

RESOLUTION NO. 2016 - ____

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO AN INDEPENDENT CONTRACTOR AGREEMENT WITH INDEPENDANT NATURALISTS RELATIVE TO THE CONDUCT OF NATURE TOURS UTILIZING THE SHUTTLE BOATS.

WHEREAS, the Lorain Port Authority has acquired two (2) shuttle boats for establishment tours to the historic Lorain Lighthouse and up river locations (nature tours); and

WHEREAS, the Lorain Port Authority has initiated nature tours of the Black River to not only attract tourists to the community and also to inform the public on the river’s attributes.

WHEREAS, it is necessary to enter into Independent Contractor Agreements with Naturalists in order to conduct said nature tours.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lorain Port Authority:

SECTION I. That the Executive Director of the Lorain Port Authority or his designee is hereby authorized and directed to enter into Independent Contractor Agreements (agreement attached) for conduct of nature tours of the river and harbor areas.

SECTION II. It is found and determined that all formal proceedings and actions of this Board concerning and relating to the passage of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22, of the Ohio Revised Code.

Ayes:

Nays:

Abstain:

Adopted:

Carl Nielsen, Chairman

Richard M. Novak, Executive Director

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement, made at Lorain, Ohio, as of this ___ day of _____, 2016, by and between LORAIN PORT AUTHORITY, governmental entity with its successors and assigns is herein called "PORT AUTHORITY", and _____ of _____, _____, _____, who is herein called "Independent Contractor", is to Evidence that:

WHEREAS, Port Authority desires to engage Independent Contractor and Independent Contractor desires to render Naturalist services for Port Authority as an independent contractor under the terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises made herein and for other valuable consideration (the receipt and sufficiency of which are hereby acknowledged), Port Authority and Independent Contractor (herein collectively called the "Parties" and individually the "Party") agree as follows"

1. Engagement

- A. Upon the terms and conditions of this Agreement, Port Authority hereby engages Independent Contractor to render Naturalist services as an independent contractor to Port Authority's patrons and Independent Contractor hereby agrees to provide such Naturalist services, utilizing Port Authority vessels, to Port Authority's patrons during the Performance Period (as defined herein).
- B. Both Parties acknowledge Independent Contractor's status as an independent contractor under this Agreement and that, therefore, Port Authority shall have no duty, responsibility, or obligation: (a) to withhold and/or pay FICA taxes or Federal, State or local income and other taxes, and/or (b) to comply with or contribute to State Workers' Compensation and/or State or federal Unemployment Compensation funds or to comply with any other laws relating to employees with respect to Independent Contractor, and/or (c) to provide Independent Contractor with any Port Authority fringe benefits or other benefits available to Port Authority employees.

2. Term

The term of this Agreement (herein called the "Agreement Term") shall commence on the date hereof May 1, 2016 and shall continue until November 1, 2016. However, either party may exercise an option to extend this contract an additional one term of (1) year by serving notice to the other party by February 1, 2017.

3. Fees

- A. In return for the Naturalist services rendered hereunder by Independent Contractor, Port Authority shall pay Independent Contractor Forty (\$40.00) Dollars (per tour) for services related to providing naturalist services to port authority patrons by Independent Contractor during the Performance Period pursuant to this Agreement.
- B. Port Authority shall pay Independent Contractor said Basic Fees within Thirty (30) days after the port authority's event or Performance Period.
- C. Port Authority's obligations under this Section 3 are expressly conditioned upon Independent Contractor's continued and faithful performance of an adherence to each and every covenant, warranty, representation, duty and obligation assigned to or made by Independent Contractor hereunder.

4. Duties and Responsibilities

- A. Independent Contractor shall render and Naturalist services for Port Authority as required. Such services shall generally be conducted on Wednesdays and Thursday evenings as per the attached schedule. Tours are approximately one and half hours in length and generally run between the hours of 6:00 pm and 9:00 p.m. (depending upon sunset times. Special group tours will also be scheduled on other dates as designated by the Port Authority during the Performance Period, Independent Contractor shall provide guided tours to the Port Authority's patrons from a location selected by Port Authority (the "Departure Location") up river. Naturalist will be responsible for explaining natural attributes of the river watershed to Port patrons including bird, reptile, amphibian and mammal identification along with accompanying geology and cultural heritage.
- B. Independent Contractor shall maintain records on behalf of Port Authority relating to the services performed under this Agreement. Such records shall be maintained in a manner acceptable to Port Authority.

5. Inclement Weather

If, during the Performance Period and in either the Boat Captain's or Port Authority's good faith judgment, the weather or lake conditions present a safety risk to the Parties or the Port Authority's patrons, Independent Contractor shall be excused from performing the boat transportation services which are the subject of this Agreement for so long as such inclement weather or conditions exist. However, if such inclement weather or lake conditions subside during the Performance Period, Independent Contractor shall immediately become responsible for the performance of the Naturalist services required under this Agreement. Independent Contractor shall only be paid for actual hours worked during the Performance Period.

6. Indemnity

Independent Contractor shall indemnify the Port Authority for any injury to any person and damage to the property of any person which results from the acts or neglect of the Independent Contractor.

7. Termination

Either Party may terminate the Agreement Term upon the other Party's breach or violation of any of its obligations, duties, covenants, representations or warranties made in this Agreement.

8. Jurisdiction and Venue

- A. This Agreement is signed, executed and consummated in the City of Lorain. County of Lorain, State of Ohio, and Ohio's laws shall govern all disputes, controversies and litigation arising hereunder.
- B. Port Authority and Independent Contractor hereby agree that exclusive venue for all disputes, controversies and litigation arising under this Agreement lies with the State Courts of Lorain County, Ohio.
- C. For all disputes, controversies and litigation arising under this Agreement, port Authority and Independent Contractor hereby (jointly and individually) submit to the personal jurisdiction of the State Courts of Lorain County, Ohio.

9. Prohibition Against Assignment

- A. Independent Contractor's duties, obligations and services rendered under this Agreement are personal in nature and are unique and peculiar to Independent Contractor. Therefore, without Port Authority's prior written consent, Independent Contractor shall not assign, transfer, sell, encumber, pledge or otherwise alienate Independent Contractor's duties, obligations, responsibilities or rights under this Agreement.
- B. If the Independent Contractor attempts to affect any of the foregoing, Port Authority shall thereupon have the continuing right and option to terminate this Agreement Term at any time, without notice or demand, and without further Port Authority obligation or liability hereunder.

10. Miscellaneous

- A. This Agreement constitutes the entire agreement between Port Authority and Independent Contractor and all prior written or oral negotiations, representations, arrangements and/or agreements regarding the subject matter herein are merged into and superseded by this Agreement. Port Authority and Independent Contractor acknowledge that there are no oral or other written understandings, arrangements and/or agreements between the Parties relating to the subject matter of this Agreement.
- B. All provisions of this Agreement are severable and no provision hereof shall be affected by the invalidity of any other such provision.
- C. No waiver by Port Authority or Independent Contractor and no refusal or neglect of Port Authority or Independent Contractor to exercise any right hereunder or to enforce compliance with the terms of this Agreement shall constitute a waiver of any provision herein with respect to any subsequent breach, actions or omissions hereunder, unless such waiver is expressed in writing by the waiving party.
- D. This Agreement may be amended, altered or changed only through a written document signed by Independent Contractor and Port Authority.
- E. For purposes of this Agreement, the singular includes the plural and vice-versa and the feminine, masculine and neuter include each other.

LORAIN PORT AUTHORITY

INDEPENDENT CONTRACTOR

Richard M. Novak, Executive Director

(First Name, Last Name)