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SCHEDULES

SCHEDULE 1

AGREEMENT BETWEEN COLCHESTER BOROUGH COUNCIL AND BRIGHTLINGSEA HARBOUR COMMISSIONERS

Interpretation

- 1 (1) In this Agreement—
- “the Act” means a private Act of Parliament promoted by the Council in respect of the harbour of Colchester substantially in the form of the Bill so that (without prejudice to the generality of the foregoing) the Council is empowered to cease to be a harbour authority for the harbour of Colchester;
 - “the appointed day” has the same meaning as in the Bill;
 - “the Bill” means the Colchester Harbour Bill as deposited in Parliament on 26 November 1999;
 - “the Commissioners” means Brightlingsea Harbour Commissioners;
 - “the Council” means Colchester Borough Council;
 - “the imaginary lines” means an imaginary line drawn across the River immediately upstream of the site of No. 42 Buoy, Wivenhoe (51°51.2'N, 00°57.5'E) and an imaginary line drawn along the current seaward limits of the harbour of Colchester;
 - “the River” means the River Colne.
- (2) References in this Agreement to navigational aids and buoys include references to their ground tackle.

Conditions

- 2 (1) Clause 3 of this Agreement is conditional upon the Commissioners assuming jurisdiction for the purposes of the Pilotage Act 1987 on the appointed day of so much of the River as lies between the imaginary lines, in consequence of the coming into operation of a provision of the Act.
- (2) Clause 4 of this Agreement is conditional upon the Commissioners becoming on the appointed day a local lighthouse authority for so much of the River as lies between the imaginary lines, in consequence of the coming into operation of a provision of the Act.

Pilotage

- 3 In consideration of the Commissioners agreeing to assume the jurisdiction mentioned in clause 2(1) of this Agreement the Council shall pay to the Commissioners the sum of £50,000 (fifty thousand pounds) and at the same time shall indemnify the Commissioners in respect of any corporation tax payable thereon.

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Navigational aids, etc.

- 4 (1) Upon becoming a local lighthouse authority as mentioned in clause 2(2) of this Agreement there shall be transferred to the Commissioners from the Council without charge the ownership of all navigational aids in the River Colne (between the imaginary lines) in respect of which the Council had statutory responsibility immediately before the date of such transfer.
- (2) The Council shall maintain at its own expense as agent for the Commissioners the navigational aid mentioned in paragraph (3) below to such standard as is reasonably required by the Commissioners for so long as that aid is required in connection with the Commissioners' functions as a local lighthouse authority.
- (3) The aid referred to in paragraph (2) above is the light at Bateman's Tower (51°48.3'N, 1°00.73'E).
- (4) The Commissioners shall maintain to the reasonable satisfaction of the Council and in the positions reasonably required by the Council the buoys mentioned in paragraph (5) below if and to the extent that those buoys are required in connection with the discharge of any obligation or function of the Council in respect of fisheries and subject to the responsibilities of the Commissioners as local lighthouse authority in consequence of the Act.

- (5) The buoys referred to in paragraph (4) above are—

<i>Name</i>	<i>Shape</i>	<i>Characteristic</i>
Fishery Buoy No. 1	Sphere	Unlit
Fishery Buoy No. 2	Sphere	Unlit
Fishery Buoy No. 3	Sphere	Unlit

- (6) For the period of 20 years from the appointed day the Commissioners shall, if and to the extent that they are so required by the Environment Agency, maintain to the reasonable satisfaction of that Agency the buoys mentioned in paragraph (7) below in the positions reasonably required by that Agency:

Provided that this obligation shall not require the Commissioners to carry out any activity in relation to those buoys which was carried out by the Environment Agency prior to the date on which the Commissioners became a local lighthouse authority in consequence of the Act.

- (7) The buoys referred to in paragraph (6) above are—

<i>Number</i>	<i>Name</i>	<i>Shape</i>	<i>Characteristic</i>
38	Colne Barrier	Can	Fl.R. 3 sec.
31	Colne Barrier	Cone	Fl.G. 3 sec.
33	Colne Barrier	Cone	Fl.G. 3 sec.
40	Colne Barrier	Can	Fl.R. 3 sec.

- (8) Prior to the transfer mentioned in paragraph (1) above and subject to the approval of Trinity House under section 199 of the Merchant Shipping Act 1995 the Council shall replace each of the aids mentioned in Annex A to this Agreement with an

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aid manufactured in glass reinforced plastic but otherwise having the same shape and characteristic as the aid which it replaces; and such replacement shall be to the reasonable satisfaction of the Commissioners.

