

**Community Recreation Project – Pass Through Grant Agreement
Ohio Department of Natural Resources**

This Capital Improvement Community Recreation Project Pass Through Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the State of Ohio, Department of Natural Resources, (hereinafter referred to as ODNR), acting by and through its Director, pursuant to Section 1501.01 of the Ohio Revised Code and Amended House Bill No. 497, 130th General Assembly of the State of Ohio and the Lorain Port Authority, 319 Black River Lane, Lorain, Ohio, an Ohio Political Subdivision, (hereinafter referred to as "Grantee") acting by and through its legal counsel.

All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and shall be respectively addressed as follows:

(a) with respect to ODNR:

Ohio Department of Natural Resources
Office of Real Estate
2045 Morse Road, E2
Columbus, Ohio 43229
Attn: Recreation Services Administrator

(b) with respect to the Project Grantee:

Lorain Port Authority
319 Black River Lane
Lorain, Ohio 44052
Attn.: Executive Director

The parties designated above shall each have the right to specify as their respective address for purposes of this Agreement any other address upon fifteen (15) days prior written notice thereof, as provided herein, to the other parties listed above.

Pursuant to Amended House Bill No. 497, the 130th General Assembly of the State of Ohio has appropriated funds in the amount of Eighty Thousand Dollars (\$80,000.00) for the capital facilities costs associated with the Project in appropriation item C725E1, described as '**the Black River Landing Pavilion**', (hereinafter referred to as "Project"). The Project reference number is **LORA-004C**.

The General Assembly has identified the Parks and Recreation Improvement Fund (Fund 7035), as the fund from which these monies will be disbursed.

NOW, THEREFORE, for the purposes of providing the funds to the Grantee pursuant to Amended House Bill No. 497 of the 130th General Assembly, the parties hereto covenant and agree as follows:

1. ODNR agrees to provide the Grantee Eighty Thousand Dollars (\$80,000.00), via qualifying advance and reimbursement, to be used toward the total cost of the Project. In no event shall ODNR's payment to Grantee exceed Eighty Thousand Dollars (\$80,000.00). Funds for this Project have been released by the Controlling Board as of _____, and encumbered by Contract Encumbrance Record Number _____ and are so certified by the Director of Budget and Management on _____. Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code. Any funds provided under this Agreement that are not timely spent shall be returned with interest to the State of Ohio in accordance with paragraph 6 of this Agreement.
2. This Agreement will terminate on **June 30th, 2016**, at which time the Grantee agrees that the Project will be completed, and open and available for use. Upon written request by the Grantee, and subject to appropriation and renewal of funds by the State of Ohio, the agreement may be renewed by the ODNR.
3. The Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the property as a public parks and recreation facility. The Grantee represents that it is the fee simple owner of the property on which the Project is or will be located, as described in Exhibit A attached hereto, and that the only restrictions of record with respect to the property or the Project are (a) any state of facts which an accurate survey might show, (b) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any Governmental Authorities having jurisdiction over the property and (c) all matters of record pertaining to the property, including dedicated public rights-of-way and the items identified on said Exhibit A, 'Boundary Map'.

4. The Grantee shall provide all construction services for the Project. The Grantee shall be responsible for the construction administration of the Project. The Grantee shall have the full authority to contract with appropriate persons for the design and construction of the Project. The Grantee will secure all necessary permits and/or licenses for the Project. The Grantee warrants and certifies that it will cause the Project to be constructed with all reasonable speed and reasonably adhere to the submitted development timeline.
5. The Grantee, or its assigns approved by ODNR, shall be solely responsible for the operation, maintenance, and upkeep of the property or facilities acquired or developed pursuant to this Agreement, and shall take all actions reasonably necessary to ensure that the facility is available to the public for the intended recreation purpose for a minimum of fifteen calendar years from the date of Project closeout by state issuance of final reimbursement for the Project. Failure to comply with this provision may result in demand for repayment of funds acquired through this Agreement.
6. If for any reason funds and/or interest on such funds acquired through this Agreement are required to be paid, repaid or remitted to the State of Ohio, such shall be remitted in full within forty-five (45) days of demand to:

