

RESOLUTION NO. 2016 - ____

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO INDEPENDENT CONTRACTOR AGREEMENTS WITH SHIP CAPTAINS RELATIVE TO THE OPERATION OF THE SHUTTLE BOAT VESSELS.

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

WHEREAS, the Lorain Port Authority has entered into an agreement with the Port of Lorain Foundation, Inc. in order to provide access to the Lorain Harbor Lighthouse; and

WHEREAS, it is necessary to enter into Independent Contractor Agreements with the Captains in order to operate said vessels; and

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

SECTION I. That the Executive Director or his designee is hereby authorized and directed to enter into Independent Contractor Agreement (Agreements attached) for the operation of the Lighthouse Shuttles for tours to the Lorain Harbor Lighthouse and up river locations. The Agreement for the Head Captain shall provide for an hourly fee of Twenty-Two (\$22.00) per hour.

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, _____, 20__ by and between LORAIN PORT AUTHORITY, governmental entity with its successors and assigns is herein called "PORT AUTHORITY", and Tom Kern, 3015 East Erie Avenue who is herein called "Independent Contractor", is to Evidence that:

WHEREAS, Port Authority desires to engage Independent Contractor and Independent Contractor desires to render boat transportation 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

Upon the terms and conditions of this Agreement, the Port Authority hereby engages Independent Contractor to render boat transportation services as an independent contractor to Port Authority's patrons and Independent Contractor hereby agrees to provide such boat transportation services, utilizing the Port Authority vessels, to Port Authority's patrons during the Performance Period (as defined herein).

Both Parties acknowledge Independent Contractor's status as an independent contractor under this Agreement and that, therefore, the 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

In return for the boat transportation services rendered hereunder by Independent Contractor, the Port Authority shall pay Independent Contractor Twenty Two Dollars (\$22.00) per hour for services related to transport of port authority patrons by Independent Contractor during the Performance Period pursuant to this Agreement. Independent Contractor shall be responsible for paying required crew out of this sum.

3. Fees (continued)

The Port Authority shall pay Independent Contractor said Basic Fees within thirty (30) days after the Port Authority's event or Performance Period, upon receiving an invoice.

The 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

Independent Contractor shall render and perform boat transportation services for Port Authority as required. For special event weekends service will generally be provided from 5:00 p.m. to 9:00 p.m. on Fridays and from 11:00 a.m. to 9:00 p.m. on Saturdays and Sundays or as designated by the Port Authority during the Performance Period, Independent Contractor shall transport

Corporation's patrons from a location selected by Port Authority (the "Departure Location") to the Port of Lorain Lighthouse at least once per hour aboard the Pride of Lorain or Lady Charleston and to upriver and harbor sites designated by the Port Authority.

Independent Contractor shall maintain records on behalf of Port Authority relating to the boat transportation services and maintenance logs rendered under this Agreement. Such records shall be maintained in a manner acceptable to Port Authority.

Independent Contractor shall be responsible for transporting any and all watercraft to and from the Departure Location before, during, and after the Agreement Term.

5. Inclement Weather

If, during the Performance Period and in either the Independent Contractor'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 sea 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 boat transportation services required under this Agreement. Independent Contractor shall only be paid for actual hours worked during the Performance Period.

6. Indemnity, Insurance and Registration

At solely his cost and expense, Independent Contractor shall obtain and continuously maintain during the Agreement Term any and all registrations, licenses and certifications required under local, State or Federal law with regard to any watercraft operated by Independent Contractor while performing the services designated in this Agreement. Such registrations and certifications shall include, but not be limited to, all registrations and certifications required by the United States Coast Guard. Independent Contractor shall periodically furnish to Port Authority, upon its demand, any and all certificates verifying that the registrations and certifications required by this Section are maintained by Independent Contractor in full force and effect.

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

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.

The 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.

For all disputes, controversies and litigation arising under this Agreement, the 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

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 the 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.

If 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 the Port Authority obligation or liability hereunder.

10. Testing Positive For Drug or Alcohol

In the event the Independent Contractor tests positive for alcohol or drug test, the Independent Contractor shall not be permitted to operate a vessel on behalf of the Lorain Port Authority until he/she is cleared.

11. Miscellaneous

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. The 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.

All provisions of this Agreement are severable and no provision hereof shall be affected by the invalidity of any other such provision.

No waiver by Port Authority or Independent Contractor and no refusal or neglect of the 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.

This Agreement may be amended, altered or changed only through a written document signed by Independent Contractor and Port Authority.

For purposes of this Agreement, the singular includes the plural and vice-versa and the feminine, masculine and neuter include each other.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year first above written.

LORAIN PORT AUTHORITY

Richard M. Novak, Executive Director

(First Name, Last Name) Independent Contractor

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement, made at Lorain, Ohio, as of this, _____, 20__ by and between LORAIN PORT AUTHORITY, governmental entity with its successors and assigns is herein called "PORT AUTHORITY", and _____, _____, _____, _____, who is herein called "Independent Contractor", is to Evidence that:

WHEREAS, Port Authority desires to engage Independent Contractor and Independent Contractor desires to render boat transportation 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:

12. Engagement

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14. Fees

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3. Fees (continued)

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by this Agreement. The 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.

All provisions of this Agreement are severable and no provision hereof shall be affected by the invalidity of any other such provision.

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This Agreement may be amended, altered or changed only through a written document signed by Independent Contractor and Port Authority.

For purposes of this Agreement, the singular includes the plural and vice-versa and the feminine, masculine and neuter include each other.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year first above written.

LORAIN PORT AUTHORITY

Richard M. Novak, Executive Director

(First Name, Last Name) Independent Contractor