

THIS AGREEMENT dated this \_\_\_\_\_ day \_\_\_\_\_ 2017

BETWEEN:

**THE CORPORATION OF THE TOWN OF KINGSVILLE**  
(hereinafter referred to as "The Town")

-and-

**CEDAR ISLAND YACHT CLUB**  
(hereinafter referred to as "CIYC")

-and-

**MELTON BROS. WELDING & MARINE LTD.**  
(hereinafter referred to as "Melton Bros.")

-and-

**ERIE VIEW MARINE**  
(hereinafter referred to as "Erie View")

**WHEREAS** CIYC provides a workboat to dredge the mouth of Cedar Island Channel (the "Channel") where it transitions into Lake Erie; (see sketch as Addendum A of this agreement)

**AND WHEREAS** the workboat is exclusively owned and operated by CIYC and is referred to as the "Little Toot";

**AND WHEREAS** dredging of the Channel is periodically required during the boating season in order to maintain safe and adequate boat passage between the lake and the Channel;

**AND WHEREAS** the maintenance and operation responsibilities of Little Toot were previously defined by a verbal agreement between the Parties;

**AND WHEREAS** the Parties are desirous of entering into this Agreement to clearly define their obligations regarding the repair, maintenance and operation of Little Toot;

**NOW THEREFORE** in consideration of the mutual covenants, terms and agreements hereinafter expressed, the parties hereto agree as follows:

## **1.0 Term**

- 2.0 Subject to any renewal under Section 1.2, the term of this Agreement shall commence on **[DATE]**, 2017 and shall continue to run for a period of 10 years, ending on **[DATE]**, after which date all obligations, covenants, conditions and responsibilities of the Parties shall come to an end.
- 3.0 This Agreement may be renewed for an additional five (5) years, or for such other time as is mutually agreed upon, provided that all Parties agree to the renewal and the term of renewal.
- 4.0 This agreement shall be renegotiated should either Melton Bros. or Erie View change ownership.
- 5.0 It is agreed that at a minimum the parties shall meet annually during the last quarter of the calendar year.

## **2.0 Definitions**

- 2.1 "*business day*" shall mean every day except Saturday, Sunday, and statutory holidays in the Province of Ontario.

## **3.0 Covenants of CIYC**

- 3.1 CIYC covenants and agrees to:
  - 3.1.1 Provide the workboat for the purposes of dredging the Channel.
  - 3.1.2 Provide trained persons who can safely operate the Little Toot.
  - 3.1.3 Maintain insurance coverage as detailed in Section 9 - Insurance.
  - 3.1.4 Conduct the operation of prop-washing of the harbour mouth on an "as required basis", as determined by CIYC.
  - 3.1.5 Maintain a logbook detailing all aspects of the operation of the Little Toot, including but not limited to: depth sounder readings, performed maintenance, and operation of the vessel. The logbook shall be made available for inspection by the Town upon no less than twenty-four (24) hours' notice.
  - 3.1.6 Conduct general maintenance relative to cleaning, washing, painting, and checking fluid levels prior to and upon completion of operation.
  - 3.1.7 Annually place, remove and store channel markers and other navigation marks as required in the Cedar Creek channel area.

- 3.1.8 Assist with Town dock maintenance within the capabilities of the Little Toot.
- 3.1.9 Annually provide an assessment to the Town of Kingsville identifying potential repair and maintenance issues likely to arise over the next five (5) years. This assessment shall be presented to the Town at the annual meeting.
- 3.1.9 Annually provide a summary of the channel depths to the Town of Kingsville at the annual meeting.
- 3.1.10 The Dredging Officer of the CIYC is the designated contact in respect of matters pertaining to this agreement.
- 3.1.1 Cover the material cost incurred by Melton Bros.

#### **4.0 Covenants of the Town**

- 4.1 The Town covenants and agrees to:
    - 4.1.1 Monthly payments outlined in the following schedule:

Calendar Year 2018	\$1000.00 per month
Calendar Year 2019	\$1100.00 per month
Calendar Year 2020	\$1250.00 per month
- For each subsequent year the monthly payment will be the previous year's amount increased by the cost of living.

