

**APPENDIX III**  
**LOCAL COOPERATION AGREEMENT**  
**BETWEEN**  
**THE DEPARTMENT OF THE ARMY**  
**AND**  
**THE TOWN OF OGUNQUIT, MAINE**  
**FOR CONSTRUCTION OF THE**  
**JOSIAS RIVER AT PERKINS COVE**  
**NAVIGATION IMPROVEMENT PROJECT**  
**OGUNQUIT, MAINE**

THIS AGREEMENT is entered into this 8<sup>th</sup> day of February 1993 by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Division Engineer for the New England Division, U.S. Army Corps of Engineers, and the Town of Ogunquit, Maine (hereinafter referred to as the "Local Sponsor,") acting by and through its Board of Selectmen,

WITNESSETH, THAT:

WHEREAS, the authority for the construction of the project for improvements in the Josias River at Perkins Cove in Ogunquit, Maine (hereinafter referred to as the "Project", as defined in Article I. a. of this Agreement), is contained in section 107 of the River and Harbor Act of 1960, approved July 14, 1960 (PL 86-645), as amended, 33 USC 577: and,

WHEREAS, Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project: and,

WHEREAS, section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project: and,

WHEREAS, 56 percent of the benefits of the Project are attributable to commercial navigation and 44 percent of the benefits of the Project are attributable to recreational navigation: and,

WHEREAS, Section 107 of the River and Harbor Act of 1960, as amended, 33 USC 577, limits the amount the Federal Government may expend on a single project to \$4,000,000; and,

WHEREAS, construction of the project is described in a report entitled "Navigation Improvement Study, Detailed Project Report and Environmental Assessment, Josias River at Perkins Cove, Ogunquit, Maine," prepared by the New England Division, U.S. Army Corps of Engineers, dated June 1990, and approved by the Chief of Engineers on 29 May 1991.

WHEREAS, the Local Sponsor has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost sharing and financing in accordance with the terms of this Agreement;

NOW, THEREFORE, the parties agree as follows:

## **ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS**

For purposes of this Agreement:

a. The term "general navigation features" shall mean the design of the proposed project, which provides for the improvement dredging of a channel 7 feet deep (mean low water) and 40 feet wide (bottom width) from the 7-foot contour in the Atlantic Ocean to the anchorage area in Perkins Cove and improvement dredging of 2.1 acres of the anchorage basin. The channel requiring improvement dredging at this time consists of an approximate 900-foot-long segment extending from the 7-foot contour in the Atlantic Ocean into Perkins Cove.

b. The term "total cost of construction of general navigation features" shall mean all costs incurred by the Local Sponsor and the Government directly related to construction of the general navigation features. Such costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after 1 October 1985; costs of applicable engineering and design; actual construction costs, including costs of relocations not performed by or on behalf of the Local Sponsor; supervision and administration costs; and costs of contractor dispute settlements or awards, but shall not include the value of lands, easements, rights-of-way, and dredged material disposal areas, relocations performed by or on behalf of the Local Sponsor, non-Federal dredging of public or private channels and berthing areas, and aids to navigation.

c. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the general navigation features of the Project by the contracting Officer.

d. The term "Contracting Officer" shall mean the U.S. Army Engineer for the New England Division, or his designee.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

f. The term "relocations" shall mean the preparation of plans and specifications for, and the accomplishment of all, alterations, modifications, lowering or raising in place, and/or new construction related to but not limited to, existing: railroads, highways, bridges, railroad bridges, and approaches thereto, buildings, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation, and maintenance of the general navigation features.

g. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

h. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

i. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer to be suitable for tender to the Local Sponsor to operate and maintain in advance of completion of construction of the entire Project.

j. The term "total cost of construction of general navigation features assigned to commercial navigation" shall mean that portion of the total cost of construction of general navigation features that is allocated by the Government to commercial navigation.

k. The term "total project cost assigned to recreation navigation" shall mean that portion of the total cost of construction of general navigation allocated by the Government to recreation navigation, including separable recreation navigation costs and joint costs allocated to recreation navigation, and the value of lands, easements and rights-of-way and disposal areas assigned to recreational features.

