

RESOLUTION NO. 2022-14

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO A BAREBOAT CHARTER AGREEMENT WITH THE KELLEYS ISLAND FERRY BOAT LINE (KIFBL), AN OHIO CORPORATION FOR THE PURPOSES OF OPERATING THE CARMEN LEE, PENDING MINOR CHANGES AND LEGAL COUNSEL APPROVAL.

WHEREAS, KIFBL is engaged in the business of operating ferry service on Lake Erie; and

WHEREAS, the Kelleys Island Ferry Boat Project was awarded two grants and the Lorain Port Authority administered said grants totally \$4.72 million to construct a ferry boat vessel now called the Carmen Lee; and

WHEREAS, in order to satisfy, the requirements of 23 U.S.C. § 129(c) and in recognition of the resources, capabilities, expertise, experience and services provided and to be provided by KIFBL, and the responsibilities for acquisition, financing and operation of the Vessel undertaken by KIFBL and the grant funding to be administered by Port Authority, the Port Authority, and KIBL have determined that the Port Authority must hold a 51% ownership interest in the Vessel and KIFBL will hold 49% ownership interest in the Vessel; and

WHEREAS, per the agreement signed August 29th, 2017, the Lorain Port Authority and KIFBL shall enter into a Bareboat Charter Agreement to establish their respective rights and obligations in connection with the acquisition, financing, ownership and operation of the Vessel.

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, or his designee is hereby authorized and directed to enter into a Bareboat Charter Agreement for the Carmen Lee with Kelleys Island Ferry Boat Line (KIFBL) as the charterer.

SECTION II. That said Bareboat Charter Agreement shall outline the terms of the agreement including but not limited to the responsibilities, rights and revenues and operation of the vessel by both parties.

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: 6

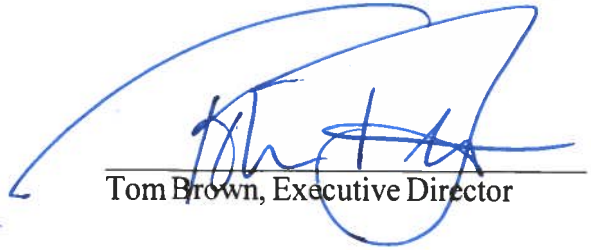
Nays: 0

Abstain: 0

Adopted: 6/14/2022



Brad Mullins, Chairman



Tom Brown, Executive Director

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2022, by and among KELLEY'S ISLAND BOAT LINE, an Ohio corporation, and the Lorain Port Authority, a port authority and political subdivision organized and existing under the laws of the State of Ohio (the "Port Authority").

WITNESSETH

WHEREAS, KIBL is engaged in the business of operating ferry service on Lake Erie;

WHEREAS, in order to satisfy, the requirements of 23 U.S.C. § 129(c) and in recognition of the resources, capabilities, expertise, experience and services provided and to be provided by KIBL, and the responsibilities for acquisition, financing and operation of the Vessel undertaken by KIBL and the Federal Earmarks funding to be provided by Port Authority, the Port Authority, and KIBL have determined that the Port Authority should hold a 51% ownership interest in the Vessel and KIBL should hold 49% ownership interest in the Vessel; and

WHEREAS, the parties desire to enter into this Agreement in order to satisfy the Program regulations and obtain the Federal Earmarks, and to establish their respective rights and obligations in connection with the acquisition, financing, ownership and operation of the Vessel.

THEREFORE, in consideration of the premises, and the mutual covenants, terms and conditions set forth herein, the parties hereto agree as follows:

DESCRIPTION OF THE AGREEMENT

1.1 Contribution of the Port Authority. It is understood and acknowledged that the Port Authority is involved in the Project solely for the purpose of enabling the

Federal Earmarks to be obtained for the Project and that the KIBL is relying solely upon Port Authority, and the Port Authority has assumed primary responsibility for, satisfaction of Federal Earmarks conditions and requirements for the use of the Federal Earmarks proceeds, acquisition and employment of the Vessel, and distribution of any funds arising from its subsequent disposition, all in compliance with ODOT and FHWA requirements including the LPA Agreement and, in particular, the Program regulations regarding solicitation of proposals, execution of the Vessel contract, and ownership of the Vessel. Furthermore, no officer or member of the Board of Directors of the Port Authority shall have any obligations with respect to the Project in other than that person's official capacity.

