

AGREEMENT

**LORAIN COUNTY PORT AUTHORITY
LORAIN COUNTY LAND REUTILIZATION CORPORATION**

This agreement is dated the ____ day of _____ 2012 by and between the Lorain County Port Authority, 226 Middle Avenue, Elyria, Ohio 44035 “LCPA” and _____ “Contractor”.

The LCPA and the Contractor, in consideration of the mutual covenants contained herein and other good and valuable consideration and intending to be legally bound hereby, agree as follows:

ARTICLE 1 – PROJECT

The Contractor shall furnish all labor, equipment, supplies, material and supervision necessary to complete, in accordance with the Technical Specifications, the demolition and site clearance of each property listed in the Contractor’s Proposal Form attached hereto and made a part hereof as Exhibit A.

ARTICLE 2 - LCPA REPRESENTATIVE

The services of the Contractor shall be carried out under the authority for contract administration of the Lorain County Port Authority, who is designating the Director of the Port Authority as the person who will administer this Agreement.

ARTICLE 3 - COMPLETION TIME

The Contractor shall have _____ days from the date of the Notice to Commence Work to complete the demolition.

ARTICLE 4 - CONTRACT PRICE AND LIMIT OF PAYMENT FOR PROJECT

The total payment to the Contractor under this Agreement shall not exceed _____ unless amended in writing by LCPA and Contractor. The Contractor agrees that no extra work will require an extra payment by the LCPA, unless the extra work is authorized in a written change order executed by the LCPA or Designee(s) before the work is carried out. Additional services will be those beyond the services provided under Article 1 and only as agreed upon in writing by the Contractor and the LCPA.

ARTICLE 5 - PAYMENT PROCEDURES

Partial payments will be made within thirty days of receipt of invoice, provided that said invoice has been approved by the Director and that all work performed is in compliance with the Technical Specifications. Final payment will be held four (4) weeks after hydro seeding has been performed to insure proper lawn growth. Final payment shall not be subject to interest nor required to be deposited with an escrow agent.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

The Contractor acknowledges that it has taken the steps reasonably necessary to ascertain the nature and the location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work, its cost, including but not limited to (1) the cost of purchasing, transportation, handling and storage of materials and supplies, (2) the availability of labor, (3) the uncertainties of weather or similar physical conditions, including the time of year the project is to be completed, (4) all other physical conditions which can impact the cost of doing work, (5) the character of the equipment and facilities needed to prepare to do the work and to carry out the work to be performed, considering the work area, and the access to each property as listed in Article 1, (6) the cost of the Contractor's overhead, (7) the cost of providing worker supervision and management, (8) the cost of providing insurance, bonds, and related expenses.

The Contractor also acknowledges that it has had sufficient time to review all contract documents and to make all investigations necessary to reasonably ascertain the cost of doing the work. Further, the Contractor has correlated the results of its observations, examination, investigations and reviewable work conditions with the terms and conditions of all the contract documents including any Addenda listed on the Contractor's Proposal Form, in determining the price it provided for the work. The Contractor acknowledges that the LCPA assumes no responsibility for any understanding reached or representations made concerning conditions which can affect the work, by any of its officers, employees, or agents before execution of this Agreement, unless that understanding or representation is expressly stated in the Contract Documents which are a part of the Agreement.

By executing this Agreement, the Contractor confirms that neither he/she nor the business is listed on the federal government's Excluded Parties List System.

ARTICLE 7 - INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless the LCPA, its elected and appointed officials, employees, representatives and agents (the Indemnified Parties) from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty or cause of action (including attorneys' fees) directly or indirectly arising out of, resulting from or related to (in whole or in part), (1) the work performed hereunder, (2) the contract or (3) the act or omission of Contractor, a Subcontractor or any individual partnership or joint venture or corporation (a) directly or indirectly employed by Contractor or a Subcontractor or (b) for whose acts or omissions Contractor or a Subcontractor may be liable. Contractor shall promptly advise LCPA

in writing of any action, claim, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense shall assume on behalf of LCPA and conduct with due diligence and in good faith the defense with counsel satisfactory to LCPA, provided, that LCPA shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and LCPA, and LCPA shall have reasonably concluded that there may be legal defenses available to LCPA which are different from or additional to, or inconsistent with those available to Contractor, LCPA shall have the right to select separate counsel to participate in a defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification, LCPA, at its option, and without relieving Contractor of its obligations hereunder may so perform, but all costs and expenses so incurred by LCPA in that event shall be reimbursed by Contractor to LCPA, together with interest on the same from the day any such expense was paid by LCPA until reimbursed by Contractor at the rate of interest provided to be paid on judgments, by the law of the State of Ohio. The obligations of Contractor under this Section shall survive the expiration of the Contract.

In claims against any of the Indemnified Parties by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts or omissions they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensations acts, disability benefits acts, or other employee benefit acts.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents include the Contractor's Pre-Qualification documents, Proposal Form, All Addenda listed on the Contractor's Proposal Form, the Technical Specifications, Equal Opportunity Clause, and all Attachments submitted by the Contractor with its Proposal Form and made a part of this Agreement as if those Contract Documents were repeated in full herein. The LCPA and the Contractor agree that there are no Contract Documents other than those identified in this Article.

ARTICLE 9 – ASSIGNMENT:

No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment. No assignment will release or discharge the assignor from any duty or responsibility under the contract documents.

ARTICLE 10 - SAFETY

The Contractor agrees to comply with Chapter 4121:1-3 of the Ohio Administrative Code entitled "Specific Safety Requirements of the Industrial Commission of Ohio relating to Construction", effective November 1, 1979 and with the "Federal Occupational Safety and Health Act of 1970 and Code of Federal Regulation, Title 29, Chapter XVII, Part 1926", and to also comply with all other requirements of law.

