

K22-365

COOPERATIVE ENDEAVOR AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND

THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND

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 The Administrators of the Tulane Educational Fund, through its Campus Health Services operating the Tulane Emergency Medical Services (“**TEMS**”), represented by Patrick Norton, Senior Vice President, and Chief Operating Officer (collectively, “**TULANE**”). The City and Tulane may sometimes each be referred to as a “**Party**” and collectively, as the “**Parties**”. This Agreement is effective as of January 31, 2023 (the “**Effective Date**”).

RECITALS

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

WHEREAS, Tulane is a private non-profit corporation, whose principal address is located at 6823 St. Charles Avenue, New Orleans, LA 70118;

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 City operates New Orleans EMS (“**NOEMS**”), and NOEMS is the sole provider of prehospital emergency ambulance services within Orleans Parish where the request for service or assistance is made through the Emergency 911 system through the Orleans Parish Communications District;

WHEREAS, NOEMS is responsible for overseeing and supervising the prehospital movement of emergency medical vehicles possessing a valid and current permit to operate in the City of New Orleans;

WHEREAS, NOEMS shall have the authority to promulgate rules and regulations pursuant to the provision of prehospital emergency medical care within the City of New Orleans under City Ordinance 62-1(g);

WHEREAS, City and Tulane establish this Agreement to identify opportunities for TEMS and New Orleans EMS.

WHEREAS, the City and Tulane desire to accomplish a valuable public purpose of aiding in public safety by granting Tulane and TEMS permission to operate as a licensed Volunteer

Ambulance Service through the Louisiana Department of Health & Hospitals and Parish of Orleans, providing Basic Life Support (“BLS”) treatment and transport within the boundaries of Tulane University’s Uptown Campus as outlined in Exhibit A; and

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

ARTICLE I - TULANE’S OBLIGATIONS

Tulane through TEMS will:

- A.** Adhere to all terms set forth in New Orleans City Ordinance Chapter 62, Article II, which pertains to the Volunteer Ambulance Services and this Cooperative Endeavor Agreement, specifically the Conditions for Operation which include yearly inspection, vehicle inspection, a defined response area, specific patient population served, and the level of care provided. In addition, TEMS shall comply with the conditions for notification and activation of the 911 emergency response system through the Orleans Parish Communications District, allow for the review of operations and procedures by the Medical Director or Director of New Orleans EMS.
- B.** Operate as a Volunteer Ambulance Service and provide “no-cost” BLS response and transport services to the Tulane University and Loyola University Campus areas and/or at approved off-site venues.
- C.** Deliver services within the boundaries of the Uptown Tulane and Loyola University Campuses bordered by S. Claiborne Ave., St. Charles Ave., Calhoun St., and Pine St. This includes additional campus facilities on the south side of St. Charles Ave. at Broadway St. TEMS agrees to contact New Orleans EMS for prior approval if services will be provided to campus events outside of this service area.
- D.** Maintain all required applicable State and Orleans Parish provider licensure and vehicle permits in accordance with current statutes and regulations.
- E.** Conduct all clinical operations in accordance with Region 1 Protocol Effort (“ROPE”) guidelines.
- F.** Notify NOEMS to respond to on-campus calls that may require Advanced Life Support Services (“ALS”) care and/or transport.
- G.** Maintain communications interoperability consistent with the Louisiana Bureau of EMS Communications Interoperability requirements to communicate with other regional public safety agencies.

ARTICLE II - THE CITY’S OBLIGATIONS

A. Administration. The City will:

- 1. Administer this Agreement through New Orleans EMS (“NOEMS”);
- 2. Provide Tulane with documents deemed necessary for Tulane’s performance of any work required under this Agreement;
- 3. Provide access to NOEMS personnel to discuss the required services during normal

working hours, as requested by Tulane;

4. Serve as the primary provider of public emergency medical services in Orleans Parish;
5. Hold regulatory responsibilities with respect to ensuring delivery of emergency medical services in Orleans Parish; Maintain communications interoperability consistent with the Louisiana Bureau of EMS Communications Interoperability requirements to communicate with other regional public safety agencies;
6. Provide volunteer and training opportunities to TEMS membership;
7. Notify TEMS to first respond to calls within their service area when a call for service is received through the PSAP/911. Additional response of NOFD and or an ALS ambulance may also be dispatched depending on the nature of the call; and
8. Abide by applicable protocol, rules, and regulations when NOEMS dispatches TEMS.

