

**USE AGREEMENT  
TO OPERATE CERTAIN PUBLIC SERVICE FACILITIES  
AT BLACK RIVER LANDING**

**THIS CONTRACT TO OPERATE CERTAIN PUBLIC SERVICE FACILITIES AT BLACK RIVER LANDING** ("Contract") is entered into as of October 20, 2014, by and between the **LORAIN PORT AUTHORITY** (the "Port") with an office at 319 Black River Lane, Lorain, Ohio 44052, and **Falls River Concerts dba ROCKIN' ON THE RIVER** ("Concessionaire"), with an office at 496 Eldridge Road, Aurora, Ohio 44202.

WITNESSETH:

WHEREAS, the Port has provided certain facilities for the use and benefit of the public in areas in Lorain, Ohio and known as Black River Landing; and

WHEREAS, the Port desires to contract with Concessionaire for the operation of such public service facilities, in order to, conduct the Rockin' on the River Concert Series at Black River Landing.

NOW, THEREFORE, for good and valuable consideration, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **FACILITIES:** As used in this Contract, "Facilities" means the following facilities of Black River Landing:
  - A. Transportation Center Building
  - B. Stage
  - C. Ferry Terminal Building Ticketing Booth (During events) and Board and Restrooms (security required)
  - D. Surrounding grounds.

The Port reserves the right, from time to time, to add to or remove buildings, improvements and equipment from the Facilities Subject to this Contract.

2. **TERM:** The term of this Contract shall commence on May 21, 2015, and shall end at the close of business on September 5, 2015, unless sooner terminated under the provisions hereof or by the mutual written agreement of the Port and the Concessionaire. Provided, however, the term may be extended, upon such terms and under such

conditions as may be determined by the Port, for an additional period of up to two years at the sole and exclusive discretion of the Port, upon application for an extension of the term by Concessionaire not later than 90 days preceding the expiration of the original term stated herein. Nothing contained herein shall be construed by Concessionaire as a representation or guaranty that the Port will or are required to grant an extension of the original contract term.

3. PAYMENT AND FEES

- A. The Concessionaire shall pay the sum of One Dollar (\$1.00) per head for each event attendee in excess of Two thousand Five Hundred (2,500) attendees.

4. SCOPE AND MANNER OF OPERATIONS:

A. The Concessionaire agrees to operate the Facilities upon the terms and conditions herein set forth for each event for the operating season and to keep the Facilities open to the public at reasonable rates established pursuant to Section 5 of this Contract.

B. The Concessionaire may use the Facilities for public events and for no other purpose. Should Concessionaire desire to use for any other purpose, they must get written permission from the Port whose permission will not be unreasonable withheld.

C. The Concessionaire shall be responsible for all of the following items:

1. Contracting, providing and marketing for all concerts and events for the Rockin' on the River Black River Landing Concert Series.
2. Providing proper maintenance and staffing;
3. Providing all materials and maintaining all equipment including, but not limited to lighting, sound, and special effects materials necessary to conduct the Rockin' on the River Concert Series;
4. Obtaining all necessary permits and licensees;
5. Maintenance and care of restrooms associated with the event including those located within the Transportation Center

Building and the outside portion of the Ferry Terminal Building;  
and the Board and Restrooms within the Ferry terminal Building

Note: Security is required for use of the Ferry Terminal building,  
in order to limit access to other portions of the agency's offices

6. Obey and comply with all Ordinances of the City of Lorain.

7. All necessary litter and site clean up after and during each  
concert event.

D. Concessionaire may offer for sale food, refreshments and, to the  
extent permitted by this Contract, alcoholic beverages.

E. The Concessionaire may not install or operate vending machines,  
either indoors or outdoors.

F. The Concessionaire must obtain Port approval over all the following  
items:

1. Signage

2. All building modifications

G. The Concessionaire shall immediately withdraw from sale any item  
determined by the Port in its reasonable discretion, to pose a negative  
impact on the Facilities or the Port.