## **ARTICLE II -OBLIGATIONS OF THE PARTIES**

a. The Government, subject to and using funds provided by the Local Sponsor and appropriated by the Congress of the United States, shall expeditiously construct the general navigation features of the Project (including alterations or relocations of highway bridges and railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the Local Sponsor will be afforded the opportunity to

review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Local Sponsor, but award of contracts, modifications or change orders, and performance of work on the general navigation features of the Project (whether the work is performed under contract or by Government Personnel), shall be exclusively within the control of the Government.

b. The Government's participation in the general navigation features of the Project, including all planning studies costs, has a statutory limitation of \$4,000,000. The Local Sponsor shall be responsible for all costs in excess of \$4,000,000.

c. The Government shall operate and maintain the general navigation features of the Project, subject to the Federal limitation set out in Article II. d.

d. The Government's responsibility for operation and maintenance of the Project shall cease when the Government's expenditures for this responsibility have reached the greater of \$4,500,000 less the Government's share of the costs of the general navigation features of the Project, including all planning studies costs, or, 125 percent of the Government's share of the construction costs of the general navigation features of the Project, including all planning studies costs, both discounted on a present worth basis starting with the date the sponsor accepts the general navigation features of the Project. The discount rate to be used in determining the value of future operation and maintenance expenditures will be the rate applicable to the evaluation of Federal water resource projects for the Federal Fiscal Year of the first construction contract award, currently estimated to be Federal Fiscal Year 1993. In view of the non-Federal participation in the operation and maintenance of the general navigation features of the Project, it is understood and agreed that the parties hereto will consult on necessity and frequency of maintenance. The Government, however, shall make the final decision on when maintenance shall occur during the period of Federal participation. When Federal participation ceases, the operation and maintenance of the general navigation features of the Project becomes the responsibility of the local sponsor. The average annual cost for operation and maintenance of the general navigation features of the Project is presently estimated to have no impact on the existing project.

e. The Local Sponsor shall provide and maintain, at its own expense, all project features other than those for general navigation features of the Project, including dredged depths commensurate with those in related general-navigation features in berthing areas and local access channels serving the general navigation features. All project features must be "open-to-all on equal terms" see Exhibit A.

f. The Local Sponsor shall provide to the Government all lands, easements and rights-of-way, including dredged material disposal areas, and perform, or assure performance of, all alterations or relocations of facilities and utilities (except relocations or alterations of highway bridges and railroad bridges and approaches thereto), determined by the Government to be necessary for construction, operation, or maintenance of the Project.

g. The Local Sponsor shall provide, during the period of construction, a cash contribution equal to the following percentages of the total cost of construction of the general navigation facilities assigned to commercial navigation:

1. Ten percent of the costs attributable to the portion of the Project which has a depth not in excess of 20 feet; and,
2. Twenty-five percent of the costs attributable to the portion of the Project which has a depth in excess of 20 feet but not in excess of 45 feet.

h. As further specified in Article VI hereof, the Local Sponsor shall provide, during the period of construction, a cash contribution of 0 to 50 percent of the total project cost assigned to recreation navigation, depending on the value of the credit, as calculated under Article IV hereof, of items provided pursuant to Article II.d. and assigned by the Government to recreation navigation. If the credit allowed for such items is less than 50 percent of the total project cost assigned to recreation navigation, the Local Sponsor shall pay in cash an amount equal to the difference between 50 percent of said assigned cost and the percent of said assigned cost represented by the value of such items. If the credit allowed is equal to or greater than 50 percent of total project cost assigned to recreation navigation, the Government shall, subject to the availability of funds for that purpose, refund the excess to the Local Sponsor no later than 90 calendar days after the final accounting is complete.

i. As further specified in Article VI hereof, the Local Sponsor shall repay, with interest, over a period not to exceed 30 years following completion of the period of construction of the Project, an additional 0 to 10 percent of the total cost of construction of general navigation features of the Project assigned to commercial navigation, depending on the value of the credit, as calculated under Article IV hereof, of items provided pursuant to Article II.f. If the credit allowed for such items is less than 10 percent of the total cost of construction of the general navigation features of the Project assigned to commercial navigation, the Local Sponsor shall repay a percentage of said total cost equal to the difference between 10 percent of the total cost and the percentage of the total cost represented by the value of such items. If the credit allowed is equal to or greater than 10 percent of said total cost, the Local Sponsor shall not be required to repay any additional percentage of the total cost.

j. The Local Sponsor shall be responsible for the cost of Operation and Maintenance of the general navigation features of the project allocated to recreation, pursuant to Article II.d.

k. No Federal funds may be used to meet the Local Sponsor's share of project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting Federal agency.

**ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646  
RELOCATION ASSISTANCE**

a. The Local Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for construction, operation, and maintenance of the general navigation features, and shall furnish to the Government evidence supporting the Local Sponsor's legal authority to grant rights-of-way to such lands. The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of the construction contract.

b. The Local Sponsor shall provide, or pay to the Government the cost of providing, all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins, determined by the Government to be necessary for construction, operation, or maintenance of the general navigation features of the Project.

c. Upon notification from the Government, the Local Sponsor shall accomplish or arrange for accomplishment at no cost to the Government all alterations and relocations of buildings, highways, railroads, storm drains, and other facilities, structures, and improvements, determined by the Government to be necessary for construction, operation, or maintenance of the general navigation features of the Project.

d. Upon notification from the Government, the Local Sponsor shall perform or assure performance of all necessary alterations and relocations of pipelines, cables, and other utilities. Nothing herein shall be deemed to affect the ability of the Local Sponsor to seek compensation from other non-Federal entities for costs it incurs under this paragraph. For projects authorized to be constructed to depths greater than 45 feet, the cost of necessary alterations or relocations shall be shared equally between the Local Sponsor and the owner of the affected utility.

e. The Local Sponsor shall comply with the applicable provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Act of 1987, (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

**ARTICLE IV - VALUE OF LANDS AND FACILITIES**

a. The value of the lands, easements, and rights-of-way to be credited pursuant to Article II.h. and Article II.i. of this agreement will be determined in accordance with the following procedures:

1. If the lands, easements, or rights-of-way are owned by the Local Sponsor as of the date the first construction contract for the general navigation features is awarded, the credit shall be the fair market value of the interest at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Local Sponsor, which has been prepared by a qualified appraiser who is acceptable to both the Local Sponsor and the Government. The appraisal shall be reviewed and approved by the Government.
2. If the lands, easements, or rights-of-way are to be acquired by the Local Sponsor after the date of award of the first construction contract for the general navigation features of the Project, the credit shall be the fair market value of the interest at the time such interest is acquired. The fair market value shall be determined as specified in Article IV.a.1. of this Agreement. If the Local Sponsor pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the Local Sponsor has secured prior written approval from the Government of its offer to purchase such interest.
3. If the Local Sponsor acquires more lands, easements, or rights-of-way than are necessary for project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for project purposes shall be included in total project costs and credited towards the Local Sponsor's share.
4. Credit for lands, easements, and rights-of-way in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior Government approval.
5. Credits for lands, easements, or rights-of-way acquired by the Local Sponsor, within a five-year period preceding the date this Agreement is signed, or at any time after this Agreement is signed, will also include the actual incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The costs of alterations or relocations of facilities and utilities incurred by the Local Sponsor that will be credited pursuant to Article II.h. and Article II.i. of this Agreement shall be that portion of the actual costs determined as set forth below, and approved by the Government:

1. Highways: Only that portion of the cost as would be necessary to construct substitute highways to the design standard that the State of Maine would use in constructing a new highway under similar conditions of geography and traffic loads.
2. Utilities and Facilities: Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments with respect to betterments, new materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be credited to the Local Sponsor's share.

#### **ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT**

a. To provide for consistent and effective communication between the Local Sponsor and the Government during the period of construction, the Local Sponsor and the Government shall appoint representatives to coordinate scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The Local sponsor will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to construction of the Project, but the Contracting Officer, having ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

#### **ARTICLE VI -METHOD OF PAYMENT**

a. The Local Sponsor shall provide, during the period of construction, the percentages of the total cost of construction of the general navigation features assigned to commercial navigation specified in Article II.g. of this Agreement. The Local Sponsor shall also provide, during the period of construction, 50 percent of total project costs allocated to separable recreation features, as specified in Article II.h. The total cost of construction of the general navigation features assigned to commercial navigation is

currently estimated to be \$205,000. The total project costs allocated to recreation features are currently estimated to be \$161,000. In order to meet its share of such costs, the Local Sponsor must provide an initial cash contribution currently estimated to be \$101,000. The dollar amounts set forth in this Article are based upon the Government's best estimates, which will reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based on costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Local Sponsor.