Ohio Treasurer of State
30 East Broad Street, 9th Floor
Columbus, Ohio 43215

7. Any such remittance shall include a copy of this Agreement. A copy of the cover letter transmitting the remittance to the Treasurer of State shall be sent simultaneously to the Auditor of State and ODNR.
8. On and after the date of this agreement, the Grantee agrees not to seek any determination of liability against ODNR or any department, agency or official of the State of Ohio in the case of claim or suit arising from the Project including acquisition of property or any future condition, construction, operation, maintenance or use of property or facilities which may be developed in relation to the Project. The Grantee forever releases and waives any and all claims it may ever possess or assert against ODNR and all employees, agents, officials and contractors and attorneys of same in relation to the Project.
9. Prior to release of funds by the Controlling Board, Grantee will provide ODNR with a document that demonstrates that all employees or agents of Grantee who are responsible for maintaining or disbursing funds acquired through this Agreement will be fully bonded or insured against loss of such funds. The bonding agent or insurer shall be licensed to do business in Ohio. No part of the funds or interest acquired by Grantee through this Agreement shall be spent to obtain bonding or insurance. All funds acquired by Grantee through this Agreement shall be deposited in one or more financial institutions that fully insure, secure or otherwise protect the funds from loss. Grantee shall use one or more federal deposit insurance corporations and/or other deposit and/or collateralization strategies to protect the funds and interest from loss.
10. The Grantee will assure compliance with all applicable Federal, State, and local laws and regulations pertaining to handling, management and accountability in relation to public funds, competitive bidding for public projects, procurement of equipment and materials, compliance with the Ohio Prevailing Wage law, and the like.
11. The Grantee will keep and make all Project-related records available to the state Auditor or the Auditor's designee for a period of not less than eighteen (18) years after the date of Project closeout as described in Paragraph 5 above. The Grantee acknowledges that the Auditor of State and other departments, agencies and officials of the State of Ohio may audit this Project at any time, including before, during and after completion. The Grantee agrees that any costs of audit by the Auditor of State or any other department, agency or official of the State of Ohio will be borne exclusively by and paid solely by Grantee, and that the funds provided under this Agreement will not be used by Grantee for payment of any audit expenses for any reason at any time. Grantee will be solely responsible for all costs associated with audit.
12. The Grantee affirmatively states that Grantee is fully aware of the restrictions and guidelines for expending such funds and intends to comply fully with same. Grantee will implement appropriate monitoring controls to ensure that funds acquired through this Agreement and any interest thereon are expended in accordance with all applicable laws, rules and requirements.
13. If it is determined by an audit by the Auditor of State or any department, agency or official of the State of Ohio or other proper means that any Project expense is ineligible, or not properly documented, the Grantee will repay such to the State of Ohio in accordance with this Agreement.
14. The Grantee assures compliance with all applicable Federal, State and local laws and regulations, for the Project, including, but not limited to:

- a. Prevailing wage pursuant to ORC Chapter 4115
 - b. Worker's Compensation
 - c. Equal Opportunity Laws
The Grantee agrees that it will fully disclose with the State Equal Employment Opportunity Coordinator, with any other official or agency of the State or Federal government which seeks to eliminate unlawful employment discrimination, and with all other State and Federal efforts to assure equal employment practices, and said Grantee will comply promptly with all requests and directions from the State of Ohio or any of its officials and agencies in this regard, both before and during performance.
 - d. Domestic Steel pursuant to ORC 153.011
 - e. The Americans with Disabilities Act
The Grantee will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public law 90-480), Department of Interior Section 504 Regulations (43CFR Part 17) and the Americans with Disabilities Act.
 - f. Environmental and Historical Preservation Laws and Regulations
The Grantee assures compliance with all applicable Federal, State, and local environmental and historic preservation laws and regulations pertaining to the Project.
 - g. Drug-free Workplace
The Grantee agrees to comply with all applicable State and Federal laws regarding a drug-free workplace. The Grantee will make a good faith effort to ensure that all contract employees, while working on Grantee's property, will not purchase, transfer, use or possess illegal drugs or abuse prescription drugs in any way.
 - h. Laws of Professional Design
The Grantee will comply with all laws that may require approval of the Project by a registered professional engineer, surveyor, architect or landscape architect.
15. The Grantee affirmatively represents and warrants to the State that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. The Grantee agrees that if this representation or warranty is deemed to be false, the Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by the State hereunder immediately shall be repaid to the State, or an action for recovery immediately may be commenced by the State for recovery of said funds.
16. The Grantee will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), Stat. 1894 (1970), and Ohio Revised Code Chapter 163 for all real property acquisitions, and where applicable will assure that these requirements have been complied with for Project to be developed using funds provided by the legislature in Amended House Bill No. 497 of the 130th General Assembly.
17. The Grantee agrees that any facilities that may be developed now or in the future on the lands acquired or improved under this Project will be made available to all persons regardless of race, color, sex, religion, national origin, ancestry, age, military status, handicap or disability on the same terms and conditions.
18. The Grantee will not discriminate against any employee or applicant for employment, because of race, color, religion, national origin, ancestry, sex, age, military status, handicap or disability. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, sex, handicap or disability. Such action will include, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices as may be provided by the State of Ohio setting forth the provisions of this non-discrimination clause.
19. Grantee represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to R.C. § 125.111(B) and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity Commission.
20. The State of Ohio reserves the right to terminate this agreement if the Grantee is unable to proceed with the Project described in the Project Agreement, or if Grantee violates any of the terms herein.

