notwithstanding the foregoing, the Parties may modify or terminate this Agreement without the consent of Air MI's Affiliates.

10.10. Representation of Comprehension of Document. In entering into this Agreement, each of the Parties represents to each of the others that they have relied upon the advice of their own attorneys, who are the attorneys of their own choice, concerning the legal or other consequences of this Agreement; that the terms of this Agreement have been completely read and explained to each of the Parties by their respective attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted by each of them.

10.11. Counterparts and Delivery. This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile signatures will be deemed original signatures for all purposes under this Agreement. When signed, this Agreement may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

<SIGNATURE PAGE FOLLOWS>

In Witness Whereof, the Parties hereto have caused this Agreement to be duly executed by their authorized representative.

**NIKE IHM, INC., D/B/A AIR
MANUFACTURING INNOVATION**

CITY OF GOODYEAR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____