

RESOLUTION NO. 2014 - ____

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH ROBERT FOWLER dba GRUMPY'S BAIT AND TACKLE FOR THE 2014 OPERATION AND MANAGEMENT OF THE AGENCY'S LAUNCH RAMP FACILITIES, (BLACK RIVER WHARF AND EAST SIDE LAUNCH RAMP).

WHEREAS, the Lorain Port Authority is the owner of certain parcels of real property which are used for boat launching and recreational purposes involving access to the Black River and Lake Erie; and

WHEREAS, it is the desire of the Lorain Port Authority to contract with an independent contactor for the management and operation of its boat launch facilities (Black River Wharf and East Side Launch) for the purpose of providing seasonal management of these facilities.

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 is hereby authorized and directed to enter into an agreement with Robert Fowler dba Grumpy's Bait and Tackle for the management and operation of its boat launch facilities (Black River Wharf and East Side Launch) for 2014.

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

2014 Boat Launch Management Agreement

WHEREAS, Owner, in conjunction with the State of Ohio, has conducted a boat (ramp) launch facility together with a launch control building and associated parking lot located on the west bank of the Black River in the City of Lorain; The premises includes six boat launch ramps, paved parking area and a launch control building. The Owner also maintains a boat (ramp) launch facility, restroom building, and associated parking lot with landscaped areas on the east side of the Black River and across east from the Coast Guard Station. Each of these boat (ramp) launch facilities collectively known herein as the “premises”.

NOW THEREFORE, in consideration of the mutual covenants herein contained the parties hereto contract and agree to the terms and conditions set forth herein below:

1. Demised Premises - The Owner, for and in consideration of the payment of the fee and the performance of covenants and agreements by Operator, hereinafter set forth, does hereby grant unto the Operator the right to utilize the above described premises and to operate the same in a manner consistent with the terms herein specified, and as directed by the Executive Director of the Lorain Port Authority or his designee in the event of his absence. Operator is an independent contractor who shall have control over all work subject to the performance of said work to the Owner’s satisfaction. Contractor/Operator will promote maximum use of the facilities, manage and lawfully operate the facilities in an efficient, safe, clean, and sanitary manner.

2. Duration of Agreement - This agreement shall become effective on execution, thereby modifying all previous agreements and unless terminated early as permitted herein, shall run from April 15, 2014 through October 31, 2014. This contract may be extended for one (1) additional term subject to the approval of the Board of Directors of the Lorain Port Authority.

3. Management Fee - The Lorain Port Authority shall pay as a basic management fee the sum of \$500.00 per week, from April 15, 2014 through October 31, 2014 as defined herein, to the Operator for the management and care of premises, including the launch ramp facilities; The Owner shall set the launch fees that shall be charged and collected from the members of the public who use the launch ramps upon the premises; Operator agrees to collect said launch fees for Owner. As compensation for the services hereunder, Operator shall be entitled to retain 50% of the total gross launch fees collected from the users of the launch ramps during the term of this agreement. Operator hereby covenants and agrees to faithfully perform all obligations contained herein as covenants for the privileges granted the Operator. It is understood and agreed by the parties hereto that Owner shall set the fees, related to the use and operation of said boat launch ramps and that Operator has no authority to charge a fee other than what Owner specifically directs; the State of Ohio shall have the right to review and suggest an alternate fee schedule should it not agree with the fees set by Owner and each party agrees to abide by the State of Ohio's alternate fee schedule. Operator shall be entitled to sell merchandise at retail and Operator shall be entitled to all proceeds of any retail activity that Operator generates from Operator's commercial trade/sale as may occur by reason of Operator's retail business conduct or vending activity. It is agreed however, that should the Lorain Port Authority Board of Directors reduce the fee to be collected from the current \$4.00 per motor boat launch rate and \$2.00 per non motorized boat launch rate then the operator shall be permitted to bill the Lorain Port Authority for the loss of said revenue equaling the difference in the rates collected against what would have been collected had the launch rate remained \$4.00 per motorized boat launch or \$2.00 per non motorized boat; this also includes the removal of the docks for the Black River Boat Launch and the East Side Boat Launch at no additional cost, this cost is included in the \$500.00 per week management fee.