b. The required cash contribution shall be provided as follows: at least 30 calendar days prior to the award of the first construction contract, the Government shall notify the Local Sponsor of the Local Sponsor's estimated share of project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction. Within 15 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, NEW ENGLAND" to the Contracting Officer representing the Government. In the event that the total cost of construction of the general navigation features assigned to commercial navigation is expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Local Sponsor of the additional contribution the Local Sponsor will be required to make to meet its share of the revised estimate. Within 45 calendar days thereafter, the Local Sponsor shall provide the Government the full amount of the additional required contribution.

c. Upon completion of the general navigation features and resolution of all relevant contract claims and appeals, the Government shall compute the total cost of construction of the general navigation features assigned to commercial navigation and separable recreation features and tender to the Local Sponsor a final accounting of the Local Sponsor's share of project costs. In the event the total contribution by the Local Sponsor is less than its initial required share, the Local Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its initial required share of project costs.

d. In the event the Local Sponsor has made excess cash contributions, which result in the Local Sponsor having provided more than its initial required share of project costs, the Government shall first credit the excess to the additional amount the Local Sponsor must repay pursuant to Article II.g. of this Agreement. In the event the excess cash contribution exceeds the additional amount the Local Sponsor must repay pursuant to Article II.h., the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of appropriations, return said excess to the Local Sponsor.

e. The Local Sponsor shall repay the additional amount required pursuant to Article II.i. of this Agreement, reduced by any excess cash contribution made during the period of construction, in equal annual installments over a period of not more than 30 years from the completion of the period of construction of the general navigation features. Such repayment shall include interest at a rate to be determined by the Secretary

of the Treasury, taking into consideration the average market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the repayment period, during the month preceding the fiscal year in which costs for construction of the Project are first incurred, or, in the case of recalculation, the fiscal year in which the recalculation is made, plus a premium of one-eighth of one percentage point for transaction costs. The interest rate shall be recalculated by the Secretary of the Treasury at five-year intervals. Nothing herein shall preclude the Local Sponsor from repaying this additional amount in full upon receipt of the final accounting. Should this full repayment be made within 90 days from receipt of the final accounting, there shall be no charges for interest or transaction costs.

## **ARTICLE VII -DISPUTES**

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

## **ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION**

a. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate all project features other than the general navigation features assigned to commercial navigation in accordance with regulations or directions prescribed by the Government.

b. The Government shall operate and maintain the general navigation features of the Project as limited in Article II.c.

c. When Federal participation in operation and maintenance of the general navigation features of the Project ceases pursuant to Article II.c.; the Local Sponsor shall assume operation and maintenance responsibilities of the general navigation features of the Project, in accordance with the regulations or directions prescribed by the Government.

d. The Local Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls, for access to the Project for the purpose of inspection, and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Local Sponsor for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Local Sponsor. If the Local Sponsor persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the Local Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement or rehabilitation of the Project by the

Government shall operate to relieve the Local Sponsor of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

#### **ARTICLE IX - RELEASE OF CLAIMS**

The Local Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

#### **ARTICLE X - MAINTENANCE OF RECORDS**

The Government and the Local Sponsor shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the Local Sponsor shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising there from, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

#### **ARTICLE XI - GOVERNMENT AUDIT**

The Government shall conduct an audit when appropriate of the Local Sponsor's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs.

#### **ARTICLE XII - FEDERAL AND STATE LAWS**

In acting under its rights and obligations hereunder, the Local Sponsor agrees to comply with all applicable Federal and State laws and regulations, including section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department II of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

#### **ARTICLE XIII - RELATIONSHIP OF PARTIES**

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

#### **ARTICLE XIV – OFFICIALS NOT TO BENEFIT**

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise there from.

