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ARTICLE 1 – PURPOSE AND INTENT

The Maritime Administration, Office of Environment and Innovation, focuses on and participates in the development of environmental policy mechanisms that address maritime transportation environmental issues (e.g., alternative fuels/energy efficiency, air emissions generated from vessels and ports, invasive species in ballast water, and economic incentives). As the leading government agency with the responsibility for maritime transportation, it is vital that MARAD develops policy that is supported by sound research. The Maritime Environmental and Technical Assistance (META) program housed within the Office of Environment and Innovation partners with other governmental agencies, industry, and academia to fund and support maritime environmental research and demonstration projects.

This Agreement sets forth the terms and conditions for the award of financial assistance to Curtin Maritime Corp. to develop and deploy an all-electric assist tug evaluate the environmental performance of the tug and the “spread” of vessels and equipment used for a new-build hybrid dredging operation.

ARTICLE 2 – EFFECTIVE DATE AND PERIOD OF PERFORMANCE

The effective date of this Agreement shall be the date of the last signatory on the Agreement. Period of Performance (PoP) covered by this Agreement commences upon the effective date of this Agreement and shall continue for (24) months unless terminated sooner as provided for herein.

ARTICLE 3 – DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

- (1) "Agreement Officer" means the person executing this Agreement on behalf of MARAD, and any other successor Agreement Officer designated by MARAD.
- (2) “Agreement Officer’s Representative” or “AOR” means the designated MARAD employee responsible for the technical aspects of this Agreement and technical liaison with the Recipient.
- (3) “Covered Federal action” means any of the following Federal actions: the awarding of any Federal grant; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; the extension, continuation, renewal, amendment, or modification of any Federal grant, grant, loan, or cooperative agreement.
- (4) “Government” refers to the U.S. Federal Government including its agencies and departments.

- (5) "Head of the Agency" or "Administrator" as used herein means the Maritime Administrator, Acting Maritime Administrator, Deputy Maritime Administrator of the Maritime Administration; and the term "duly authorized representative" means any person or persons or board (other than the Agreement Officer) authorized in writing to act for the head of the agency.
- (6) "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.
- (7) "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before 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 any Covered Federal action.
- (8) "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, includes a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
- (9) "Officer or employee of an agency" as used in this article, includes the following individuals who are employed by an agency:
- a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
 - b. A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
 - c. A special Government employee, as defined in section 202, title 18, United States Code.
 - d. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.
- (10) "Parties" refers to the organizations which sign this Agreement.
- (11) "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
- (12) "Program Partners" refers to the Recipient's partners; either as individuals or organizations, in the Agreement and the technical initiatives being undertaken by the Recipient.

- (13) “Recipient” means the entity identified on the first page of this Agreement.
- (14) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.
- (15) “Subcontractor” means a contractor to the Recipient and all tiers of subcontractors thereunder including those of the Program Partners.

ARTICLE 4 – SCOPE OF THE AGREEMENT

The scope of this Agreement is set forth in the attached Statement of Work (SOW). Work under this Agreement will be funded based on a SOW that defines deliverables, reports, schedules, and invoices; reimbursement drawdowns and special disposition arrangements.

ARTICLE 5 – ROLES AND RESPONSIBILITIES

Recipient has full responsibility for the conduct of the activities supported under this Agreement and for adherence to the conditions set forth herein. In the event that the Recipient seeks the advice, guidance, or opinion of MARAD on any problems that may arise, such advice, guidance, or opinion does not diminish the Recipient’s responsibility for making sound scientific and administrative judgments and should not imply that the responsibility for operating decisions has shifted to MARAD. Recipient is responsible for notifying MARAD about any allegation of research misconduct that it concludes has substance and requires an investigation, or of any significant problems relating to the administrative or financial aspects of this award. By acceptance of this award, Recipient agrees to comply with all applicable laws, regulations, and rules, and to the prudent management of all expenditures and actions affecting this award.