4. Obligation of Operator - Operator shall manage and operate the boat ramps and shall

perform duties and responsibilities incident thereto including, but not by way of limitation, the collection of fees paid by persons using the boat ramps for launching purposes, Operator shall station personnel at the boat ramps for purposes of collecting fees from 6 am to 6 pm during the season as deemed necessary. Hours of personnel shall be reasonably subject to weather, lake and ramp traffic conditions, Operator shall use Operator's best business judgment concerning required staffing to best serve the public's needs during the seasons of boating. As defined herein and as used for the purposes of this agreement, the term "season" shall be from April 15, 2014 through October 31, 2014. Operator shall further take care to service the post summer season by stationing adequate personnel at the ramps for the facilities care, management, supervision, and the collection of launch ramp fees through October 31, 2014. All parties agree that should weather conditions then prevailing make it not feasible for the launching boats, then the post summer stationing personnel may be avoided during such bad weather conditions that make it not feasible for the launching boats. During the term of this agreement the Operator shall be further obligated to:

A. Care for, maintain and keep the facilities, premises and parking areas, including but not limited to the concession/restroom buildings in a secure, clean, neat and orderly condition as may be reasonably expected;

B. Use or occupy the premises in accordance with any and all laws or regulations of any public authority, and to refrain from doing anything which would unduly increase the risk of any personal or property damage to any persons or property;

C. Save the Owner harmless from all liability for damages, loss, costs, damages or expenses, including attorney fees, which may be incurred with respect to any person or persons, or to the property itself resulting from any acts done or omission by or through the Operator or resulting from the Operator's use, or possession of said property, and/or the condition of the premises, and any and all loss, costs, liability or expense resulting there from. Operator shall maintain a policy of liability insurance, which adequately insures the Owner and Operator so that each is named as an insured under the insuring policy, and said policy shall provide medical payments coverage in the amount of \$10,000.00 per person injured on the site and said policy shall cover each party hereto as an insured and provide insurance coverage to protect Owner and Operator so that each will be adequately compensated in the event of damages caused by Operator's use of the premises, and provide Owner on a continuing basis with adequate proof thereof being given to Owner. Adequately insured shall mean a policy with 1-million/3 million coverage limits. No policy shall be cancelled without thirty (30) day's adequate notice to Owner and its Executive Director;

- D. Operator will be responsible for the day-to-day care and upkeep of the premises except such major maintenance which may be necessitated or caused by Operator's use of said premises;
- E. Operator may utilize all areas outside of the launch ramp facilities that have been prepared and designated for parking purposes; Operator shall maintain an adequate and appropriate respect for vehicular/trailer;
- F. Operator shall collect, deposit and account for all fees collected, pursuant to this agreement, in accordance with rules prescribed by the Executive Director or Owner;
- G. Operator shall maintain and monitor a marine band VHF radio during hours of operation for weather conditions only;
- H. Operator shall provide all hardware required to meet ODNR and State of Ohio Safety requirements;
- I. Operator shall further:
- a. Provide: ½ ton pick-up to assist boaters from ramp.
 - b. Furnish: NOAA radio broadcast of current weather.
 - c. Provide: 900-amp battery booster to assist boaters.
 - d. Provide: 3 loaner batteries for boaters.
 - e. Provide: the Owner with accurate records of fees collected at each launch ramp facility.
 - f. Be permitted to have vending and rental operations on the premises not inconsistent with all laws, statutes and ordinances.
- J. Operator shall further be responsible for any telephone bills not attributed to the launch control building;
- K. Owner shall be responsible for all trash removal for the premises;
- L. Operator shall also be responsible hereunder for all sanitation, cleaning and janitorial services, including all the extraordinary and regular maintenance of all public restrooms existing upon the premises. All applicable health and sanitary standards must be met or exceeded by the Operator. The Lorain Port Authority agrees to and will provide Operator with necessary janitorial supplies.
- M. Owner will be responsible for major repairs to the premises.
- N. The boat launch management operator shall provide a minimum of 50 hours of service at the launches weekly.
- O. Restrooms must be clean and open by 6 am daily.
- P. Peak hours should be staffed as foreseeable.
- Q. Weekends and holidays shall have priority and be staffed accordingly.

