

THIS INDEPENDENT CONTRACTOR AGREEMENT (this “**Agreement**”) made and entered into this ____ day of **Month and Year of the Agreement** (“**Commencement Date**”).

B E T W E E N:

THE CORPORATION OF THE TOWN OF KINGSVILLE

(the “**Town**”)

– and –

CEDAR ISLAND YACHT CLUB

(the “**Contractor**”)

RECITALS

WHEREAS the Contractor is a not-for-profit corporation in the business of yachting, boating and/or marine activities;

AND WHEREAS the Town is a municipal corporation created by an Order of the Province of Ontario made under Subsection 25.2(4) of the *Municipal Act*, R.S.O. 1990, c. M.45;

AND WHEREAS the Town and the Contractor are the registered owners of abutting real property, subject to an easement identified as Instrument No. ##### (“**Cedar Island Canal**”), and have a joint obligation to ensure that Cedar Island Canal is navigable for applicable waterborne vessels;

AND WHEREAS Cedar Island Canal is connected to a parcel of real property described in Schedule “B” attached (the “**Harbour Mouth**”) and the Town is the lessee of the Harbour Mouth;

AND WHEREAS the Contractor operates a waterborne vessel (the “**Boat**”) that has the ability to dredge the Harbour Mouth by conducting a Propeller Wash Dredging Operation;

AND WHEREAS the Town wishes to retain the Contractor as an independent contractor to conduct a Propeller Wash Dredging Operation in the Harbour Mouth and provide the services set forth in Schedule “A” of this Agreement, subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants, promises and commitments contained herein, the Parties agree as follows:

NOW THEREFORE, in consideration of the mutual covenants and other terms and conditions set out in this Agreement, the Parties agree as follows:

1. **Recitals** – The Parties to this Agreement represent, warrant and agree that the recitals above are true and accurate.

2. **Definitions.**

2.1. Throughout this Agreement, the Town and the Contractor may each individually be referred to as a “**Party**” or collectively as the “**Parties**”.

2.2. The following terms have the meanings specified or referred to:

2.2.1. “**Agreement**” shall have the meaning set forth in the preamble.

- 2.2.2. **“Boat”** shall have the meaning set forth in the recitals;
- 2.2.3. **“Business Day”** shall mean any day of the week excluding Saturday, Sunday and statutory holidays in the province of Ontario.
- 2.2.4. **“Cedar Island Canal”** shall have the meaning set forth in the recitals.
- 2.2.5. **“Commencement Date”** shall have the meaning set forth in the preamble.
- 2.2.6. **“Contractor’s Personnel”** means the Contractor’s own members, agents, employees, officers or sub-contractors.
- 2.2.7. **“Contractor”** has the meaning set forth in the preamble.
- 2.2.8. **“Propeller Wash Dredging Operation”** shall mean an operation designed to remove, relocate or dislodge by using propeller-generated currents any natural or other material for the purpose of the maintaining a navigable waterway within the Harbour Mouth.
- 2.2.9. **“Fee”** shall have the meaning set forth in this Agreement under Section 6.1.
- 2.2.10. **“Governmental Authority”** shall mean any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial, regional or municipal government having jurisdiction over the Town, the Contractor and/or the mutual covenants and other terms and conditions set out in this Agreement.
- 2.2.11. **“Harbour Mouth”** shall have the meaning set forth in the recitals.
- 2.2.12. **“Logbook”** shall mean a record of data and information pertaining to the operation, maintenance and repair of the Boat.
- 2.2.13. **“Operational Plan”** shall mean a specific operational plan for use of the Boat and the performance of any Propeller Wash Dredging Operation, as developed by the Contractor and approved by the Town.
- 2.2.14. **“Policy”** shall have the meaning set forth in Section 9.
- 2.2.15. **“Reserve Fund”** shall mean the fund so designated in, and created pursuant to, this Agreement under Section 6.4.
- 2.2.16. **“Services”** means the services to be provided by the Contractor as set forth in Schedule “A” of this Agreement.
- 2.2.17. **“Term”** means the period in which this Agreement shall be in full force and effect as set forth in Section 3 of this Agreement.
- 2.2.18. **“Town”** has the meaning set forth in the preamble.
- 2.2.19. **“Unused Fee”** shall mean any amount of the Fee that is not disbursed or otherwise expended within the Term.