MARAD

In support of the activities performed hereunder, MARAD will work with Recipient to provide technical/programmatic support and financial assistance as specified in Article 8. MARAD has overall responsibility for MARAD-funded awards, including providing award oversight for technical/programmatic, as well as for financial and administrative performance. The AOR may participate in discussions of programmatic, technical, managerial, and/or scheduling concerns; provide guidance and/or advice; review technical or programmatic reports and information submitted by Recipient; and schedule desk and on-site reviews as necessary to resolve any MARAD award questions or resolve follow-up audit issues. Substantial involvement by MARAD is anticipated during the performance of the activities supported by this Agreement to ensure that such activities further MARAD’s goal of supporting environmental and technological work under the Marine Environmental and Technical Assistance (META) program. Specifically, MARAD will interact and meet regularly with CMC to address progress and adjust the scope and direction of the effort as additional information is learned. These types of projects might involve groundbreaking research and as we move forward with our project partner we need to be able to make adjustments, as necessary. MARAD will also act as a liaison between CMC and other

Federal agencies and MARAD project partners to assist with data gathering efforts that may be hard to obtain and to ensure that there is no duplication of effort.

Reporting

Recipient agrees to make quarterly progress reports using the standard form Performance Progress Report (PPR)/SF-PPR during the performance period. Quarterly reporting periods shall commence on the effective date of this Agreement, and these reports shall be due within thirty (30) calendar days after the reporting period ends. A final Performance Progress Report (PPR)/SF PPR shall be submitted to MARAD within ninety (90) calendar days of completion of the project. Contents of the report shall include those items identified in 2 C.F.R. § 200.329 (c)(2).

Recipient shall submit an interim Federal Financial Report (FFR)/SF-425, or other form as instructed by MARAD, to MARAD on a quarterly basis. Each report shall be due within thirty (30) calendar days after the reporting period ends. A final financial report shall be due within ninety (90) calendar days of completion of the project.

Equipment

The terms and conditions set forth in 2 C.F.R. § 200.313, shall govern the vesting of title to, and the use, management, and disposition of, any equipment purchased with any funds provided under this Agreement.

In the event that MARAD provides Government Furnished Equipment (GFE) to Recipient during the Period of Performance of this Agreement, all GFE shall be subject to the terms and conditions in this Article. Unless otherwise agreed to by the parties, MARAD shall deliver any GFE to a location agreed to by MARAD and Recipient. Prior to the Recipient taking possession of any GFE, the Recipient shall be provided adequate notice and time by MARAD to arrange insurance for protecting the GFE. Recipient shall arrange for and assume responsibility for the return shipping of all GFE to a location designated by MARAD. Recipient shall notify MARAD at least 14 calendar days prior to the date when the GFE will no longer be required.

Recipient acknowledges and agrees that any GFE provided by MARAD hereunder is provided with no warranty or guarantee, express or implied, regarding the condition, description, or performance of the GFE, or the suitability for its intended use, and that Recipient will return all GFE to MARAD in substantially the same condition that existed when the GFE was delivered to Recipient, less normal wear and tear, as determined by the AOR. Recipient shall use all GFE only for performing the activities approved by MARAD. Modifications or alterations of GFE are prohibited unless authorized by MARAD.

Recipient shall be responsible for controlling, securing, preserving, protecting, safely operating, repairing, and maintaining all GFE until Recipient returns such GFE to MARAD. Recipient shall assume all liability for any damage to or loss of GFE. In the event of any damage to or loss of GFE, Recipient agrees to work with the Agreement Officer to determine the appropriate form and method of MARAD recovery, including without limitation repair, replacement, or other restitution.

MARAD may, at any time, withdraw authority for Recipient to use GFE, and Recipient shall return the GFE at its expense to the location identified by MARAD.

MARAD shall retain title to all GFE. Title to GFE shall not be affected by its incorporation into or attachment to any property not owned by MARAD, nor shall GFE become a fixture by being attached to any real property. Recipient shall create and maintain records of all GFE provided under this Agreement.

Meetings

The AOR and Recipient shall establish a schedule of meetings they deem necessary to successfully perform the activities supported by this Agreement. Meetings may be held in person or by telephone/video conferencing.