- (9) Prior to the transfer mentioned in paragraph (1) above and subject to the approval of Trinity House under section 199 of the Merchant Shipping Act 1995 the Council shall:—
- (a) replace the unlighted buoy mentioned in Annex B to this Agreement with a lighted green conical buoy, to the reasonable satisfaction of the Commissioners;
 - (b) replace the unlighted buoy mentioned in Annex C to this Agreement with a lighted red can buoy, to the reasonable satisfaction of the Commissioners;
 - (c) discontinue and remove the aids mentioned in Annex D to this Agreement; and
 - (d) move the No. 13 buoy station to the westernmost point of the bank on the Brightlingsea side of the River.
- (10) The Council shall transfer to the Commissioners the benefit of any manufacturers' guarantees and warranties relating to any replacement aids.
- (11) The Council shall maintain to a reasonable standard each of the aids mentioned in paragraph (1) above (including those replaced in accordance with paragraphs (8) and (9) above) until they are transferred to the Commissioners in accordance with paragraph (1) above.
- (12) In consideration of the Commissioners agreeing to assume the functions of a local lighthouse authority as mentioned in clause 2(2) of this Agreement and of maintaining the buoys mentioned in paragraphs (5) and (7) above the Council shall pay to the Commissioners annually the sum calculated in accordance with the provisions of clause 6 of this Agreement.

Provisions as to payment of sums in respect of pilotage and navigational etc. aids

- 5 (1) The sums mentioned in clause 3 of this Agreement shall be payable on the appointed day.
- (2) The sum referred to in clause 4(12) of this Agreement shall be first payable on the appointed day and thereafter on each anniversary of that day.

Annual sum payable in respect of navigational etc. aids

- 6 (1) Subject to the provisions of this clause the sum referred to in clause 4(12) of this Agreement shall be £65,000 (sixty five thousand pounds).
- (2) In the event that the sum referred to in clause 4(12) of this Agreement is first payable on a date (“the date of first payment”) which falls after 1 November 2000, the sum due on the date of first payment shall be £65,000 (sixty five thousand pounds) or, if greater, the following sum, namely:—

$£65,000 \times \frac{\text{Index for month immediately preceding date of first payment}}{\text{The Base figure.}}$

- (3) The sum payable on each anniversary of the date of first payment shall be £65,000 (sixty five thousand pounds) or, if greater, the following sum, namely:—

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£65,000 × Index for month immediately preceding anniversary concerned
The Base figure.

(4) In this clause:—

“The Base figure” means the figure for the Index for the month of October 2000;

“Index” means the Index of Retail Prices published by the Stationery Office or such other Agent as may be authorised to publish the same by one of Her Majesty’s Principal Secretaries of State.

(5) If it becomes impossible by reason of any change after the date of this Agreement in the methods used to compile the Index or for any other reason to calculate the sum referred to in clause 4(12) of this Agreement by reference to the Index, the determination of a fair and reasonable alternative method for calculating for the purposes of this clause any increase in that sum due to general inflation shall (in the absence of agreement) be determined by arbitration in the manner provided in clause 12 of this Agreement.

Interest

7 So much of any sum for which provision for payment is made under this Agreement as is unpaid immediately after the date on which it falls due shall accrue interest from that date at 3% above the base lending rate from time to time of Barclays Bank plc:

Provided that if that rate shall at any time cease to exist or be ascertainable the Council shall substitute for it the base lending rate of such of the London Clearing Banks as it shall prescribe in writing.

Appointed day

8 As soon as reasonably practicable after the enactment of the Act the Council shall after consultation with the Commissioners resolve to appoint a day for the purposes of the Act and the day so appointed shall be not more than six months after the date of that resolution.

Accounting for dues, etc.

9 (1) The Council shall account to the Commissioners for any dues or charges received or properly recoverable by the Council in respect of pilotage or navigational aids if and to the extent that such dues or charges are referable to any period after the Commissioners assume jurisdiction for pilotage as described in clause 2(1) of this Agreement or, as the case may be, become a local lighthouse authority, as described in clause 2(2) thereof.

(2) The Commissioners shall account to the Council for any dues or charges received or properly recoverable by the Commissioners in respect of pilotage or navigational aids if and to the extent that such dues or charges are referable to any period before the Commissioners assume jurisdiction for pilotage as described in clause 2(1) of this Agreement or, as the case may be, become a local lighthouse authority, as described in clause 2(2) thereof.