1.2 Contribution of KIBL. KIBL shall fund all Project costs not payable by the Port Authority pursuant to Section 1.1 hereof. In addition, KIBL shall also contribute such services as may be required for the acquisition, supervision, operation and management of the Vessel in accordance with Program requirements.

1.3 Vessel Ownership Decisions. The parties hereto acknowledge that the Port Authority will not take an active role in, and KIBL will be primarily responsible for, decision regarding the operation or management of the Vessel. The parties agree that KIBL shall make all decision to be made by the Vessel owner, and shall exercise all rights of the Vessel owner relating to the Vessel, including changing the name of the Vessel, making warranty or other claims under the Vessel acquisition contract, making claims under the Vessel insurances (other than liability insurance coverage as to which the Port Authority shall be an insured and entitled to make and resolve claims to the extent of its interest), and other such decisions. Furthermore, the Port Authority shall cooperate with KIBL, but at the sole expense of KIBL, to the extent necessary to carry out such decisions.

1.4 Other Business Activities. Nothing herein shall be construed to create general partnership between parties. The relationship among the parties shall be limited to their contractual rights and obligations under this Agreement. Each party hereto shall be free to engage in any other business activity for its exclusive benefit, and the other parties hereto shall have no interest in such other business activities.

1.5 Agency. No party hereto shall be deemed an agent of any other party hereto except as otherwise stated herein.

1.6 Tax-Exempt Status of Port Authority. All provisions of this Agreement shall be construed to maintain the Port Authority's exemptions from Ohio taxes with respect to the Agreement and the Vessel.

CHARTER

2.1 Charter. The Charter shall have a term of 5 years (the "Charter Term") unless terminated earlier. The Charter Term shall be renewable at the option of KIBL for up to three additional five-year terms, for a total potential Charter Term of 20 years.

2.2 Responsibilities of Charter. As bareboat charterer, KIBL shall be responsible for all costs associated with the Vessel, including all costs of maintaining, repairing, insuring, manning and operating the Vessel, and shall have full authority to operate the Vessel subject to the trading and other restrictions set forth in this Bareboat Charter. This Bareboat Charter shall permit KIBL to enter into contracts with third parties for the operation and management of the Vessel, or to sub-bareboat charter the Vessel, in its sole discretion, provided that KIBL shall remain primarily liable for operation, management, repair and insurance of the Vessel.

2.3 Exercise of Rights. the Port Authority agrees (i) that it shall not exercise any right under this Bareboat Charter as 51% owner of the Vessel without the prior written approval of KIBL, and (ii) that KIBL shall have the authority to give all notices, and grant all approvals, consents and waivers, as may be required or permitted under the Bareboat Charter on its own behalf and on behalf of the Port Authority as co- owners of the Vessel. The Port Authority retains the right (x) to insist that customary levels of liability insurance be maintained, and that the Port Authority be named as an additional insured, and (y) to make and resolve claims on its own behalf thereunder.

2.4 Revenues from Operation of Vessel. As bareboat charterer, KIBL shall collect and retain all revenues from operation of the Vessel and shall pay all expensed incurred with respect to the Vessel.

2.5 Termination of Bareboat Charter. (a) KIBL shall have the option to terminate the Bareboat Charter by delivery of written notice to the Port Authority stating that, in the reasonable determination of KIBL, (i) the Vessel is not profitable, or (ii) the Vessel is no longer suitable for its intended purposes, or (iii) although the Vessel remains profitable and suitable for its intended purposes, KIBL believes termination of the Bareboat Charter would be beneficial. Such notice shall be given not later than the sixtieth day prior to the effective date of termination. For purposes of clause (ii) above, the Vessel shall be deemed suitable for its intended purposes if it performs substantially in accordance with the performance specifications contained in the RFP.