3. **Term** – The Term shall commence on Commencement Date and shall terminate on December 31, 2023, unless earlier terminated in accordance with Section 11.

4. **Services.**

4.1. The Contractor shall provide the services set forth in Schedule "A" of this Agreement to the Town either personally or through the Contractor's Personnel.

4.2. The Contractor shall determine the manners or means by which it performs the Services for the Town.

4.3. Unless otherwise set forth in Schedule "A", the Contractor shall supply, at its sole cost and expense, all staff, accommodations, technical assistance, equipment, supplies, tools, other materials necessary to perform the Services to be furnished by it under this Agreements.

4.4. The Contractor shall make itself available for consultation with the Town at such times and places as are mutually agreeable to the Parties.

4.5. The Contractor shall obtain the any applicable work permits required in order for Contractor to render the Services

5. **Independent Contractor Relationship.**

5.1. The Contractor is and shall remain at all times an independent contractor and not an employee or dependent contractor of the Town. Nothing in this Agreement shall be construed to create any association, partnership, joint venture, agency, fiduciary or employment relationship between the Contractor and the Town, for any purpose, and neither party has the authority to contract for or bind the other party in any manner whatsoever.

5.2. The Contractor shall provide the Services to the Town on a non-exclusive basis, and shall be free to provide its services to third parties during the Term of this Agreement; provided that the Contractor shall not provide such services in a way that is inconsistent with any of the provisions of this Agreement.

5.3. Without limiting Section 5.1, the Contractor and the Contractor's Personnel shall not be eligible to participate in any benefit or compensation plans offered by the Town to its employees, including, without limitation, any payments under the *Employment Standards Act, 2000*, S.O. 2000, c. 41.

5.4. The Town shall have no liability or responsibility for withholding or remitting any income, payroll, or other federal or provincial taxes, including employment insurance remittances, Canada Pension Plan contributions, or employer health tax or worker's compensation insurance premiums for the Contractor and the Contractor's Personnel. The Contractor is responsible for these withholding, remitting and registration obligations, and shall indemnify the Town from and against any order, penalty, interest, taxes or contributions that may be assessed against the Town due to the failure or delay of the Contractor to make any such withholdings, remittances or registration, or to file any information required by any law.

5.5. The Contractor shall be fully responsible for the Contractor's Personnel and shall indemnify the Town against any claims made by or on behalf of any of the Contractor's Personnel, including, without limitation, any claim for unpaid wages, overtime, vacation pay, or any other claim under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, reasonable notice of termination, or any other claim whether arising pursuant to contract, statute, common law or otherwise. Section 5.5 shall survive the termination of this Agreement and remain binding on the Contractor.

5.6. The Contractor shall be responsible, where applicable, for the health and safety of its workplace and per compliance with the provisions of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, and the requirements under the *Workplace Safety and Insurance Act*, S.O. 1997, c. 16, Sch. A.

5.7. At any time during the term of this Agreement, the Contractor shall, when requested by the Town, provided evidence of compliance by itself and its subcontractors with respect to the *Workplace Safety and Insurance Act*, S.O. 1997, c. 16, Sch. A., and failure to provide satisfactory evidence shall result in payment being held by the town until the Town has received satisfactory evidence.

6. **Fees & Payment**

6.1. Subject to the terms and conditions of this Agreement, the Town has allocated and agrees to provide a fee to the Contractor in the amount of \$[AMOUNT] (the "Fee"). In no instance shall the Town be liable provide funds in excess of this amount, nor for any unauthorized or ineligible costs or expenses as provided for under Section 6.3.