H. Alcoholic beverages, including beer with any alcoholic content, may  
be sold and served at the Facilities only in strict accordance with the  
terms of the liquor permit, all applicable laws, and the rules and  
regulations of the Ohio Department of Liquor Control applicable to the  
liquor permit held by Concessionaire. In addition, no alcoholic  
beverages will be sold in the park or at the Facilities except during the  
following specific periods and terms:

1. Alcoholic beverages may be served during the time period  
associated with each concert event.

2. The Concessionaire will be responsible for permits, licensee and insurance.

I. The Concessionaire shall not permit gambling or games of chance at the Facilities, nor will it install, operate or permit to be installed or operated any device, or permit or conduct any activities which are illegal or contrary to good morals or are otherwise objectionable to the Port.

J. The Port reserves the following rights:

1. The right to offer events, festivals and concessions outside of the terms of this contract. Groups renting the building may bring in their own food or caterers.

5. RATES AND PRICES: The Concessionaire shall be permitted to charge a reasonable entrance fee associated with the conduct of the Rockin' on the River Concert Series. The Concessionaire shall keep at all times on public display at the Facilities, the prices, rates and charges which may be made for the sale of goods and services to the public.

6. REPORTS AND RECORDS:

A. The Concessionaire will keep true, accurate, and complete records of all its operations under this Contract, including all receipts and disbursements of money by it. All books, accounts and records of the Concessionaire relating to the Facilities shall be open at all reasonable times for inspection and copying by the Port. All books, accounts and records of the Concessionaire relating to the Facilities shall be available for inspection and copying by the State Auditor when a proper request for an audit of Concessionaire's books is made to Concessionaire.

B. The Concessionaire shall furnish to the Port, promptly after the close of each fiscal year a statement of all revenues and expenses relating to Concessionaire's operations at the Facilities for such fiscal year, both of such statements to be in form reasonably acceptable to the Port.

- C. The Concessionaire will use its best efforts to follow recognized, modern business practices to the end of providing efficient and adequate services to the public at fair and reasonable rates.
- D. The Concessionaire shall at all times keep the Port informed of its business address and telephone number, and shall promptly inform the Port in writing of any change of address and/or telephone number on a year-round basis. The Concessionaire shall at its cost and expense provide a business telephone by which the Concessionaire may be reached during regular business hours. Facility pay phones are unacceptable for use as business phones.

7. UTILITIES:

- A. The Port shall pay for the utilities supplied.
- B. In no event shall the Port be liable for an interruption or failure in the supply of any such utilities to the Facilities.

8. CONDITION OF FACILITIES:

- A. The Concessionaire accepts the Facilities "AS IS", in their present condition.
- B. The Concessionaire shall keep the Facilities free from debris and in a clean and sanitary condition at all times in conformity with the rules and regulations pertaining to sanitation and public health. The Concessionaire shall maintain the public restrooms in a clean and sanitary condition, and shall provide all restroom supplies including but not limited to soap, towels, toilet tissue and cleaning supplies. The disposal of rubbish, refuse, garbage and debris shall be the sole responsibility of the Concessionaire.
- C. The services rendered by the Concessionaire under this Contract shall at all times be orderly and sufficient to meet the reasonable demands of the public.
- D. The Port has the right to object to the service of any particular condition of the Facilities and order the unsatisfactory service or condition to be corrected. If such action is necessary to protect

and maintain the public health, safety and welfare, it shall be done immediately.

9. MAINTENANCE:

A. The Port shall be responsible for:

1. All outdoor maintenance; and
2. Maintenance of the site's facilities including the stage, Transportation Center Building, Ferry Terminal Building, Pergola and Pavilions.

B. The Concessionaire, at its own cost and expense, shall;

1. Promptly make and or reimburse the port for the cost of major structural repairs which result from the negligence or failure of the Concessionaire to utilize the Facilities in a generally acceptable manner.
2. Maintenance, repair and, if required, replacement of any equipment provided by the Port (the "Equipment"). If Concessionaire no longer desires to use a particular item of Equipment, it shall return such item to the Port. The Concessionaire shall not remove any item of Equipment owned by the Port except with the approval of the Port. The Concessionaire must receive and keep a receipt for any item of Equipment temporarily removed from the Facilities for repairs or service.