21. The Grantee will assure that monies expended under this Agreement are spent in conformity with their intended purpose as provided by Amended House Bill No. 497, 130th General Assembly and Chapters 151 and 154 of the Ohio Revised Code and all other laws that apply to expenditure of monies by the Grantee. If Grantee is required to submit an annual financial report to the Auditor of State, in accordance with Auditor of State Bulletin 2001-012, then the Grantee shall report the funds it acquires through this Agreement as a separate column identified consistent with the Project description in appropriation item C725E1. If Grantee is not required to submit the report identified above in this paragraph, Grantee shall file an annual detailed expenditure report of all expenditures associated with the Project with the Auditor of State by March 1st every year until all funds provided in this Agreement have been spent. The above reports shall be sent to the address provided in Auditor of State Bulletin 2001-012.
22. Grantee hereby certifies that neither it nor any of its officers nor the spouse of any such person, has made contributions to the Governor of Ohio in excess of the limitations specified in R.C. § 3517.13.
23. Grantee hereby certifies that it will comply with the Executive Order of the Governor of Ohio regarding equal employment and that it will include in its construction contracts provisions for compliance with the terms and conditions of the Copeland Anti-Kick Back Act, 18 U.S.C. §874, as the same are supplemented by regulations promulgated by the U.S. Department of Labor in 29 CFR, Part 3.
24. This Agreement may be modified if agreed to in writing by both parties.
25. The Grantee, by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Grantee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
26. Each provision hereof shall be separate and independent and the breach of any provision by either party hereto shall not discharge or relieve the other party from its obligations to perform each and every covenant to be performed by it hereunder. If any provisions hereof (or the application thereof to any person, firm or corporation or to any circumstances) shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement (or the application of such invalid provision to such persons, firms or corporations or circumstances other than those as to which it is invalid or unenforceable), shall not be affected thereby, and said provisions hereof shall be valid and enforceable to the fullest extent permitted by law.

27. MISCELLANEOUS

- a. Controlling Law. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Consultant consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.
- b. Waiver. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- c. Successors And Assigns. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Consultant, without the prior written consent of the ODNR.
- d. Notices. Except to the extent expressly provided otherwise herein, all notices, consents and communications required hereunder (each, a "Notice") shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses first set forth above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

- e. Conflict. In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
- f. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- g. Execution. This Agreement is not binding upon the ODNR unless executed in full, and is effective as of the last date of signature by the ODNR.
- h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- i. Electronic Signatures. Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chapter 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

28. Time is of the essence in this Agreement.

IN TESTIMONY WHEREOF, the Grantee and the ODNR have caused this Agreement to be executed by their respective officers duly authorized as of the date on which the Director of the Department of Natural Resources signs this Agreement.

FOR THE GRANTEE:

LORAIN PORT AUTHORITY

Signature

Printed Name: _____

Printed Title: _____

FOR THE STATE OF OHIO, ODNR

Paul R. Baldrige, Chief Office of Real Estate

Ohio Department of Natural Resources

Date: _____

APPROVED BY:

JAMES ZEHRINGER, DIRECTOR
Ohio Department of Natural Resources

Date _____

ATTORNEY CERTIFICATION

I, _____ [name and title], acting as attorney for the _____ [name of Grantee], do certify that I have examined the Agreement and find that acceptance by Grantee has been authorized and that the execution thereof is proper and in accordance with the laws of the State of Ohio. Following signature, the Agreement, in my opinion, is a legal obligation of _____ [name of Grantee] in accordance with the terms thereof, and that Grantee possesses the legal authority to fully perform all obligations incurred by Grantee in signing this Agreement, as Authorized in Resolution or Ordinance No. _____, dated _____, 2014.

Legal Counsel for Grantee _____
(Signature)

Printed Name of Legal Counsel _____

Address _____

Registration Number _____

Rick Novak

From: Fitch, Mary [Mary.Fitch@dnr.state.oh.us]
Sent: Thursday, August 07, 2014 3:09 PM
To: rnovak@lorainportauthority.com
Subject: Black River landing Pavilion
Attachments: Scanned from REALM Xerox on E-2.pdf

Mr. Novak:

Thank you for submitting the information packet on the subject Community Recreation Project. I've attached one of the completed forms. Both yes and no are checked on question 12 on this form. Please correct this and email or fax it back to me.

Please let me know if you have any questions.

Mary Fitch
Recreation Services Administrator
Office of Real Estate
Ohio Department of Natural Resources
2045 Morse Road E2
Columbus, Ohio 43229-6693
mary.fitch@dnr.state.oh.us
phone: 614-265-6477 fax: 614-267-4764

-----Original Message-----

From: REALME2Xerox@dnr.state.oh.us [mailto:REALME2Xerox@dnr.state.oh.us]
Sent: Thursday, August 07, 2014 3:04 PM
To: Fitch, Mary
Subject: Scanned from REALM Xerox on E-2

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Device.

Attachment File Type: pdf, Multi-Page

Device Name: nr738xer7835

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Ohio Department of Natural Resources**

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