INDEMNIFICATION

3.1 Indemnification by KIBL. KIBL agree to indemnify and hold harmless the Port Authority, its officers and members of its Board of Directors, from and against any liability, cost, charge or expense asserted against or incurred by the Port Authority or any such officer or member, including costs of defense, arising out of, resulting from or in connection with the acquisition, construction, financing, ownership, operation or sale of the Vessel, including without limitation, the use of Grant proceeds and any claim for repayment of all or any portion thereof and any claim of non-compliance with ODOT or FHWA requirements or terms or provisions of the LPA Agreement, except to the extent that such liability, cost, charge or expense has resulted from (i) the gross negligence or willful misconduct of the person seeking such indemnification, or (ii) a breach by the Port Authority of the terms of this Agreement. This Section shall survive the termination of any other provisions of this Agreement.

TERMINATION OF AGREEMENT

4.1 Automatic Termination. This Agreement and the relationship among the parties hereto shall terminate when the Port Authority no longer has an ownership interest in the Vessel. Termination of this Agreement shall not relieve any party from any obligations that accrued prior to the date of termination and, shall survive the termination of other provisions of this Agreement.

4.2 Termination by Written Consent. Subject to the approval, if necessary, of ODOT or FHWA, the parties hereto may agree to terminate this Agreement and the joint venture relationship by a written consent of all parties.

MISCELLANEOUS

5.1 Assignment of Agreement. The rights and obligations of the parties hereto are non-assignable, except that KIBL may assign its rights and obligations under this Agreement to any affiliate.

5.2 Amendments, Modifications and Waivers. The rights and obligations of the parties hereto may not be amended, modified or waived except in writing. The waiver of any provision herein shall be valid only in the instance for which given and shall not be deemed continuing, and furthermore shall not be construed as a waiver of any other provision hereof.

5.3 Further Assurances. The parties hereto will perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

5.4 Obligation to Proceed in Good Faith. The parties hereto agree to work together in good faith to consummate the transactions contemplated herein, obtaining any necessary governmental approvals, or otherwise in connection with implementing the Project. The parties shall agree to such modifications of the terms set forth herein and additional terms as may be required by ODOT and/or FHWA in order to consummate the proposed transactions.

5.5 Severability. In the event that ODOT or FHWA deems any terms or provision of this Agreement unacceptable, the remainder of this Agreement shall remain in full force and effect if and to the extent that (i) the term or provision deemed unacceptable is not essential to the implementation of the balance of this Agreement, and (ii) the reasonable expectations of the parties as to the financial consequences of the transactions contemplated by this Agreement are not materially and adversely affected. If the finding by ODOT or FHWA of a term or provision of this Agreement to be unacceptable materially and adversely affects the reasonably expected financial consequences to any party of the transaction contemplated hereby, each party shall cooperate in good faith to negotiate revised terms for the transactions that are mutually acceptable.

5.6 Confidentiality. Each party hereto agrees that any business or financial information obtained from another party in the course of the execution and implementation of the agreements and transactions contemplated herein shall not be disclosed to third parties; provided that a party may disclose such information as is required to be disclosed in accordance with applicable law.

5.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

5.8 Entire Agreement. This Agreement, including the Appendices attached hereto constitutes the full and complete understanding between the parties hereto with respect to the transactions contemplated herein and supersedes all prior arrangements, understandings and agreements concerning the transactions contemplated herein, oral or written, between the parties hereto (including the Memorandum of Understanding, dated as of _____).

IN WITNESS WHEREOF, the undersigned have executed this Joint Venture Agreement as of the day and year first above written.

LORAIN PORT AUTHORITY

By: _____
Name:
Title:

KELLY'S ISLAND BOAT LINE

By: _____
Name:
Title: