

RESOLUTION NO. 2025-02

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO AN AGREEMENT WITH THE LORAIN HISTORICAL SOCIETY REGARDING THE 2025 HISTORY BOAT TOURS.

WHEREAS, the Lorain Port Authority has acquired two (2) boats for providing tours in the City of Lorain; 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 Historical Society in order to provide a narrator with historical expertise.

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 Historical Society regarding the provision of the 2025 shuttle boat service for patrons of History Boat Tours.

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: 7

Nays: 0

Abstain: 0

Adopted: 1/14/25


Brad Mullins, Chairman


Tiffany McClelland, Executive Director

AGREEMENT

This Agreement, made at Lorain, Ohio, as of this ____ day of _____, 20____, by and between the LORAIN HISTORICAL SOCIETY, which with its successors and assigns is herein called “Historical Society”, 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, Historical Society desires to engage the Port Authority and the Port Authority Contract desires to render boat transportation services for “History Boat Tours” 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), Historical Society 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, Historical Society hereby engages the Port Authority to render boat transportation services to Historical Society patrons and Port Authority hereby agrees to provide such boat transportation services to Historical Society 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, Historical Society 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. History Excursions

1. The Lorain Port Authority shall process ticket sales, established at a rate of ~~\$20-\$25~~ per ticket. A service fee will be added to the sale of each ticket that is to be paid by the purchaser. In return for the historian services rendered by Historical Society, Port Authority shall pay the Historical Society ~~four-seven~~ dollars (~~\$7.00\$4.00~~) of each ticket reservation during the Performance Period pursuant to this Agreement.
2. Port Authority shall pay the Historical Society said fee within thirty (30) days after the Port Authority’s accounting of proceeds at the end of the boating season.

B. Private History Tours

1. The Lorain Port Authority shall process requests for private history tours in coordination with the Historical Society. Interested customers are required to submit an application to the Port Authority. The date and time of private trips will be subject to the availability of the captains and the historians. The rental fee for one boat for up to two (2) hours is \$300 with any additional hours costing \$50 per hour. The historian service fee is \$75, in addition to the base rate, and is to compensate the Historical Society. No private history tour is to be longer than two (2) hours. A deposit of \$175 must be made to the Lorain Port Authority at the time of application submittal. The balance of \$200 is due two weeks prior to the event.
2. Port Authority shall pay the Historical Society said fee, \$75, within thirty (30) days after receiving full payment from customer.

- C. Historical Society'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 History Boat Tours for the 2024 boating season, each day, as mutually agreed upon, (the "Performance Period"). During the Performance Period, the Port Authority shall transport all ticket holders from a location agreed upon by Historical Society and Port Authority (the "Departure Location"), on the designate two-hour route in the Lorain harbor and Black River.
- B. 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.
- C. The Historical Society shall be responsible for providing necessary trained personnel on the vessel to provide the historical narrative to patrons/passengers. The Captain of the vessel shall assist in the loading and unloading procedure.
- D. Work with the U.S. Coast Guard, Community Resource Officer and the Lorain Harbor Patrol to ensure public safety on the waterfront.
- E. Cooperatively work on tour marketing.

- 5. Inclement Weather.** If, during the Performance Period and in either the Port Authority's or Historical Society'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 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. Historical Society 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, Historical Society 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 Historical Society'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, Historical Society shall thereupon have the continuing right and option to terminate this Agreement Term at any time, without notice or demand, and without further Historical Society obligation or liability hereunder.

10. Miscellaneous.

- A. This Agreement constitutes the entire agreement between Historical Society 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 Historical Society or the Port Authority and no refusal or neglect of Historical Society or the Port Authority to exercise any right here under 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 maybe amended, altered or changed only through a written document signed by the Port Authority and Historical Society.
- 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.

LORAIN HISTORICAL SOCIETY

LORAIN PORT AUTHORITY

By: _____

By: _____

Title: _____

Title: _____