

COOPERATIVE ENDEAVOR AGREEMENT**BETWEEN****CITY OF NEW ORLEANS****AND****LAKEFRONT MANAGEMENT AUTHORITY****LOAN OF MSA AIR BOTTLES**

THIS COOPERATIVE ENDEAVOR AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Lakefront Management Authority, represented by Wilma Heaton, Chairman (the “**Authority**”). The City and the Authority may sometimes be 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 New Orleans Fire Department (the “**Department**,”) was contacted by Lakefront Management Authority requesting a loan of twelve MSA 3,000 psi air bottles;

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, the Authority is a political subdivision possessing full corporate power to manage, control, regulate, operate, and maintain any non-flood protection facility or improvement asset or function within the Orleans Levee District which is within the jurisdiction of a flood protection authority, which principal address is located at 6514 Spanish Fort Boulevard, New Orleans, Louisiana 70124;

WHEREAS, the City and the Authority desire to accomplish a valuable public purpose of protecting the safety of its Fire Department members as they provide for the protection of life and property from fires by delivering this loan of twelve 3,000 psi MSA air bottles;

WHEREAS, the Authority will accept the loan of twelve 3,000 psi MSA air bottles; and

WHEREAS, the City will make the loan of twelve 3,000 psi MSA air bottles to the Authority.

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

ARTICLE I- THE AUTHORITY'S OBLIGATIONS

The Authority. The Authority will:

1. Accept the loan of twelve 3,000 psi MSA air bottles;
2. Preserve the condition of the 3,000 psi air bottles, less normal wear and tear;
3. Accept the condition that expenditure for repair and/or maintenance associated with twelve 3,000 psi MSA air bottles loaned will be the responsibility of Lakefront Management Authority, "The Authority";
4. Replace any of the 3,000 psi MSA air bottles in the event they are lost, destroyed or damaged;

ARTICLE II- THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the New Orleans Fire Department;
2. Provide the Authority documents deemed necessary for the Authority's performance of any work required under this Agreement;
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Authority; and
4. Lend twelve 3,000 psi MSA air bottles, to Lakefront Management Authority "the Authority";

ARTICLE III – FUNDING OR COMPENSATION.

There is no funding component to this Agreement.

ARTICLE IV – DURATION AND TERMINATION

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

B. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Authority written notice of its intention to terminate at least thirty (30) days before the intended date of termination.

C. Termination for Cause. Either party may terminate this Agreement immediately for cause. If either party prevails in a challenge to a termination for cause, the termination for cause will be deemed to be a termination for convenience effective thirty (30) days from the date that the original written notice of termination for cause without the requirement of notice.

ARTICLE V - INDEMNITY.

A. To the fullest extent permitted by law, the Authority 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 Authority, 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 Authority in connection with the performance of work under this Agreement.

B. Limitation. Notwithstanding anything in this Agreement to the contrary, the Authority'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. Notwithstanding anything in this Agreement to the contrary, the Authority, 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, Lakefront Management Authority (the Contractor) will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement.

B. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City. The Contractor shall retain the rights to "Self-Insure" for any of the insurance coverages required under this Agreement:

Minimum Requirements:

Workers' Compensation & Employers Liability Insurance in compliance with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.

Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.

Automobile Liability Insurance with limits of liability of not less than 1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.

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

Additional Insured Status: The Contractor and all Subcontractors (where applicable) 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 insurance coverage can be provided in the form of an endorsement to the Contractors 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).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all of the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

The Additional Insured box shall be marked "Y" or Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation/Employers Liability and Property.

Primary Coverage: For any claims related to this agreement, the Contractors 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 Contractors coverage.

Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement 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 3 years after the termination of this agreement.

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 agreement.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.

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.

Notice: The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: CEA) the following documents, within 10 calendar days of the City's request: Copies of all policies of insurance, including all policies, forms, and endorsements:

Miscellaneous: Without notice from the City, the Contractor will: Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this

Agreement; 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.