6.2. The Fee shall be disbursed to the Contractor on an expense reimbursement or costs-incurred basis. The Contractor must submit each disbursement request for the Fee in a form and content satisfactory to the Town.

6.3. The Fee shall be disbursed by the Town, in its sole and absolute discretion, as reimbursement for the following costs and expenses incurred by the Contractor:

6.3.1. the cost of fuel incurred in connection with the provision of the Services; and

6.3.2. the cost of materials and parts, as well as other expenses, incurred in connection with the repair and maintenance of the Boat.

6.4. The Unused Fee shall be maintained by the Town in a Reserve Fund. The Reserve Fund shall be the property of the Town and the Unused Fee maintained therein may be used for the purpose of funding future extensions, amendments, or renewals of the Term. If this Agreement is not extended, amended, or renewed within thirty (30) days of the expiration of the Term, the Contractor shall release the Town of any obligation to maintain the Unused Fee and the Town may use the Unused Fee for any purpose including, but not limited to, purposes not contemplated in this Agreement.

6.5. Notwithstanding anything to the contrary set forth in this Agreement, the Town is not obligated to provide the Fee to the Contractor until it is satisfied with the progress of the provision of the Services.

7. **Representations and Warranties.**

7.1. The Contractor represents and warrants the following:

7.1.1. the Contractor has the right to enter into this Agreement, to grant the rights granted herein and to perform fully the Contractor's obligations in this Agreement;

7.1.2. the Contractor has the required skill, experience and qualifications to perform the Services;

7.1.3. the Contractor shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services,

and in compliance with all applicable federal, provincial, territorial and municipal laws and regulations;

7.1.4. the Contractor shall devote such time, attention and energy as is necessary to implement and comply with its obligations under this Agreement; and

7.2. The Town represents and warrants that:

7.2.1. the Town has the full rights, power and authority to enter into this Agreement and to perform its obligations hereunder; and

7.2.2. the execution of this Agreement by its representatives whose signature is set forth at the end of this Agreement has been duly authorized by all necessary action.

8. **Indemnification.**

8.1. The Contractor shall defend, indemnify and hold harmless the Town, its elected officials, councillors, employees, contractors, agents and any other persons for whom the Town may be responsible in law from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, arising out of or resulting from:

8.1.1. bodily injury, death of any person, or damage to real or tangible personal property, resulting from the Contractor's or the Contractor's Personnel's acts or omissions in connection with the performance of the Services; and

8.1.2. the Contractor's breach of any representation, warranty or obligation under this Agreement.

8.2. The Town may satisfy such indemnity (in whole or in part) by way of deduction from any payment of the Fee due to the Contractor.

9. **Insurance** – The Contractor shall put into effect and maintain, at its sole cost and expense, protection and indemnity insurance or other form of watercraft liability insurance for the Boat (the “**Policy**”) in a form acceptable to the Town and with limits not less than five million dollars (\$5,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. The Policy is to include the Town as an additional insured, and shall be endorsed to provide the Town with not less than thirty (30) days written notice in advance of cancellation, change, or amendment restricting coverage. The Contractor shall provide the Town with proof of its coverage when the Contractor signs this Agreement and when the Policy is renewed.

10. **Renewal.**

10.1. This Agreement may be extended, amended or renewed upon mutual written consent of the Parties.

10.2. If the Contractor proposes to increase the Fee as a part of any amendment, extension, or renewal of this Agreement, the Contractor shall provide the Town with the amount of the proposed increase within ninety (90) days' of the expiration of the Term.

11. **Termination.**

11.1. During the Term, either Party may terminate this Agreement without cause upon thirty (30) days' written advance notice to the other Party.

11.2. During the Term, the Town may terminate this Agreement immediately upon providing written notice to the Contractor if the Town, in its sole and absolute discretion, determines that a Propeller Wash Dredging Operation will not be sufficient to maintain a navigable waterway within the Harbour Mouth.