ARTICLE 11 – ANTI-KICKBACK

The Contract shall comply with the requirements of 20 C.F.R. Part 3 which are incorporated by reference in this contract.

ARTICLE 12 - SUCCESSORS

The LCPA and the Contractor each bind themselves, their partners, successors, assigns and legal representatives in respect to all conveniences, agreements and obligations contained in the contract documents.

ARTICLE 13 – EQUAL EMPLOYMENT OPPORTUNITY CLAUSE

The Contractor agrees that during the performance of the services under this Agreement, that they:

- (a) will not discriminate against any employee or applicant;
- (b) that it will take affirmative action in the employment of new employees;
- (c) that they will comply with all provisions of the Equal Opportunity Employment clause form attached hereto and made a part hereof.

ARTICLE 14 – CONFLICT OF INTEREST

No member of the governing body of the locality and no other officer, employee, agent or public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Contract shall take appropriate steps to assure compliance.

Interest of Contractor and Employees

The Contractor covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

Records and Audit

The Contractor shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the LCPA to assure proper accounting for all project funds. These records will be made available for audit purposes to the LCPA or any authorized representative, and will be retained for three years after the expiration of this contract unless permission to destroy them is granted by the LCPA.

Federal or State Officials Not to Benefit

No members of or delegate to the Congress of the United States of America, and no resident U.S. Commissioner, nor any officer or employee of the State of Ohio subject to Ohio Ethics Law (ORC Section 102.03 (A)) will be admitted to any share or part hereof or to any benefit to arise here from.

ARTICLE 15 – CERTIFICATION OF NON SHARING:

By execution of the Agreement, both parties certify that there are no agreements concerning the profits which may result from the herein agreement whereby any member of the Port Authority Board, elected or appointed County official, department head, elected or appointed official or employee of the LCPA or other public agency is directly or indirectly interested therein.

ARTICLE 16 – TERMINATION

This Agreement may be terminated by either the LCPA or the Contractor by serving written notice in the event of substantial failure to perform in accordance with the terms herein through no fault of the terminating party. If this Agreement is so terminated by the LCPA, the LCPA shall pay the Contractor for the services rendered prior to the receipt of the notice of termination.

ARTICLE 17 – INSURANCE:

The Contractor shall comply with the insurance provisions as provided in the Pre-Qualification document. If insurance requirements are waived or raised, at the discretion of the LCPA, a signed addendum will be attached to this agreement. The Contractor shall provide and maintain Workers Compensation with statutory limits.

All insurance shall be exclusive of defense costs when possible.

The Contractor shall provide to the LCPA evidence of insurance which shall consist of the Insurance Affidavit and Certificate of Insurance. In addition, the Contractor's policy shall provide and the Certificate of Insurance shall reflect the fact that the LCPA is an additional insured except for the workers' compensation insurance required hereunder, and all, (if any) other additional insured shall receive at least thirty (30) days' notice of any cancellation, change reducing the coverage, or refusal to renew, which is adverse to the interest of the LCPA and/or any other additional insured to be effected. The LCPA and any other additional insured shall be

provided with any notice of non-renewal, regardless of the cause. The same terms shall apply to any subcontractors to the extent practicable.

This Agreement is contingent upon and not valid and binding upon LCPA until the Contractor has complied with the provisions of this Article 16.

ARTICLE 18 – DRUG FREE WORKPLACE REQUIREMENTS

Contractor and all subcontractors must be enrolled and in good standing in the drug-free workplace program (DFWP) or a similar program approved by the Bureau of Workman’s Compensation. The contractor shall insert in each of its subcontractors contracts a clause requiring all subcontractors to comply with this requirement.

ARTICLE 19 – STANDARD OF CARE FOR SERVICE:

The Contractor will exercise the degree of due diligence, care and skill ordinarily exercised by reputable companies performing the same or similar project.

ARTICLE 20 – FORCE MAJEURE:

Neither party to this Agreement will be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God, act or omission of LCPA or its other Contractors, failure of any governmental authority to timely review or to approve the services or to grant permits or approvals, or any other cause beyond the effected party’s reasonable control.

ARTICLE 21 – CONDITIONS:

LCPA assumes no responsibility for conditions of the Project site involved with respect to the Project and any change in those conditions at any time during this agreement and makes no representations as to those conditions.

ARTICLE 22 - SUBCONTRACTING

Contractor agrees not to subcontract any part of the Project without prior written approval of the LCPA. The LCPA may review both the work being subcontracted and the person(s) to whom any work is proposed to be subcontracted.

ARTICLE 23 - GOVERNING LAW AND JURISDICTION:

This agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Ohio. This Agreement shall be subject to the jurisdiction of the Court of Common Pleas, Lorain County, Ohio.

ARTICLE 24 – MODIFICATIONS:

No changes in, modifications, extensions, supplements to or discharges of this Agreement shall be valid or enforceable unless in writing and duly executed on behalf of LCPA by its Board and the Contractor.

ARTICLE 25 - SEVERABILITY

If any term or provision of this Agreement shall become or be declared by a Court of law to be invalid or unenforceable, the remainder of this Agreement and the application of the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law.

ARTICLE 26 – ENTIRE AGREEMENT:

This Agreement and all the attachments hereto contain the entire Agreement between LCPA and the Contractor with respect to the project as stated herein. LCPA and Contractor agree that no representations or warranties shall be binding upon either party unless expressed in writing.

This Agreement signed in duplicate by Contractor on the _____ day of _____, 2012, and by LCPA on the ____ day of _____, 2012.

NAME OF COMPANY:

By: _____

LORAIN COUNTY PORT AUTHORITY

By: _____