5. **Public Access** - The public shall have full and complete access to all portions of the premises with the exception of a portion of the launch control building, which is designated by the Operator as off limits and approved by the Owner.

6. **Non-assignment** - The Operator covenants not to assign this Agreement, a portion thereof or duty or responsibility arising hereunder to suffer the use of the premises except in a manner consistent herewith without the express prior written consent of Owner, except Operator shall be permitted to sublease space on the premises for a bait store and have control of vending operators on the premises, subject to the consent of Owner.

7. **Surrender of Property** - Operator covenants and agrees to deliver up and surrender to Owner possession of the premises upon the expiration of this agreement, on its termination, as provided therein, in as good condition and repair as the same shall be at the commencement of said term or may have been put by Owner during the continuance thereof. Operator further covenants and agrees that if the premises or any portion thereof is damaged or destroyed as a result of Operator's use, Operator shall fully compensate Owner for the costs of repair to said premises.

8. **Operator Default: Insolvency of Operator** - If Operator shall fail to keep and perform any of the covenants of this agreement, or said Operator shall abandon or vacate said premises during the term hereof, or shall make an assignment for the benefit of creditors, or if the interest of the Operator in said premises shall be sold under execution or other legal process, or if in relation to the Owner a petition for voluntary or involuntary bankruptcy shall be filed, or if the Operator by a court, the Owner may at Owner's election, cancel and terminate this agreement, and this agreement shall cease and be utterly void without prejudice to any remedies, which might otherwise be available by law.

9. **Loss Due to Catastrophe** - In case of damage to the premises by an act of God or other casualty beyond the Owner's control, the Owner shall have the option to terminate this Agreement or to repair the premises. The Owner shall have the option to terminate this

agreement or to repair the premises. The Owner shall attempt to make any such repairs within a reasonable time if Owner chooses to repair said premises.

10. Non-discrimination - The Operator will not discriminate against any member of the public, citizen, employee or applicant for employment, because of race, color, religion, national origin, ancestry, age handicap, disability, or sex. All pertinent Federal laws prohibiting any such discrimination will be adhered to. The Operator will obey all employment laws. As independent contractor, Operator will hire Operator's employees lawfully. Operator shall take affirmative action to ensure that applicants are employed and that said employees are treated during their employment, without regard to their race, color, religion, national origin, ancestry, handicap, disability, or sex. Operator shall not retaliate against any employee engaged in protected activity while seeking employment rights. Operator shall not discriminate against any employee in any employment decision, including, but not limited to decisions concerning the following: applicant review, hiring practice, employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or terminations; rate of pay or other forms of compensation; and selection for training; including apprenticeship. The Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices as may be required by law or as may be provided by the Owner, setting forth the provisions of this non-discrimination clause.

11. Severability of Clauses - No waiver of any covenant or condition or of the breach of any covenant or condition of this agreement by the Owner shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the non-observance or any other occasion of the same in any other covenant or condition hereof.

12. Termination - Owner reserves the right to terminate this agreement upon 30 days notice to Operator, with cause, at which time Operator shall surrender the premises pursuant to Section 7 herein. Owner further reserves the right to terminate this agreement without cause.

13. Notice - Whenever in this agreement there shall be required or permitted that notice or demand be given in or served by either party to this agreement, to or on the other, such notice or demand shall be given in writing, addressed as follows:

To the Owner: Lorain Port Authority
c/o Executive Director
319 Black River Lane
Lorain, OH 44052

Either party may change these addresses from time to time by serving notice as above provided.

14. Entire Agreement - This agreement, and all of the terms and provisions hereof, shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, administrators, executors and assigns.

Signed by the Parties hereto:

Port/Owner
Lorain Port Authority

Date _____

Richard M. Novak, Executive Director

Contractor/Operator

Date _____

Robert Fowler dba Grumpy's Bait and Tackle