ARTICLE III – COMPENSATION

There is no compensation amount requested under this Agreement. Each Party is responsible for their own costs.

ARTICLE IV - DURATION AND TERMINATION

- A. **Term.** The term of this agreement shall be for one year from the Effective Date through January 31, 2024.
- 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 the requirements of the City’s Disadvantaged Business Enterprise program and 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

In General. 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 "City Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the City 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.

The City will indemnify, defend, and hold harmless Tulane, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Tulane Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Tulane 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 City, 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 City in connection with the performance of work under this Agreement.

ARTICLE VI – INSURANCE

Parties shall provide each other certificates of insurance evidencing the following coverages: general liability insurance, automobile liability insurance, workers' compensation insurance and medical legal liability insurance.

- A. The term of such insurance policies shall be for a period of not less than one year.
- B. The general liability and automobile liability insurance policies shall provide not less than \$1,000,000 limits of liability for each accident resulting in bodily injury or property damage (including death at any time resulting therefrom).
- C. The medical malpractice insurance policy(ies) shall provide limits of liability per claim resulting in bodily injury (including death at any time resulting therefrom) of \$500,000.00. Participation in the Patient's Compensation Fund of the State of Louisiana as set forth in LRS 40: 1231.1, et seq, and such participation will be considered to meet this Agreement's requirement for medical legal liability insurance.
- D. The workers' compensation coverage shall provide coverage for statutory benefits and employers liability of \$1,000,000.00.
- E. Each party shall provide the other thirty (30) days written notice of any cancellation.

ARTICLE VII - PERFORMANCE MEASURES

- A. Factors.** The City will measure the performance of TEMS according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; availability; training; professionalism; experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).
- B. Failure to Perform.** If TEMS fails to perform according to the Agreement, the City will notify Tulane in writing of the alleged violation. If there is a continued violation following thirty (30) calendar days after written notice of notification, the City may declare Tulane in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law.

ARTICLE VIII - NON-DISCRIMINATION

- A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, Tulane (1) will not 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 Tulane'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, Tulane 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 Tulane in any of TEMS' 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 Tulane. Tulane 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.** Tulane 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. Termination for Breach.** The City may terminate this Agreement for cause if Tulane fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE IX - INDEPENDENT CONTRACTOR

- A. Acknowledgment of Exclusion of Worker's Compensation Coverage.** The City will not be liable to Tulane, 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 Tulane will not be considered an employee of the City for the purpose of Worker's Compensation coverage. Likewise, TULANE shall not be liable to the City 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 the City shall not be considered an employee of TULANE for the purpose of Workers' Compensation coverage or any other employee benefits provided by TULANE to its employees.
- B. Acknowledgment of Unemployment Compensation Coverage.** Neither TULANE nor anyone employed by TULANE is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E). Neither TULANE 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.
- C. Waiver of Benefits.** Tulane, 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 X- FORCE MAJEURE

- A. Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by either Party at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (caused by neither Party); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of either Party, provided such event was not caused by the negligence or misconduct of either Party, by the failure of either Party to comply with applicable laws, or by the breach of this Agreement.
- B. Notice.** To seek the benefit of this Article, the Party must provide notice in writing to the other Party stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.
- C. Effect.**
1. Upon the occurrence of a Force Majeure event, for which the Party has provided required notice, either Party may, at its sole discretion:
 - a. Suspend this Agreement for a duration mutually agreed upon by both Parties, not to exceed ninety (90) calendar days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such

- period of suspension, the Parties must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance at a date agreed upon by the Parties; or
- b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the other Party and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XI – 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:

New Orleans Emergency Medical Services
City of New Orleans
2929 Earhart Blvd.
New Orleans, LA

70125 &

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

2. To TULANE:

Patrick Norton
Senior Vice President and Chief Operating Officer
1555 Poydras Street, Suite 836
New Orleans, LA

70112

With copy to: Tulane University
Office of the General Counsel
6823 St. Charles Ave. Gibson Hall 300
New Orleans, LA 70118

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. Notice 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 XII - 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 TULANE'S interest in it are not assignable or transferable without the City's prior written consent.