#### **5.0 Covenants of Melton Bros.**

- 5.1 The Melton Bros. covenant and agree to:
  - 5.1.1 Prepare the Little Toot for spring launch checking all systems, fluids, batteries, making repairs and replenishment as necessary.
  - 5.1.2 Launch the Little Toot in the spring and haul it out in the fall on a date as agreed upon between the Melton Bros. and CIYC.
  - 5.1.3 Provide labour, without charge, for annual maintenance (i.e. oil changes, filter replacement, belt replacement) etc.
  - 5.1.4 Provide a winter storage location for the Little Toot.
  - 5.1.5 Winterize the Little Toot.
  - 5.1.6 Provide other maintenance and repair services, including capital repairs, as may be requested, on a fee for service basis. It is understood and agreed that CIYC is under no obligation to engage Melton Bros. to perform any maintenance or repairs as described by this section.
  - 5.1.7 No work shall be performed by outside contractors on Little Toot while stored on Melton Bros. property that Melton Bros. would be capable of performing without the expressed permission of Melton Bros.
- 5.2 It is understood and agreed that the work and services provided by the Melton Bros. as outlined in Sections 5.1.1 - 5.1.5 are provided without charge.

## **6 Covenants of Erie View**

### **6.1 Erie View covenants and agrees to:**

- 6.1.1 Contribute \$750.00 annually to an account to be used towards the maintenance and repair of Little Toot. This account will be held by CIYC and the disbursements shall be reviewable by all parties at any time.

## **7.0 Termination**

- 7.1 Notwithstanding the terms of this agreement, or any renewal of this agreement, if any Party finds that another Party is in breach of this agreement that Party will advise all of the Parties via certified mail of the alleged breach. The Party allegedly in breach of the agreement shall have 3 months to remedy the problem. If no remedy is provided within this 3 month period then the agreement may be terminated 3 months from the receipt of notification of termination.
- 7.2 In the event that the Little Toot is no longer operational and a new workboat is required, this Agreement shall immediately come to an end and the obligations of the Parties shall cease.

## **8.0 Notice**

- 8.1 Subject to Section 8.3 any notice required or permitted to be given under this Agreement shall be in writing and provided by way of:
  - 8.1.1 Hand delivery, in which case notice shall be effective on the date of delivery;
  - 8.1.2 Electronic mail, in which case notice shall be effective on the day on which the electronic mail is received; or
  - 8.1.3 Regular letter mail, in which case notice shall be effective on the fifth day following the date of mailing.
- 8.2 The notice, described above, shall be provided to the Parties as follows:

The Town of Kingsville  
2021 Division Road North  
Kingsville, ON N9Y 2Y9  
Email: \_\_\_\_\_  
Attention: [NAME ], TITLE

**Cedar Island Yacht Club**  
**982 Heritage Rd.**  
**P.O. Box 214**  
Kingsville, ON N9Y 2E9  
Email: pcairoli@wavedirect.net  
Attention: Paul Cairoli, Commodore

**Melton Bros.**  
**863 Elinor St.**  
Kingsville, ON N9Y2E6  
Email: \_\_\_\_\_  
Attention: Tom Melton

**Erie View**  
**883 Elinor St.**  
Kingsville, ON N9Y2E6  
Email: jim@erieviewmarine.com  
Attention: James Dick

- 8.3 If the day upon which the notice is effective is not a business day, the notice shall be deemed to be received on the next business day.

## **9.0 Insurance**

- 9.1 CIYC shall maintain, at its own expense, a comprehensive general liability insurance policy, including public liability and property damage insurance coverage, in an amount not less than five million dollars (\$5,000,000) per occurrence, and shall name the other parties as additional insureds. CIYC shall provide evidence reasonably satisfactory to the other parties that such insurance coverage is in force, and the policy shall require notification to the additional insureds in advance of any material adverse change in coverage or cancellation of the policy.

## **10.0 Indemnity**

- 10.1 CIYC shall indemnify and hold harmless the other Parties, their directors, officers, employees, agents, assigns and elected officials, against all actions, suits, claims, demands and expenses, including any legal fees and costs incurred, made or suffered by any person or persons, in respect of any loss, injury, damage or obligation to compensate, arising out of or in connection with or as a result of:

10.1.1 The negligence or willful misconduct of CIYC, its directors, officers, employees, agents, assigns or elected officials:

10.1.2 Any breach by CIYC of the terms and conditions of this Agreement;  
or

10.1.3 The operation of the workboat; provided that CIYC shall not be liable under this Section to the extent to which such loss, damage, or injury is caused or contributed to by the negligence or default of the other parties, their directors, officers, employees, agents, assigns, or elected officials.

10.2 **Melton Bros.** shall indemnify and hold harmless the other parties, their directors, officers, employees, agents and elected officials against all actions, claims, demands and expenses including any legal fees and costs incurred, made or suffered by any person or persons, in respect of any loss, injury, damage or obligation to compensate, arising out of or in connection with or as a result of:

10.2.1 The negligence or wilful misconduct of Melton Bros., its directors, officers, employees, agents assigns or elected official; or

10.2.2 Any breach by Melton Bros. of the terms and conditions of this Agreement;

provided that the Melton Bros. shall not be liable under this Section to the extent to which such loss, damage, or injury is caused or contributed to by the negligence or default of the other parties, their directors, officers, employees, agents, assigns, or elected officials.