10. ALTERATIONS:

A. The Concessionaire shall not make or cause to be made any alterations, additions, or improvements, or install or cause to be installed any trade fixture, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings, or make any changes or additions to the concession structures without first obtaining the Port's written approval and consent. The concessionaire shall present to the Port plans and specifications for such work at the time approval is sought.

- B. Unless the Port shall otherwise direct, all alterations, decorations, additions, and improvements (other than removable trade fixtures and personal property paid for by Concessionaire) made by the Concessionaire, shall immediately become the property of the Port. Upon expiration of this Contract, the Concessionaire shall remove its trade fixtures and personal property and all such alterations, decoration, additions and improvements as the Port shall direct, and shall restore the Facilities to the same condition as they were at the commencement thereof, ordinary wear and tear and damage by unavoidable casualty excluded. All alterations, decorations, additions and improvements not directed to be removed shall remain with the Facilities.

11. CONDITIONS AND SURRENDER OF FACILITIES:

- A. The buildings, rooms, locations and equipment, or all parts thereof, which are the property of the Port shall remain the property of the Port. Upon termination of this Contract, whether by lapse of time or otherwise, the Concessionaire shall at once surrender possession of the Facilities to the Port in good order. If the Concessionaire does not at once surrender possession of the same, the Port may forthwith re-enter and repossess the Facilities without being guilty of trespass or of forcible entry or detainer and without incurring liability to the concessionaire for loss or damage to the Concessionaire's property.
- B. Property of the Concessionaire must be removed from the Facilities within ten (10) days after any such termination, provided all payments due from the concessionaire to the Port have been paid in full, unless otherwise authorized by the Port. If any property of the concessionaire is not removed within ten days of termination, or payment is not made within ten days, such property shall become and remain the property of the Port, or at the election of the Port, such property shall be treated as abandoned and disposed of in any manner the Port sees fit. The Port is not required to offset the Concessionaire's debts to the Port if any, by the estimated value of such property.
- C. Alterations, decorations, additions and improvements, however, can only be removed in accordance with Section 10(B).

12. STANDARDS OF PERFORMANCE: The Concessionaire shall be responsible for assuring that the concession operations authorized by

this Contract provide services to the best standards prevailing for similar businesses.

13. CONCESSIONAIRE EMPLOYEES:

- A. The Port will be reimbursed by the Concessionaire for any employee that works for the Concessionaire.
  
- B. The Concessionaire will employ only competent and orderly employees who will keep themselves neat and clean and will accord courteous and competent treatment and service to all patrons. The Concessionaire's employees shall be properly trained in their duties and must be adequate in number and quality to provide prompt and efficient service to the public.
  
- C. Whenever the Port notifies the Concessionaire in writing that any employee employed by Concessionaire at the Facilities is deemed by the Port to be incompetent, disorderly, or unsatisfactory, and provided such notice indicates the Port's reason therefore, the Concessionaire will within twenty-four (24) hours cease using such person at the Facilities, unless such person is in a managerial or supervisory position. In the case of any personnel deemed unsatisfactory by the Port, the Port shall give written notification to the Concessionaire stating the reason(s) for discharge. The Concessionaire will have thirty (30) days to replace supervisory personnel and sixty (60) days to replace the manager. Any person so discharged from working at the Facilities will not be re-employed at the Facilities except with the prior written consent of the Port. In exercising its rights under this Section 13, the Port shall act in good faith, but its decisions shall be final.
  
- D. Employees of the Concessionaire working at the Facilities shall dress in a manner suitable for public service, shall strive to portray both the Concessionaire and the Port in a positive fashion, and shall be subject to the approval and requirements of the Port. Employees of the Concessionaire shall be required to conduct themselves before the public in a manner that reflects favorably on the Facilities, the Port and the Concessionaire.