11.3. In the event of termination by the Town pursuant to this Agreement, the Town shall disburse Fees to the Contractor for any Services completed up to and including the effective date of such termination.

11.4. All terms and conditions of this Agreement under Section 5.4, Section 5.5, Section 6.5, Section 8 and Section 11.4, shall survive the termination of this Agreement whether the termination is initiated by the Contractor, by the Town, on a with or without cause basis, or by mutual agreement, or whether the termination is lawful or unlawful.

12. **Notice** – All notices, requests, consents, claims, demands, waivers, and other communications to be given under this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail, as follows:

On the Town:

The Corporation of the Town of Kingsville
2021 Division Road North
Kingsville, Ontario N9Y 2Y9

Attention: Richard Wyma
rwyma@kingsville.ca

On the Contractor:

982 Heritage Road
Kingsville, Ontario N9Y 3B1

Attention: Commodore
commodoreciyc@gmail.com

13. **Freedom of Information and Protection of Privacy** – The Contractor acknowledges that the Town is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, and that any information provided to the Town in connection with this Agreement or the provision of the Services may be subject to disclosure in accordance with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.
14. **Entire Agreement** – This Agreement, together with any other documents incorporated herein by reference and related exhibits and schedules, shall constitute the entire agreement between the Parties with respect to the subject matter contained herein. Any prior contemporaneous understandings, agreements, representations and warranties, both written and oral, preceding the date of this Agreement will not be binding on either Party except to the extent incorporated in this Agreement.
15. **Successors and Assigns** – This Agreement will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and permitted assigns, as the case may be, of each Party. The Contractor shall not assign this Agreement or any interest in this Agreement without the prior written consent of the Town.

16. **Amendments and Waivers.**

16.1. Any amendments to this Agreement must be in writing and executed by both Parties. No waiver of any provision in this Agreement shall be deemed or constitute a waiver of any other provision.

16.2. Notwithstanding anything to the contrary set forth in this Agreement, if there is a conflict between any provision of this Agreement and the applicable legislation of the Province of Ontario, or the federal laws of Canada applicable in that Province, such legislation will prevail and such provisions of this Agreement shall be amended or deleted as necessary in order to comply with such legislation. Further, any provisions that are required by such legislation are incorporated into this Agreement.

16.3. Waiver by the Town of any non-compliance or breach of any term or restriction of this Agreement shall not be taken or held to be a waiver of any subsequent non-compliance or breach or as a waiver of the provision itself that is breached, nor shall any delay or omission on the part of the Town to exercise any right arising from such non-compliance or breach impair the Town's right as to the same or any future non-compliance or breach. Nothing shall be construed or have the effect of a waiver except a document in writing.

17. **Severability.**

17.1. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement and the remaining provisions had been executed by the Parties subsequent to the expungement of the invalid provision.

17.2. If there is a conflict between any provision of this Agreement and the applicable legislation of the Province of Ontario, or the federal laws of Canada applicable in that Province, such legislation will prevail and such provisions of this Agreement shall be amended or deleted as necessary in order to comply with such legislation. Further, any provisions that are required by such legislation are incorporated into this Agreement.

18. **Liability of Contractor** – Each person comprising the Contractor will be jointly and severally liable to the Town for the obligations and liabilities of the Contractor under this Agreement.

19. **Governing Law** – It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, shall be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the Province of Ontario and the federal laws of Canada applicable in that Province, without regard to the jurisdiction in which any action or special proceeding may be instituted.

20. **Compliance with Laws** – Nothing in this Agreement shall relieve the Contractor from compliance with all applicable municipal by-laws, laws and/regulations or laws and/or regulations established by any other Governmental Authority which may have jurisdiction.

21. **Common Law Obligations Preserved** – Nothing in this Agreement shall be interpreted so as to limit any obligation owing by the Contractor to the Town as a matter of common law.

