

RESOLUTION NO. 2024-05

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE LORAIN LIGHTHOUSE FOUNDATION, INC. REGARDING THE PROVISION OF THE 2024 SHUTTLE BOAT SERVICE TO THE LORAIN LIGHTHOUSE.

WHEREAS, the Lorain Port Authority has acquired two (2) boats for providing tours to the historic Lorain lighthouse; and

WHEREAS, the provision of said tours will enhance tourism and economic opportunities within the City of Lorain; and

WHEREAS, in order to provide said tours, it is necessary to enter into an agreement with the Lorain Lighthouse Foundation, Inc. in order to obtain access to the structure.

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 the Lorain Lighthouse Foundation, Inc. regarding the provision of the 2024 shuttle boat service for passengers to the Lorain Harbor Lighthouse.

SECTION II. That said agreement shall be substantially in the form now on file with the Executive Director and said changes as are not adverse to the interest of the Port Authority and as may be approved by the Executive Director and legal counsel, which approval shall be conclusively evidenced by execution and decision of said agreement.

SECTION III. 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.

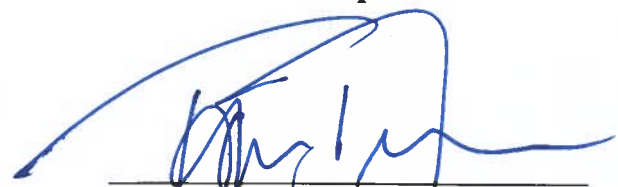
Ayes: 9

Nays: 0

Abstain: 0

Adopted: 02/13/2024


Brad Mullins, Chairman


Tom Brown, Executive Director

AGREEMENT

This Agreement, made at Lorain, Ohio, as of this ____ day of _____, 20____, by and between the LORAIN LIGHTHOUSE FOUNDATION, INC, a nonprofit 501 (c) (3) Organization, which with its successors and assigns is herein called “Lighthouse Foundation”, and the LORAIN PORT AUTHORITY, a governmental entity created under Section 4582 of the Ohio Revised Code, who is herein called “Port Authority”, is to Evidence that:

WHEREAS, Lighthouse Foundation desires to engage the Port Authority and the Port Authority desires to render boat transportation services for Lighthouse Foundation under the terms and conditions of this Agreement.

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), Lighthouse Foundation and the Port Authority (herein collectively called the “Parties” and individually the “Party”) agree as follows:

1. Engagement.

- A.** Upon the terms and conditions of this Agreement, Lighthouse Foundation hereby engages the Port Authority to render boat transportation services to Lighthouse Foundation and Port Authority hereby agrees to provide such boat transportation services to Lighthouse Foundation during the term (as defined herein).
- B.** Both Parties acknowledge Port Authority’s status as an independent governmental entity under this Agreement and that, Lighthouse Foundation 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, including the providing of any Port Authority fringe or other benefits with respect to Port Authority employees.

2. Term. The term of this Agreement (herein called the “Agreement Term”) shall commence on May 15, 2024, and end on October 31, 2024, or until terminated as provided herein.

3. Fees. The fees between the Port Authority and Lighthouse Foundation shall be distinguished based upon the type of trip as outlined below.

A. Lighthouse Tours

- 1. In return for the boat transportation services to the Lighthouse rendered by Port Authority, the Lighthouse Foundation shall pay Port Authority a rate of \$110 per hour during the term pursuant to this Agreement. Fractional hours will be billed in 15-minute increments at a rate of \$27.50.
- 2. The Lighthouse Foundation shall process ticket sales for Lighthouse Tour trips using their own Peek Pro ticketing system which will be established and setup with training

provided by the Port Authority in the introductory year. It should be noted that a service fee will be added to the sale of each ticket that is to be paid by the purchaser and retained by the ticketing agency.

3. Port Authority shall bill the Lighthouse Foundation these fees within thirty (30) days after the Port Authority's accounting of proceeds at the end of the boating season.

B. Lighthouse Sunset Wine Dinners

1. The Lighthouse Foundation Inc. will host Sunset Wine Dinners at the Lorain Lighthouse each Tuesday from June 18, 2024, to September 10, 2024. The Port Authority agrees to provide the transportation to and from Oasis Marinas at Port Lorain Dock A and the Lighthouse.
2. The Lighthouse Foundation, Inc. shall pay the Port Authority a rate of \$110 per hour.
3. Fractional hours will be billed in 15-minute increments at a rate of \$27.50.
4. There will be a **maximum of 18 persons** per dinner.
5. Port Authority shall bill the Lighthouse Foundation these fees within thirty (30) days after the Port Authority's accounting of proceeds at the end of the boating season.