#### **ARTICLE XV - COVENANT AGAINST CONTINGENT FEES**

The Local Sponsor warrants that no person or selling agency; has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Local Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE XVI – TERMINATION OR SUSPENSION**

a. If at any time the Local Sponsor fails to make the payment required under this Agreement, the Secretary of the Army shall terminate or suspend work of the Project until the Local Sponsor is no longer in arrears, unless the Secretary of the Army determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Local Sponsor. After 60 calendar days either party may elect, without penalty, to terminate this Agreement pursuant to this Article or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI of this Agreement. In the event that either party elects to defer future performance under this Agreement, pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

## **ARTICLE XVII - HAZARDOUS SUBSTANCES**

a. After execution of this Agreement and upon direction by the Contracting Officer, the Local Sponsor shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the Local Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Local Sponsor, which are properly allowable and allocable to performance of any such environmental investigations, shall be included in total project costs and cost shared as a construction cost in accordance with sections 101 (a) (1) (A) and 103 (c) (4) of Public Law 99-662.

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Local Sponsor and the Government shall provide prompt notice to each other, and the Local Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the Local Sponsor shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Local Sponsor determine to proceed or continue with construction after considering any liability that may arise under CERCLA, as between the Government and the Local Sponsor, the Local Sponsor shall be responsible for any and all necessary cleanup and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the Local Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVI of this Agreement.

d. The Local Sponsor and the Government shall consult with each other under the Construction Phasing and Management Article of this Agreement to assure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph c. of this Article shall not relieve any party from any liability that may arise under CERCLA.

e. The Local Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner so that liability will not arise under CERCLA.

**ARTICLE XVIII - NOTICES**

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given, if in writing and delivered personally; given by prepaid telegram; or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Local Sponsor:  
Town Manager  
Town of Ogunquit  
Municipal Offices  
School Street  
Ogunquit, Maine 03907

If to the Government:  
Division Engineer  
New England Division, Corps of Engineers  
424 Trapelo Road  
Waltham, Massachusetts 02254-9149

b. A party may change the address to which such communications are to be directed by giving written notice to the other in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

**ARTICLE XIX - CONFIDENTIALITY**

To the extent permitted by the law governing each party, the parties agree to maintain the confidentiality of exchanged information, when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the day and year first above written.

THE DEPARTMENT OF THE ARMY

TOWN OF OGUNQUIT, MAINE

BY: \_\_\_\_\_  
BRINK P. MILLER  
Colonel, Corps of Engineers  
Division Engineer

BY: \_\_\_\_\_  
Town Manager

DATE: 8 FEB 93

DATE: 1/25/93

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

---

Town Manager

## **EXHIBIT A**

### **DEFINITION OF OPEN-TO-ALL ON EQUAL TERMS**

Federal navigation projects must be managed in the general public interest and must be accessible and available to all on equal terms. Any number of approaches may be used to assure that all citizens desiring mooring or other access to the projects are treated impartially; it is not the Federal Government's intention to prescribe specific procedures.

A management system shall be considered acceptable provided that it:

- Makes no arbitrary distinction or requirement of any kind of allocating use of the project and ancillary facilities and services to the public except as may be consistent with the purpose for which the project was constructed.

- Does not impose arbitrary fees or arbitrary variations in fees among users. The cost of providing necessary management and ancillary facilities and services may be offset through equitable user fees based on the actual costs incurred.

Information pertinent to harbor management - including but not limited to rules and regulations, lists of mooring holders, waiting lists and fee schedules - shall be readily available to the public at all times.

**EXHIBIT B**

**CERTIFICATE OF AUTHORITY**

In accordance with section 221 Public Law 91-611, I, as amended, 42 U.S.C. 1962d-5b, I Bruce M. Read, do hereby certify that I am the Town Counsel of the town of Ogunquit, Maine and that the town of Ogunquit, Maine is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the town of Ogunquit, Maine in connection with the Josias River and Perkins Cove Navigation Improvement Project, Ogunquit, Maine, and to pay damages, if necessary, in the event of the failure to perform and that the person(s) who have executed the aforementioned Agreement on behalf of the town of Ogunquit, Maine, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certificate this 19<sup>th</sup> day of January, 1993

Bruce M. Read

Town Counsel  
Town of Ogunquit, Maine  
Bruce M. Read

## **CERTIFICATION OF LEGAL REVIEW**

The Local Cooperation Agreement for the construction of the Josias River at Perkins Cove Navigation Improvement Project in Ogunquit, Maine has been fully reviewed by the Office of Counsel, USAED, New England.

---

Division Counsel