Quality of Workmanship, Materials, Equipment

All operational practices of the Recipient and all workmanship, material, equipment, and articles used in the performance of work under this Agreement shall be evaluated and used in accordance with accepted practices and applicable national, state, and local laws, regulations, and standards, and applicable international requirements and standards. Recipient shall take proper safety and health precautions to protect the work, the workers, the public and the property of others.

Permits and Licenses

Recipient shall, without expense to the Government, be responsible for obtaining any necessary licenses and permits and for complying with any Federal, state, and municipal laws, codes, and regulations applicable to performance of any work accomplished under this Agreement.

ARTICLE 6 – CHANGE

Changes to this Agreement must be formally adopted in writing by the signatories of the agreement.

ARTICLE 7 – AGREEMENT ADMINISTRATION

Administrative matters under this Agreement that involve the Federal Government shall be referred to the following representatives of the parties:

MARAD: Kelly B. Mitchell-Carroll, Agreement Officer
Office of Acquisition, MAR-380
DOT/Maritime Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590
(202) 366-9714

k.mitchell-carroll@dot.gov

Technical matters under this Agreement that involve the Federal Government shall be referred to the following representatives:

MARAD: Mr. Galen Hon
Office of Environment and Innovation
1200 New Jersey Avenue, SE
Washington, D.C. 20590
(202) 366-7155
galen.hon@dot.gov

The Recipient key information/data (names/title/addresses/phone numbers/e-mail addresses) for the principal points of contact for all aspects of the Agreement are as listed below:

Recipient:

Recipient may change its representatives named in this Article by written notification to MARAD, which will be effective upon written approval by MARAD. Changes by MARAD to its representatives named in this Article shall be effective upon written notice to Recipient.

ARTICLE 8 – FUNDING & ALLOWABLE COSTS

Funding

The maximum amount of the financial assistance that may be provided to Recipient under this Agreement shall not exceed the total sum of \$XXXXXX during the period of performance. MARAD shall not be liable to Recipient for any costs incurred by Recipient, and Recipient shall not be entitled to any payments under this Agreement, in excess of such amount.

Allowable Costs

Funds provided by MARAD hereunder shall only be used on a reimbursable basis to pay for costs incurred by Recipient in the performance of work set forth in Article 4. No funds will be used for expenses associated with or related in any way to work to be done or done in a facility owned by someone other than a Citizen of the United States (as defined in 46 CFR 315.3(b)) or located outside the United States of America.

All travel in connection with this Agreement shall be performed in accordance with the prevailing Federal Travel Regulations (FTR), and actual travel costs shall be reimbursed at a rate not to exceed the allowable FTR rates. Copies of travel receipts must be submitted with invoices for reimbursement.

Except as otherwise provided herein, the allowability of costs shall be determined in accordance with the terms and conditions contained herein and the applicable Federal cost principles, in effect at the time a cost was incurred, set forth in 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

No part of the funding provided by MARAD under this Agreement may be used:

- (1) to pay any costs incurred by Recipient prior to the effective date of this Agreement or after the period of performance or earlier termination of this Agreement;
- (2) to support anything other than the work to be performed hereunder;
- (3) for any work for which Recipient has received or is entitled to receive payment from another source;
- (4) to purchase items considered personal expenses, such as entertainment, food, or refreshments;
- (5) to support events that will involve the consumption of alcohol; or
- (6) in any manner that violates any prohibitions or restrictions contained in 2 C.F.R. 200, as implemented by 2 C.F.R. 1201, including without limitation 2 C.F.R. 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment).

Requirements Regarding Delinquent Tax Liability Or A Felony Conviction Under Any Federal Law

The funds provided under this award shall not be used to enter into any agreement with any third party that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this Article 8, the following definitions apply:

“Covered Transaction” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“Felony Conviction” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an

offense that is classified as a felony under 18 U.S.C. 3559.

“Participant” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“Tax Delinquency” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another party, a Participant shall check the System for Award Management (*the “SAM”*) at <http://www.sam.gov/> for an entry describing that party.

3. **Mandatory Certifications.**

(a) By entering into this Agreement with the Government, the Recipient hereby certifies that it:

- (i) has no Tax Delinquency; and
- (ii) has no Felony Conviction.