C. Special Events

1. Any additional special events **hosted by the Lighthouse Foundation** to take place above and beyond those listed in Sections 3A and 3B shall be done at the rate of \$110 per hour. Fractional hours will be billed in 15-minute increments at a rate of \$27.50. This fee shall be billed to the Lighthouse Foundation by the Port Authority upon conclusion of the special event.
2. Any person and/or group may schedule a **private special event**. All private special events will be required to submit a Lighthouse Special Event Application (attached) to the Lighthouse Foundation for review. Rental fees are outlined on the Lorain Lighthouse application form, available on their website. The Port Authority will be compensated in the amount of \$110 per hour per boat, paid upon receipt of invoice from Port Authority after the event concludes. Fractional hours will be billed in 15-minute increments at a rate of \$27.50.
3. Any inquires the Port Authority receives for use or rental of the Lighthouse shall be referred to the Lighthouse Foundation – Call Frank Sipkovsky at 440-960-2301 or Ron Mantini at 440-282-7137.

- D.** Lighthouse Foundation's obligations under this Section 3 are expressly conditioned upon the Port Authority's continued and faithful performance of and adherence to each and every covenant, warranty, representation, duty and obligation assigned to or made by Port Authority hereunder.

4. **Duties and Responsibilities.**

- A. The Port Authority shall render and perform boat transportation services for Lighthouse Foundation per the Term defined in Section 2, each day and as mutually agreed upon, (the “Term”). During the Agreement Term, the Port Authority shall transport all ticket holders from a location selected by Lighthouse Foundation (the “Departure Location”) to the Lorain Lighthouse and return.
- B. Each party shall maintain records relating to the boat transportation services rendered under this Agreement. Such records shall be maintained in a manner mutually acceptable to both parties.
- C. The Port Authority shall be responsible for transporting any and all watercraft to and from the Departure Location before, during, and after the Agreement Term.
- D. The Lighthouse Foundation shall be responsible for providing necessary personnel at loading and off-loading sites to assist patrons/passengers. The Captain of the vessel shall assist in the loading and unloading procedure.
- E. Work with the U.S. Coast Guard, Community Resource Officer and the Lorain Harbor Patrol to ensure public safety on the waterfront.
- F. Cooperatively work on tour marketing.

5. **Inclement Weather.** If, during the Agreement Term and in good faith judgment of the Captain of the boat, the weather or lake conditions present a safety risk, the Port Authority shall be excused from performing the boat transportation services, which are the subject of this Agreement for so long as such inclement weather or lake conditions exist. However, if such inclement weather or lake conditions subside during the Agreement Term, the Port Authority shall immediately become responsible for the performance of the boat transportation services required under this Agreement.

6. **Indemnity, Insurance and Registration.**

- A. Both Parties shall indemnify and hold harmless the other party against and from any and all claims, actions, suits, proceedings, costs (including, but not limited to, attorney fees, damages and liabilities arising out of, connected with, or resulting from the either Party’s actions or omissions while performing the services designated in this Agreement.
- B. The Port Authority shall be responsible for and obtain an insurance policy for the shuttle boats containing a minimum of \$1 million of liability, personal injury, death and/or property damage arising out of, connected with, or resulting from acts or omissions while performing the services designated in this Agreement. The Lighthouse Foundation shall be responsible for any insurance obligations on the Lighthouse. Such insurance shall include naming each respective party as named insured (as its interests may appear). Each respective party shall not cancel or allow to be cancelled the insurance required by this Section and all such

insurance policies shall contain provisions requiring at least thirty (30) days written notice to each other before any termination or reduction in benefits thereof.

C. The Port Authority shall obtain and continuously maintain during the Agreement Term any and all registrations and certifications required under local, State or Federal law with regard to any watercraft used by the “Port Authority” 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.

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.**

A. 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.

B. Lighthouse Foundation and the Port Authority hereby agree that exclusive venue for all disputes, controversies and litigation arising under this Agreement lies with the State Courts of Lorain County, Ohio.

C. For all disputes, controversies and litigation arising under this Agreement, Lighthouse Foundation and the Port Authority hereby (jointly and individually) submit to the personal jurisdiction of the State Courts of Lorain County, Ohio.

9. **Prohibition Against Assignment.**

A. The Port Authority’s duties, obligations and services rendered under this Agreement are personal in nature and are unique and peculiar to the Port Authority. Therefore, without Lighthouse Foundation’s prior written consent, the Port Authority shall not assign, transfer, sell, encumber, pledge or otherwise alienate the Port Authority’s duties, obligations, responsibilities or rights under this Agreement.

B. If the Port Authority attempts to affect any of the foregoing, Lighthouse Foundation shall thereupon have the continuing right and option to terminate this Agreement Term at any time, without notice or demand, and without further Lighthouse Foundation obligation or liability hereunder.

10. **Miscellaneous.**

A. This Agreement constitutes the entire agreement between Lighthouse Foundation and the Port Authority 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.

- B.** All provisions of this Agreement are severable and no provision hereof shall be affected by the invalidity of any other such provision.
- C.** No waiver by Lighthouse Foundation or the “Port Authority” and no refusal or neglect of Lighthouse Foundation or the Port Authority 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.
- D.** This Agreement may be amended, altered or changed only through a written document signed by the Port Authority and Lighthouse Foundation.
- E.** 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.

THE LORAIN LIGHTHOUSE FOUNDATION, INC.

By: _____

Title: _____

LORAIN PORT AUTHORITY

By: _____

Title: _____