C. Audit and Other Oversight. TEMS will abide by all applicable provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12) to the extent of TEMS operations, which requires TEMS 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, TEMS 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. Authority of Management.

Except as otherwise provided in this Agreement, Tulane reserves authority of management of the volunteer TEMS members, including the following examples:

1. Supervise, select, train, assign and schedule members;
2. Take disciplinary actions;
3. Relieve members from duty;
4. Utilization of technology and overall budgetary matters;
5. Determine the procedures and standards of selection for membership and promotion;
6. Determine the methods, means and personnel by which operations are to be conducted;
7. Determine member classifications;
8. Maintain the efficiency of operations;
9. Take all necessary actions to carry out its purpose and function in declared emergencies; and
10. Retain and own its transport and medical records

F. Conflicting Employment. To ensure that the TEMS's efforts do not conflict with the City's interests, and in recognition of the TEMS's obligations to the City, TEMS will decline any request to provide Basic Life Support treatment and transport or similar services if its performance of this Agreement is likely to be adversely affected by the acceptance of the other request. Tulane will promptly notify the City in writing of its intention to accept the other request for BLS services and will disclose all possible effects of the other services on the Tulane's performance of this Agreement.

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 Tulane 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.** Tulane complies with City Code § 2-8(c) and no principal, or officer 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, bribery, or falsification or destruction of public records for the past five years.
- I. Employee Verification.** Tulane 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 specifically engaged for TEMS operations to comply 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 TEMS being ineligible for any public contract for a period of three years from the date the violation is discovered, provided that TEMS is allowed a reasonable time in which to cure any alleged violation. TEMS 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. TEMS 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 Tulane fails to provide such the requested affidavit or violates any provision of this paragraph.
- J. Entire Agreement.** This Agreement, including Exhibit A and 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.** Tulane 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 TULANE.
- 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-Solicitation Statement.** Tulane 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. TULANE 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 of Records. All records contained in TEMS' electronic medical record, IPCR, all data collected and all products of work prepared, created or modified by TEMS 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, but and Tulane's and TEMS's personnel, education, business and administrative records and any tools, systems, and information used by TEMS to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "**Work Product**") will be the exclusive property of Tulane and Tulane 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 Tulane's name.

Q. 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 TEMS, 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 TULANE pursuant to this Agreement without regard to the TEMS's otherwise satisfactory performance of the Agreement.

R. 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.

S. 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.

T. 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 of the Agreement.

U. 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 with respect to this Agreement shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

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

ARTICLE XIII - 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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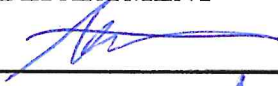
IN WITNESS WHEREOF, the City and TULANE, through their duly authorized representatives, execute this Agreement.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 16th of November, 2022.

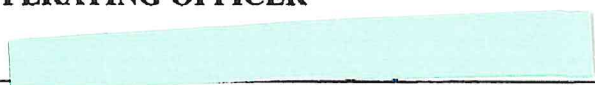
FORM AND LEGALITY APPROVED:
LAW DEPARTMENT

BY: 

PRINTED NAME: Andrew Gregorich

THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND
THROUGH TULANE CAMPUS HEALTH SERVICES

BY: 
PATRICK NORTON, SENIOR VICE PRESIDENT, AND CHIEF
OPERATING OFFICER


FEDERAL TAX I.D

[EXHIBIT A "SERVICE AREA MAP" ON THE NEXT PAGE]

Exhibit A

TEMS Area Service Map