14. ASSIGNMENTS AND SUBCONTRACTS:

- A. The Concessionaire will not assign or subcontract this Contract in whole or in part (such as vending), without first obtaining the written consent of the Port. This prohibition against assigning or subcontracting shall be construed to include a prohibition against any assignment or subcontracting created by operation of law. If this Contract is assigned or subcontracted without the consent of the Port as hereinabove provided, the Port may collect fees herein reserved, but no such assignment, subcontracting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee or subcontractor as the Concessionaire, or a release of the Concessionaire from further performance by the Concessionaire of the terms contained in this Contract.
- B. Notwithstanding any assignment or subcontract, the Concessionaire shall remain fully and primarily liable on this Contract and shall not be released from performing any of the terms, covenants, and conditions of this Contract, including payment terms as specified herein.

15. DEFAULT: If the Concessionaire:

- A. Fails to maintain in full force and effect any insurance or bond required by the terms of this Contract or Ohio law;
- B. Fails to maintain adequate standards in providing food or service required by this Contract, or in any manner fails to provide adequate service to the public;
- C. Fails to observe and perform any other provision, covenant, or condition of this Contract by the end of fifteen (15) days after written notice from the Port specifying such failure;
- D. Abandons or vacates the Facilities or any part thereof;
- E. Makes an assignment for the benefit of creditors or enters into a composition agreement with its creditors, or if the interest of the Concessionaire in this Contract is attached, levied upon, or seized by legal process;

- F. Assigns this Contract in violation of the terms hereof;
- G. Under-reports revenues on monthly statements, or any other financial reports, or misrepresents the source of such revenue in such reports furnished to the Port; or
- H. Its principals or officers, if the Concessionaire is a corporation, or is partners if the Concessionaire is a partnership, are convicted of any theft offense;

then, and in any of such cases, immediately or at any time thereafter, at the option of the Port, the Port shall have the right to immediately reenter and take possession of the Facilities, and, declare this Contract to be terminated, in which event this Contract, all rights of the Concessionaire, and all duties of the Port shall immediately cease and terminate and the Port may possess and enjoy the Facilities as though this Contract had never been made, without prejudice, however, to any and all rights of action against the Concessionaire the Port may have for concession fees, damages, or breach of covenant, in respect to which the Concessionaire shall remain and continue liable notwithstanding such termination.

**16. RIGHT OF ENTRY, INSPECTION, AND PROTECTION OF PROPERTY:**

- A. The Port reserves the right to enlarge, close or reduce the size of any area for the purpose of improvement, repair, construction or any other purpose.
- B. The Port and its employees shall have full right and power to enter the Facilities for the purpose of construction, repairs or replacement of buildings and equipment furnished by the Port, inspection, enforcing laws, rules and regulations, and for any other lawful purpose.
- C. The Port, or its authorized representatives, may at all reasonable times, enter into and upon the Facilities to examine the condition thereof, and determine whether the Concessionaire is conducting its operations thereon in compliance with the terms and provisions of this Contract.

**17. PROPERTY AT CONCESSIONAIRE'S RISK:** The Concessionaire's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to the Concessionaire, which may be in, on or about the Facilities during the continuance of this Contract, or thereafter, shall be at the sole risk and hazard of the Concessionaire; and if the whole or any part thereof shall be destroyed or damaged by fire, water, or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft, or any other cause, no part of said loss or damage is to be charged to or be borne by the Port, and the Concessionaire hereby agrees to forever hold the Port harmless from and to indemnify and defend the Port against any and all loss, cost, debt, claim, damage, judgment, and/or expense suffered and incurred by the Port in connection with the Facilities.

**18. DESTRUCTION OF FACILITIES:**

A. Except as provided herein, if the Facilities are damaged by fire, the elements, unavoidable accident or other casualty not due to the fault or neglect of the Concessionaire, its agents, contractors or employees, but the Facilities are not thereby rendered unfit, in whole or in part, for use by the Concessionaire shall, at its own expense, cause the damage to be repaired.

If, by reason of any of the above occurrences not due to the fault or neglect of the Concessionaire, the Facilities are rendered unfit for use by the Concessionaire only in part, as determined by the Port, then the Port shall, at its own expense, cause the damage to be repaired.