ARTICLE VII- NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Authority (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, sex, 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, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Authority 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 Authority in any of the Authority'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 Authority 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. The Authority 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 the Authority 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. The Authority 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 the Authority, 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 the Authority will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Authority, 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 the Authority 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) the Authority 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 the Authority are outside the normal course and scope of the City's usual business; and (c) the Authority has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Authority, 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:

Chief Timothy McConnell, Superintendent of Fire
New Orleans Fire Department
317 Decatur Street
New Orleans, LA 70130

&

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

2. To the Authority:

Executive Director
New Orleans Lakefront Airport Terminal Bldg.
6001 Stars and Stripes Blvd
Suite 233
New Orleans, LA 70126

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

B. 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 the Authority's interest in it are not assignable or transferable without the City's prior written consent.

C. Audit and Other Oversight. The Authority will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Authority 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, the Authority 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. Compliance with City's Hiring Requirements – Ban the Box.

1. The Authority agrees to adhere to the City's hiring requirements contained in City Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Authority must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirement is necessary.
2. Failure to maintain compliance with the City's hiring requirements through the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Authority notice of noncompliance and allow the Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Authority remains noncompliant, the City may move to suspend payments to the Authority, void the Agreement, or take any such legal action permitted by law or this Agreement.
3. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and remaining provisions of the Agreement will remain in full force and effect.
4. The Authority will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-Authorities to comply with those provisions.

F. Conflicting Employment. To ensure that the Authority's efforts do not conflict with the City's interests, and in recognition of the Authority's obligations to the City, the Authority 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. The Authority 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 the Authority's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

G. 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 Authority 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.

H. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

I. Employee Verification. The Authority 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 the Authority 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 the Authority being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Authority 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. The Authority 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 the Authority fails to provide such the requested affidavit or violates any provision of this paragraph.

J. 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.

K. Jurisdiction. The Authority 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 the Authority.

L. 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.

M. 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.

N. Non-Exclusivity. This Agreement is non-exclusive and the Authority 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.

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. The Authority will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in the Authority and stating that no other person holds an ownership interest in the Authority 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 the Authority fails to submit the required affidavit, the City may, after 30 days' written notice to the Authority, 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 the Authority in the performance 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") are the exclusive property of the City, and no reproduction of any portions of such Work Product may be made in any form without the express written consent of the City. The City shall have all right, title, and interest in all Work Product, including without limitation the right to secure and maintain the copyright, trademark, and/or patent of Work Product in the name of the City. This City may use or distribute all Work Product for any purpose without the consent of and for no additional consideration owing to the Authority.

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 the Authority, 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 the Authority pursuant to this Agreement without regard to the Authority'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. **Restrictions on Subleases.** The Authority may not enter into any sublease without the prior approval of the Council of the City of New Orleans.

V. **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.

W. **Subcontractor Reporting.** The Authority will provide a list of all natural or artificial persons who are retained by the Authority at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Authority's work for the City. For any subcontractor proposed to be retained by the Authority to perform work on the Agreement with the City, the Authority must provide notice to the City within 30 days of retaining that subcontractor. If the Authority 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.

X. **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.

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

ARTICLE XIV – COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

ARTICLE XV - ELECTRONIC SIGNATURE AND DELIVERY

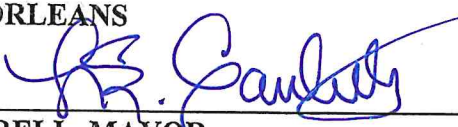
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to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

[SIGNATURES CONTAINED ON NEXT PAGE]

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

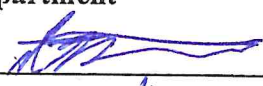
CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL, MAYOR

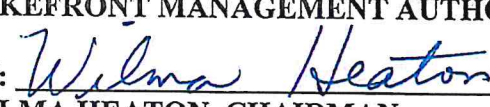
FORM AND LEGALITY APPROVED:

Law Department

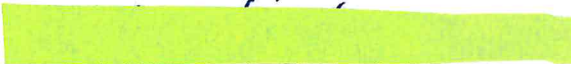
By: 

Printed Name: Andrew Gregorian

LAKEFRONT MANAGEMENT AUTHORITY

BY: 

WILMA HEATON, CHAIRMAN


CORPORATE TAX I.D.