(b) Before entering a Covered Transaction with another party, a Participant shall require that party to:

- (i) Certify whether that party has a Tax Delinquency; and
- (ii) Certify whether that party has a Felony Conviction.

4. **Prohibition.** If

- (i) the SAM entry for a party indicates that the party has a Tax Delinquency or a Federal Conviction;
- (ii) a party provides an affirmative response to either certification in section 3; or
- (iii) a party’s certification under section 3 was inaccurate when made or became inaccurate after being made,

then a Participant shall not enter or continue a Covered Transaction with that party unless MARAD has determined in writing that suspension or debarment of that party is not necessary to protect the interests of the Government.

5. **Mandatory Notice to MARAD.**

- (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify MARAD in writing of that entry.
- (b) If a Participant provides an affirmative response to either certification in section 3, the Recipient shall notify MARAD in writing of that affirmative response. The Agreement Officer then shall:

- (i) Promptly, upon receipt of notice, request such additional information from the Recipient as the Agreement Officer deems necessary to demonstrate the Participant's present responsibility;
 - (ii) Notify, in accordance with agency procedures, MARAD's Suspension and Debarment Official; and
 - (iii) Not award to the Participant unless MARAD's Suspension and Debarment Official has considered suspension or debarment, and made a determination that suspension or debarment on this tax delinquency or felony basis is not necessary to protect the interest of the Government.
- (c) If the Recipient knows that a Participant's certification under section 3 was inaccurate when made or became inaccurate after being made, the Recipient shall notify MARAD in writing of that inaccuracy.
6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:
- (1) require the SAM check in section 2;
 - (2) require the certifications in section 3;
 - (3) include the prohibition in section 4; and
 - (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify MARAD under section 5.

ARTICLE 9 – AGREEMENT OFFICER'S REPRESENTATIVE (AOR)

Mr. XXXXXX is hereby designated as the AOR for this Agreement. The AOR is located at the Department of Transportation (DOT), Maritime Administration (MAR-410), 1200 New Jersey Ave., SE, Washington, DC 20590. The AOR may be reached at (XXX) or at @dot.gov.

- (1) The AOR is responsible for the technical aspects of the initiative and technical liaison with the Recipient and other parties and compliance with all applicable laws, agency orders, directives, rules and regulations.
- (2) The AOR is not authorized to make any commitments or otherwise obligate the Federal Government or authorize any changes that affect the price, terms or conditions of this Agreement. Any recipient and/or party who requests changes shall be referred to the Agreement Officer directly or through the AOR. No such changes shall be made without the expressed prior authorization of the Agreement Officer. The AOR may designate assistant AOR(s) to act for the AOR by naming such assistants in writing and transmitting a copy of such designation through the Agreement Officer to the Recipient.

ARTICLE 10 – FINANCIAL ACCOUNTABILITY/RECORDS RETENTION/AUDIT

- (1) The Recipient shall have and maintain an established accounting system which complies with Generally Accepted Accounting Principles, and with the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds. 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, is incorporated herein by reference and establishes the requirements for financial management and financial reporting to the Government.
- (2) The Recipient shall maintain adequate records to account for Federal funds received under this Agreement, as well as Recipient or other party funds contributed under this Agreement. The Recipient's relevant financial records are subject to examination or audit by the Federal Government. The Agreement Officer or designee shall have direct access to sufficient records and information of the Recipient, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during normal business hours on normal business days.
- (3) Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement including those of the Recipient and any consultant shall be retained during the period of performance and for a period of 3 years after the period of performance or earlier termination of this Agreement. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.
- (4) The head of the Federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any pertinent books, documents, papers, and records of the Recipient and its consultant(s) to make audits, examinations, excerpts and transcripts.
- (5) Unless otherwise required by law, MARAD shall not place restrictions on the Recipient that will limit public access to the records of the Recipient that are pertinent to this Agreement, except when MARAD can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. §552) if the records had belonged to the Federal sponsoring agency.
- (6) A nonfederal entity that expends more than \$750,000 or more during the nonfederal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. Subpart F – Audit Requirements. A nonfederal entity that expends less than \$750,000 during the nonfederal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 C.F.R. § 200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate MARAD officials, pass-through entity, and Government Accountability Office (GAO).