If, by reason of any of the above occurrences not due to the fault or neglect of the Concessionaire, the Facilities are rendered wholly unfit for use by the Concessionaire, or if twenty-five percent (25%) or greater of the Facilities are damaged or destroyed, as determined by the Port, the Port at its option may either:

1. Cause the damage to be repaired at the expense of the Port; or
2. Terminate this Contract and the concession hereby created by giving to the Concessionaire, within sixty (60) days of the occurrence, written notice of the Port election to terminate. In the event of such termination, the concession fees paid or payable shall be adjusted to the date of termination.

By reason of any of the above occurrences, the Concessionaire shall, at its expense, clean the Facilities and cause any resultant damage to its equipment to be repaired to the extent necessary to continue its normal operations at the Facilities.

- B. If the Facilities are damaged by flooding or rendered unusable from natural causes, the Concessionaire shall, at its expense, clean the Facilities and cause any resultant damage to its equipment to be repaired to the extent necessary to continue its normal operations at the Facilities.
- C. The Port has no responsibility for repair or replacement of any property of the Concessionaire.

#### 19. LIABILITY AND INDEMNIFICATION OF PORT:

- A. All operations by the Concessionaire under this Contract shall be conducted solely at its own risk. The Concessionaire will take proper safeguards to prevent any and all injuries or damage to employees and property of the Port, to the public and to any other person, property, material or thing, and the Concessionaire alone shall be responsible for any damage or injury occurring on or about the Facilities resulting from its operations under this Contract.

The Concessionaire will assume, pay and at all times indemnify, defend, protect and save harmless the Port, its agents and employees, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in, upon, or at the Facilities, in connection with its operation, by any act or omission of the Concessionaire, its agents, contractors, employees, servants or lessees.

Provided, however, Concessionaire shall in no way be responsible for, nor required to hold the Port harmless from any claim, action, damage, liability or expense in connection with loss of life, personal injury or damage to property that arises from or out of any occurrence in, upon or at the Facilities by, through or as a result of the negligent act or negligent omission of any employee, agent, contractor, servant or representative of the Port.

In case the Port shall, without fault on its part, be made a party to any litigation commenced by or against the Concessionaire, then the Concessionaire shall protect and hold the Port harmless and shall pay all costs and expenses incurred or paid by the Port in connection with such litigation. The Concessionaire shall also pay all costs and expenses that may be incurred or paid by the Port in successfully enforcing the covenants and provisions of this Contract.

- B. The Concessionaire shall at all times during the term of this Contract maintain or cause to be maintained in full force and effect with a financially responsible insurance company or companies licensed to do business in Ohio: (1) comprehensive general liability insurance covering the Facilities and Concessionaire's operations thereon, and including insurance against assumed or contractual liability, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and not less than One Million Dollars (\$1,000,000.00) annual aggregate and (2) Liquor Liability Insurance covering the Facilities and Concessionaire's operations thereon, with a limit of not less than One Million Dollars (\$1,000,000.00). Such insurance shall include the Port as an additional insured.
  
- C. The insurance required to be carried by the Concessionaire may be carried under a blanket policy or policies covering other liabilities and locations of the Concessionaire, or a subsidiary, successor, affiliate or controlling corporation of the Concessionaire. The Concessionaire shall furnish to the Port a memorandum copy of the insurance policy for the coverage required by this section. All instruments purchased by the concessionaire to satisfy the insurance requirements stated hereinabove shall carry the requirement that the Port will be notified in writing thirty (30) days prior to the cancellation of any coverage for any reason.

20. SIGNS:

- A. Signs or advertisements placed by the Concessionaire upon any property shall be subject to the Port's approval. The Port shall have the right, without notifying the Concessionaire, to remove any sign or signs that do not meet the approval of the Port.
  
- B. The Concessionaire further agrees to maintain any sign, awning, canopy, decoration, lettering, advertising matter or other things as may be approved, in good condition and repair at all times.

21. NONDISCRIMINATION: The Concessionaire shall not discriminate against, intimidate, or retaliate against because of race, color, national origin, ancestry, sex, handicap or religion in its employment practices, providing of services or in any other manner in the use of the Facilities or in the exercise of the rights and privileges granted by this Contract.