22. **Injunctive Relief** – The Contractor acknowledges and agrees that monetary damages might not be a sufficient remedy for any breach of this Agreement by the Contractor and that, in addition to

all other remedies available at law, the Town shall be entitled to seek injunctive or other equitable relief as a remedy for any such breach.

23. **Time Limits.**

23.1. Time shall always be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Contractor and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

23.2. Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. Unless otherwise provided herein, all references to time in this Agreement shall mean Eastern Standard Time.

24. **Interpretation.**

24.1. Each obligation expressed in this Agreement, even though not expressed as a covenant, is considered to be a covenant for all purposes.

24.2. In this Agreement words importing the singular number only shall include the plural and vice versa, words importing one gender shall include the other genders and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations, and corporations.

24.3. The headings in this Agreement identifying various sections, paragraphs, subsections and clauses are inserted for convenience or reference only and are in no way intended to describe, interpret, define, affect the construction of or limit the scope, extent or intent of this Agreement or any provision of this Agreement.

24.4. Each Party has reviewed and negotiated the terms and provisions of this Agreement and has contributed to their revision.

24.5. The rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

24.6. The terms and provisions of this Agreement shall be construed fairly as to all Parties and not in favour of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

24.7. Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section and all regulations thereunder or in connection therewith as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

24.8. Whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.

24.9. All references to currency in this Agreement shall be deemed to be in reference to Canadian dollars.

25. **Further Assurances** – The Parties shall, at their sole expense, promptly execute such further documentation as may be required to give effect to this Agreement as the Town or the Contractor, as the case may be, may reasonably require from time to time.

26. **Counterparts** – The Parties agree that this Agreement may be executed in counterpart and all counterparts taken together will constitute one fully executed copy of this Agreement. The Parties further agree that delivery of a faxed, photocopied or electronically signed or scanned executed counterpart will be deemed to be a duly executed original.

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IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the date written above, by affixing the hands of their respective officers duly authorized in that behalf.

FOR CEDAR ISLAND YACHT CLUB

Rachel Park
Commodore
I have authority to bind the Corporation.

**FOR THE CORPORATION OF THE TOWN OF
KINGSVILLE:**

Name of the Town's Authorized Representative
Title of the Town's Authorized Representative

Name of the Town's Authorized Representative
Title of the Town's Authorized Representative

DRAFT

SCHEDULE "A"

DESCRIPTION OF THE SERVICES

The Contractor shall:

1. use the Boat to conduct a Propeller Wash Dredging Operation in the Harbour Mouth on or before [DATE], subject to delays beyond its control;
2. ensure the Boat is maintained to a good and serviceable standard, which may include but is not limited to, cleaning, washing, painting, and checking fluid levels of the Boat prior to and upon completion of any Propeller Wash Dredging Operation;
3. effect repairs of the Boat when it is necessary to ensure the Boat is maintained to a good a serviceable standard;
4. submit a complete written report to the Town in a form and content satisfactory to the Town on or before [DATE] that shall include the following:
 - 4.1. an itemized summary of the cost and expenses incurred by the Contractor in connection with the performance of the Services during the Term; and
 - 4.2. a summary of the costs and expenses that the Contractor expects to incur in connection with the future repair and maintenance of the Boat;
5. maintain the Logbook and make the Logbook available for inspection by the Town upon its request;
6. maintain and adhere to the Operational Plan; and
7. appoint a member of the Cedar Island Yacht Club Executive Committee to correspond with the Town and address to any matters which may arise in connection to the operation of the Boat or the performance of any of the Contractor's other obligations under this Agreement.

SCHEDULE "B"

DESCRIPTION OF THE HARBOUR MOUTH

Property Identification No. (PIN): 75181-0447

Legal Description: PT LT 15 CON FRONT WEST GOSFIELD; PT WATER LT IN FRONT OF LT 15 CON FRONT WEST GOSFIELD AS IN DP24276, R106881, R221602, R264076, PT 2, 12R2202; T/W R715554; KINGSVILLE

Illustration from the Town's Geographic Information System (GIS):