10.3 **Erie View** shall indemnify and hold harmless the other parties, their directors, officers, employees, agents and elected official against all actions, claims, demands and expenses including any legal fees and costs incurred, made or suffered by any person or persons, in respect of any loss, injury, damage or obligation to compensate, arising out of or in connection with or as a result of:

10.3.1 The negligence or wilful misconduct of Erie View, its directors, officers, employees, agents assigns or elected official; or

10.3.2 Any breach by Erie View of the terms and conditions of this Agreement;

Provided that the Erie View shall not be liable under this Section to the extent to which such loss, damage, or injury is caused or contributed to by

the negligence or default of the other parties, their directors, officers, employees, agents, assigns, or elected officials.

## **11.0 General Provisions**

- 11.1 This Agreement shall be governed in accordance with the laws of the Province of Ontario and the federal laws of Canada, as applicable.
- 11.2 Any dispute that may arise as a result of the provisions of this Agreement shall be resolved, if possible, on terms and conditions as negotiated between the parties. If the parties are unable to reach a negotiated resolution of the matter in dispute, then the parties acknowledge that any party to the dispute shall have the option of referring the dispute to arbitration for resolution. In the event that the matter in dispute is referred to arbitration, the arbitration procedure as set out in Section 12.0 - Arbitration Procedure shall be followed.
- 11.3 If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision (or part thereof) and everything else in this Agreement shall continue in full force and effect
- 11.4 No change or modification of this Agreement shall be valid unless it is in writing and signed by each Party hereto.
- 11.5 This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter of this Agreement. The Parties hereto acknowledge that there is no representation, warranty, and agreement or understanding between them, whether express or implied, which has induced any of the Parties hereto to enter into this Agreement except as expressly stated herein.
- 11.6 No failure on the part of any Party to exercise, and no delay by any Party in exercising, any right under this Agreement shall operate as a waiver of such right, unless the Party gives written notice to the other Party of its intention to waive such right.
- 11.7 This Agreement shall commence on the Effective Date.
- 11.8 Time shall be of the essence of this Agreement.
- 11.9 The Section headings of herein have been inserted for ease of reference only and shall not affect the construction or the interpretation of this Agreement.

- 11.10 This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.
- 11.11 Delivery of this Agreement by electronic mail or facsimile transmission shall constitute valid and effective delivery.
- 11.12 This Agreement shall be binding upon and **enure** to the benefit of the Parties hereto, their respective heirs, estate trustees and other legal representatives and, to the extent permitted hereunder, their respective successors and permitted assigns.
- 11.13 Any monies to be paid pursuant to this Agreement shall be in Canadian funds.

## **12.0 Arbitration**

- 12.1 For the purposes of this Section, "Arbitration Panel" shall mean either a single arbitrator or a panel of three (3) arbitrators.
- 12.2 If a dispute arises under this Agreement and the Parties cannot resolve the dispute as between themselves, the matter shall be referred to arbitration for resolution as follows:
- 12.2.1 The Party desiring arbitration shall deliver notice thereof in writing to the other Party(ies).
- 12.2.2 Within ten (10) days of delivery of the notice requiring arbitration, the parties may agree on a single arbitrator.
- 12.2.3 The parties may, by mutual agreement, agree to extend the period of time within which to select a single arbitrator.  
If the parties cannot agree on a single arbitrator within the ten (10) day timeframe, or such other timeframe as mutually agreed upon, the matter shall be referred to a panel of three (3) arbitrators, two (2) of which shall be appointed by the parties to the dispute and the third to be chosen by the first two named, before they enter upon the business of arbitration.
- 12.3 All decisions of the Arbitration Panel with respect to the matter in dispute shall be rendered in writing shall contain a brief recital of the facts upon which the decision is made and the reasons thereof.
- 12.4 The award and determination of the Arbitration Panel shall be final and binding upon the parties and there shall be no appeal there from.
- 12.5 The Arbitration Panel has the authority to award costs of the arbitration.



**IN WITNESS WHEREOF** the parties have hereunto set their hands and seals.

**THE CORPORATION OF THE TOWN OF KINGSVILLE**

\_\_\_\_\_  
MAYOR, Nelson Santos

\_\_\_\_\_  
CLERK, Jennifer Astrologo

**CEDAR ISLAND YACHT CLUB**

\_\_\_\_\_  
NAME  
I have authority to bind the Corporation

**MELTON BROS. WELDING & MARINE LTD.**

\_\_\_\_\_  
NAME  
I have authority to bind the Corporation

**ERIE VIEW MARINE**

\_\_\_\_\_

NAME

I have authority to bind the Single Proprietorship

**Addendum A**



Channel