22. COMPLAINTS FROM USERS: From time to time, it is expected there will be a minimal number of complaints from the public utilizing the Facilities relating to the Concessionaire's operation. It is the intent of both the Port and the Concessionaire to resolve each complaint in an expeditious manner so as to preclude a future similar occurrence.

23. COMPLIANCE WITH LAWS AND AGREEMENTS:

- A. Except as specifically provided in this Contract to the contrary, the Concessionaire shall, throughout the term of this Contract, keep itself fully informed of an at its own cost and expense, promptly comply or cause compliance with, all laws, ordinances, rules and regulations in any manner affecting its operation of the Facilities, including but not limited to the Americans with Disabilities Act (ADA) and the Occupational Safety and Health Act (OSHA) and of all orders and decrees of bodies and tribunals having jurisdiction or authority over same, whether present or future, foreseen or unforeseen, ordinary or extraordinary, whether or not the same shall be presently within the contemplation of the Port and the Concessionaire, or shall involve any change of governmental policy, which may be applicable to the Facilities; provided, however, that any alteration of the buildings, structures shall be the responsibility of the Port, at the Port's expense. The Concessionaire will protect the Port against any claim or liability arising from any failure to so comply.
- B. The Concessionaire will procure all permits and licenses, pay any and all charges, license fees, and taxes incident to the operation of the Facilities and give all notices necessary and incident to the lawful and proper execution of its operation hereunder.
- C. The Concessionaire shall at all times carry Workers' Compensation protection under the laws of the State of Ohio on all persons employed by it at the Facilities or in connection with Concessionaire's operations thereon, and will pay all premiums or other charges legally assessed therefor, The Concessionaire shall also comply with all minimum wage, maximum hours, and other laws, rules and regulations applicable to conditions of employment upon or in connection with the Facilities.

24. QUALIFICATIONS OF CONCESSIONAIRE: The Concessionaire hereby represents and warrants that it is duly authorized to transact in

the State of Ohio business of the type and nature required for the operation of the Facilities and it will continue to be so qualified during the term of this Contract.

25. JURISDICTION: Any action at law, suit in equity or judicial proceeding for the enforcement of this Contract or any provision thereof shall be instituted only in the courts of the State of Ohio.
  
26. CONFLICTS OF LAW: It is mutually understood and agreed that this Contract shall be governed by the laws of the State of Ohio, both as to interpretation and performance.
  
27. TIME OF THE ESSENCE: Time is of the essence in the doing, performance and observation of each and every term, covenant and condition of this Contract by the Concessionaire.
  
28. CHANGES IN WRITING ONLY: This Contract contains the entire agreement of the parties with respect to the subject matter hereof and no change, modification or waiver in or of the terms, provisions or conditions of this Contract shall be in any way valid or binding on either of the parties hereto unless the same be dated after the date hereof and be in writing and signed by both parties.
  
29. CAPTIONS: The captions of the several sections of this Contract are not a part of the context hereof and shall be ignored in construing this Contract. They are intended only as aids in locating and reading the various provisions hereof.
  
30. SEVERABILITY: It is understood and agreed by the parties hereto that if any part, term, or provision of this Contract is by the courts held to be illegal or in conflict with any law of the State of Ohio, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid.
  
31. NONWAIVER: Neither a failure by the Port to exercise any of its options hereunder, nor failure to enforce its rights to seek its remedies herein provided for in the event of default, nor the acceptance by the Port of any payments accruing before or after any default from the

Concessionaire or otherwise, shall affect or constitute a waiver of the Port's right to exercise such option, to enforce such right, or to seek such remedy with respect to that default or to any prior or subsequent default. The remedies provided in this Contract shall be cumulative and shall not in any way abridge, modify or preclude any other rights or remedies to which the Port is entitled, whether at law or in equity.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first set forth above.

**CONCESSIONAIRE:**

**LORAIN PORT AUTHORITY**

ROCKIN' ON THE RIVER

BY: Bob Earley

BY: \_\_\_\_\_

TITLE: President

TITLE: Richard Novak, Executive Director