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Miscellaneous

- 10 (1) The Commissioners shall not be liable for any act, neglect or default of the Council as harbour authority (including competent harbour authority) which occurs before the date on which the Commissioners assume jurisdiction for pilotage or, as the case may be, become a local lighthouse authority in accordance with the Act.
- (2) The Council shall indemnify and hold the Commissioners harmless from all claims or demands which may be made on or against the Commissioners in consequence of any such act, neglect or default as is mentioned in paragraph (1) above:

Provided that:—

- (i) nothing in this indemnity shall impose any liability on the Council in respect of any such claim or demand in so far as and to the extent to which it is attributable to the act, neglect or default of the Commissioners, their contractors, agents, workmen or servants; and
- (ii) the Commissioners shall give to the Council immediate notice of any such claim or demand and no settlement or compromise thereof shall be made except with the consent of the Council who (if it so elects) shall at its expense have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the same.
- (3) The Council shall ensure that any byelaws made by the Council in relation to the River under section 235 of the Local Government Act 1972 after the Commissioners assume jurisdiction for pilotage as described in clause 2(1) of this Agreement and become local lighthouse authority as described in clause 2(2) thereof shall have effect subject to the statutory functions of the Commissioners in relation to pilotage and navigational aids.
- (4) The Council shall disclose to the Commissioners all documents relating to its pilotage and local lighthouse authority functions which appear to the Council to be relevant to, or which may otherwise assist the Commissioners in, the discharge by the Commissioners of any responsibility which they assume by reason of the Act.
- (5) The duty of the Council under paragraph (4) above shall include a duty to provide the Commissioners with copies of such documents as the Commissioners may reasonably require:

Provided that nothing in this paragraph or paragraph (4) above shall require the Council to act in breach of any law or existing legal obligation.

- (6) The Council shall permit the Commissioners without charge to maintain the aids and buoys mentioned in clause 4(1), (5) and (7) of this Agreement upon the bed of the River owned by the Council and without prejudice to the generality of the foregoing the Council shall indemnify the Commissioners in respect of any fee or other charge which may be made by any person for the right to attach to the bed of the River any such aid or buoy in the position in which the same is presently located.
- (7) The Commissioners shall, if so requested by the Council, give the Council all reasonable assistance (other than financial assistance) in securing the passing of the Act and the Council shall if requested reimburse the Commissioners any expenses reasonably incurred by them in providing such assistance.
- (8) The costs and expenses referred to in this clause shall be payable 30 days after written details thereof have been supplied to the reasonable satisfaction of the Council.

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- (9) This Agreement shall be scheduled to the Bill and is subject to such alterations as may be made by Parliament therein but in the event of Parliament making any material alteration in this Agreement the party affected by such alteration may rescind this Agreement by giving written notice to the other party before the Consideration (if any) of the Bill in the Second House and thereupon this Agreement shall become void and the Council shall withdraw from the Bill:—
- (a) the provisions confirming this Agreement; and
 - (b) clause 5 (Pilotage and navigational aids), except to such extent as the parties may agree.

Value Added Tax

- 11 So far as concerns value added tax:—
- (i) where under this Agreement an amount of money is to be paid such amount shall be regarded as being exclusive of value added tax;
 - (ii) any obligation to pay an amount of money under this Agreement shall be construed as requiring payment to the Commissioners of any value added tax properly chargeable in respect of any payment made by or taxable supply received by the Council under the terms of or in connection with this Agreement.

Settlement of disputes

- 12 Any dispute arising in respect of this Agreement shall be referred to and be settled by a single arbitrator to be agreed between the parties or failing agreement to be appointed on the application of either of them by the President of the Law Society and subject as aforesaid the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment of it shall apply to such arbitration and the costs of such arbitrator shall be met by the parties in accordance with the decision of such arbitrator and failing any such decision equally between the parties.

ANNEX A—AIDS TO BE REPLACED

<i>Number</i>	<i>Name</i>	<i>Shape</i>	<i>Characteristic</i>
13A	Lower Binnaker	Cone	Fl.G. 3 sec.
15	Binnaker	Cone	Fl.G. 3 sec.
18	Ooze End	Can	Fl.R. 3 sec.
19	Aldboro Point	Cone	Fl.G. 3 sec.
20	—	Can	Fl.R. 3 sec.
24	Alresford	Can	Fl.R. 3 sec.
27	Wivenhoe Reach	Cone	Fl.G. 3 sec.
32	Marriages Bight	Can	Q.Fl.R.

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ANNEX B—COLNE POINT BUOY

<i>Number</i>	<i>Name</i>	<i>Shape</i>	<i>Characteristic</i>
1	Colne Point	Cone	Unlit

ANNEX C—PYEFLEET SPIT BUOY

<i>Number</i>	<i>Name</i>	<i>Shape</i>	<i>Characteristic</i>
12	Pyefleet Spit	Can	Unlit

ANNEX D—AIDS TO BE DISCONTINUED

<i>Number</i>	<i>Name</i>	<i>Shape</i>	<i>Characteristic</i>
9	Long Bar	Cone	Fl.G. 3 sec.
14	Geedon Spit	Can	Unlit
17	Hounds	Cone	Unlit
34	Marriages Bight	Can	Unlit

Executed as a deed this 21st day of September 2000.