

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
CITY OF LORAIN, OH
AND
LORAIN PORT AUTHORITY
FOR
LORAIN HARBOR CONTAINED SPOIL DISPOSAL FACILITY

THIS AGREEMENT, entered into this _____ day of _____, 2010, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the Assistant Secretary of the Army (Civil Works); CITY OF LORAIN (hereinafter the "City"), represented by the Mayor; and LORAIN PORT AUTHORITY (hereinafter the "Port Authority"), represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, Section 123 of the River and Harbor Act of 1970 (Public Law 91-611, approved 31 December 1970) authorized the construction, operation and maintenance of contained spoil disposal facilities;

WHEREAS, the City, by Ordinance Number 32-76 of its Council of the City of Lorain, dated February 17, 1976, authorized the Mayor to enter an agreement for the construction, operation and maintenance of a contained spoil disposal facility at Lorain Harbor and agree to prerequisites, maintenance responsibilities and other rights and duties;

WHEREAS, the Government and the City, entered into an Agreement for Local Cooperation for the construction of a Contained Spoil Disposal Facility at Lorain Harbor, OH, on February 17, 1976, in which the City agreed to furnish the non-Federal cooperation required by River and Harbor Act of 1970, § 123 (Public Law 91-611) and by other applicable federal law and agreed to hold and save the Government harmless from damages due to the construction and maintenance of the Contained Spoil Disposal Facility;

WHEREAS, the Government and the City, entered into a supplement agreement to the Agreement for Local Cooperation for the Spoil Disposal Facility on September 9, 1995, to replace a permanent pipeline with a removable pipeline as requested by the sponsor to facilitate development and recreational navigation (hereinafter the "Agreement for Local Cooperation");

WHEREAS, the Contained Spoil Disposal Facility was constructed in 1978 and the removable pipe replaced the permanent pipe on DATE 1995 (hereinafter the "Project");

WHEREAS, the City now desires to divest itself of the primary responsibility for operating and maintaining the Project, and in general to transfer its rights, responsibilities and obligations related to the Project to the Port Authority;

WHEREAS, the Port Authority has the authority and capability to furnish the non-Federal cooperation required by the Federal legislation authorizing the Project, by other applicable law and the Agreement for Local Cooperation and is willing to assume such rights, responsibilities and obligations and participate in accordance with the terms of the Agreement for Local Cooperation.

NOW, THEREFORE, the parties agree to modify the Agreement for Local Cooperation, as follows:

ARTICLE I - OBLIGATIONS OF THE PARTIES

A. Effective on the date of this Agreement, all rights, responsibilities and obligations of the City, as stated in the aforementioned Ordinance and Agreement for Local Cooperation, shall be transferred to and assumed in full by the Port Authority, except as provided in paragraph B. of this Article.

B. The City shall continue to hold and save the Government harmless under the save and hold harmless provisions of the Agreement for Local Cooperation to the extent that any claim for damages concerning the Contained Spoil Disposal Facility relate to events that occurred prior to the date of execution of this Agreement. The Port Authority shall hold and save the Government harmless for all damages or claims for damages that do not relate to events that occurred prior to the date of execution of this Agreement, except for damages due to the fault or negligence of the Government and its contractors.

C. In the event that the Port Authority fails to perform the obligations under the Agreement for Local Cooperation transferred to and assigned by this Agreement, the City shall undertake such obligations. Nothing contained herein shall prevent any party to this Agreement from taking such action as is necessary to enforce its rights under the aforementioned Ordinance, Agreement for Local Cooperation or this Agreement or pursue any remedy at law or in equity.

D. All other provisions of the Agreement for Local Cooperation, remain in full force and effect.

ARTICLE II - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

IF TO THE CITY:

Director of Public Service
Lorain City Hall, 7th Floor
200 West Erie Avenue
Lorain, OH 44052

IF TO THE PORT AUTHORITY:

Lorain Port Authority
Executive Director
422 Broadway
Lorain, OH 44052

IF TO THE GOVERNMENT:

District Engineer
U.S. Army Engineer District, Buffalo
1776 Niagara Street
Buffalo, NY 14207

B. A party may change the address or person to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communications made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

THE DEPARTMENT OF THE ARMY

CITY OF LORAIN, OHIO

By: _____
Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)

By: _____
Anthony Krasienko
Mayor, City of Lorain

DATE: _____

DATE: _____

LORAIN PORT AUTHORITY, LORAIN,
OHIO

By: _____
Richard M. Novak
Executive Director

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the City of Lorain, that the City of Lorain is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the City of Lorain in connection with the Lorain Harbor Contained Spoil Disposal Facility and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as provided by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b) and that the persons who have executed this Agreement on behalf of the City of Lorain have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, 2010.

Patrick Riley
City of Lorain Law Director

DRAFT

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Anthony Krasienko
Mayor, City of Lorain

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the Lorain Port Authority, that the Lorain Port Authority is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Lorain Port Authority in connection with the Lorain Harbor Contained Spoil Disposal Facility and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as provided by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b) and that the persons who have executed this Agreement on behalf of the Lorain Port Authority have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, 2010.

Michael Brosky
Lorain Port Authority Legal Counsel

DRAFT

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Richard M. Novak
Executive Director, Lorain Port Authority

DATE: _____

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, _____, do hereby certify that I am the Chief Financial Officer [OR TITLE OF EQUIVALENT OFFICIAL] of the LORAIN PORT AUTHORITY (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the LORAIN HARBOR CONTAINED SPOIL DISPOSAL FACILITY and that the Non-Federal Sponsor has the financial capability to satisfy the Non-Federal Sponsor's obligations under the AGREEMENT FOR LOCAL COOPERATION AT LORAIN HARBOR.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____, _____.

BY: _____

TITLE: _____

DATE: _____

DRAFT