

**RESOLUTION NO. 2016 – \_\_\_\_**

**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 2016 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 2016 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:**

**Nays:**

**Abstain:**

**Adopted:**

\_\_\_\_\_  
Carl Nielsen, Chairman

\_\_\_\_\_  
Richard M. Novak, 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 Contract 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 donors and Port Authority hereby agrees to provide such boat transportation services to Lighthouse Foundation during the Performance Period (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 the date hereof and shall continue until terminated as provided herein.

**3. Fees.**

A. The Lorain Port Authority shall process ticket sales. In return for the boat transportation services to the Lighthouse rendered by Port Authority, Port Authority shall pay the Lighthouse Foundation fifty percent (50%) of all ticket prices per person transported by Port Authority during the Performance Period pursuant to this Agreement. 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.

B. Port Authority shall pay the Lighthouse Foundation said Basic Fees within thirty (30) days after the Lighthouse Foundation’s accounting of proceeds at the end of the boating season.

C. Lighthouse Foundation’s obligations under this Section 3 are expressly conditioned upon the Port Authority’s continued and faithful performance of an 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 from May 1, 2016 to October 31, 2016, each day and as mutually agreed upon, (the "Performance Period"). During the Performance Period, the Port Authority shall transport all ticket holders from a location selected by Lighthouse Foundation (the "Departure Location") to the Port of Lorain Lighthouse and return. (See Exhibit "A" for schedule).

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 Performance Period and in either the Port Authority's or Lighthouse Foundation's good faith judgment, 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 Performance Period, 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 Parties shall jointly obtain an insurance policy containing a minimum of \$3 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. 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. The cost of insurance shall be allocated by agreement of the parties.

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: \_\_\_\_\_