ARTICLE 11 – METHOD OF PAYMENT/INVOICE REQUIREMENTS

Invoice Requirements

Recipient shall submit invoices for allowable costs incurred in the performance of this Agreement in accordance with this Article 11. The invoices must be in PDF format and invoices shall be submitted as follows:

- (a) The Recipient may request reimbursement of allowable costs up to the amount stated in ARTICLE 8. MARAD shall not be liable to Recipient for any costs incurred by Recipient, and Recipient shall not be entitled to any payments under this Agreement, in excess of the amount stated in Article 8. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall request reimbursement as soon as practicable after incurring a cost. If the Recipient requests reimbursement more than 180 days after a cost was incurred, MARAD may deny the request for being untimely.
- (c) The Recipient shall request reimbursement by completing forms in the Delphi e-Invoicing System, which is on-line and paperless. MARAD may deny a payment request that is not submitted through the Delphi e-Invoicing System.
- (d) The Recipient shall complete training on using the Delphi e-Invoicing System before submitting a request for reimbursement. To guide the Recipient when completing this training, MARAD provides the following additional information, which may change after execution of this Agreement:
 - (1) The Recipient may access the training from the USDOT “Delphi e-Invoicing System” webpage at <https://einvoice.esc.gov>, on the left is a tab labeled Grantee Training. We recommend using Internet Explorer for accessing the e-Invoicing System. Anyone can go to this site and view the training options. No login required. The training is linked under the heading “Grantee Training.” The Recipient should click on “Grantee Training” to access the training. This training does not provide a training certificate.
 - (2) A user-name and password are not required to access the on-line training. It is currently available, will be accessible 24/7, and will take approximately 10 minutes to complete.
- (e) Once the above referenced training has been completed, Recipients must request and complete the External User Access Request form in order to receive a user-name and password. Recipients can request the External User Access Request form by sending an email to a Grants/Contracting Officer who is identified in Section 9.1. A user-name and password will be sent once the External User Access Request form is received.
- (f) Requests for Reimbursement: When requesting reimbursement, the Recipient shall submit supporting cost detail with the SF-270 (available at <https://www.grants.gov/forms/post-award->

[reporting-forms.html](#)) to clearly document the cost incurred. costs incurred. Cost detail includes a detailed breakout of all costs incurred including direct labor, indirect costs, other direct costs, travel, etc. The DOT/Enterprise Service Center (ESC) OFO/FAA, Oklahoma City, OK and the Program Office, DOT/MAR 410 reserve the right to withhold processing requests for reimbursement until sufficient detail is received. In addition, reimbursement will not be made without DOT/ESC OFO/FAA and program official review and approval to ensure that progress on the Agreement is sufficient to substantiate payment. After approval, ESC will certify and forward the request for reimbursement to the payment office.

ARTICLE 12 – RESERVED

ARTICLE 13 – EQUAL OPPORTUNITY

During performance of this Agreement, the Recipient agrees as follows:

- (1) The Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (2) The Recipient shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
- (3) The Recipient shall, in all solicitations or advertisement for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (4) The Recipient shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (5) The Recipient shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Recipient's compliance with the applicable rules, regulations, and orders.
- (6) If the Government determines that the Recipient is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government assistance, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Recipient as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (7) The Recipient shall include the terms of this Article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding

upon each subcontractor.

By execution of this Agreement, Recipient certifies to all of the assurances set forth in SF424B, Assurances – Non-Construction Programs (available at <http://www.grants.gov/web/grants/forms.html>) in effect as of the effective date of this Agreement.

ARTICLE 14 – PROCUREMENT STANDARDS

The Recipient, and the Recipient's subcontractors, shall comply with the standards listed in 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, for all procurement actions pursuant to this Agreement. The Government has the right to review records of the Recipient and the Recipient's subcontractor's for the purposes of determining compliance with the applicable standards.

If any of the following cases apply, the Recipient shall forward the proposed contract to the Agreement Officer for review and approval prior to award:

- (1) The proposed contract is to be awarded on a sole source basis or where only one bid or proposal is received in which the aggregate expenditure exceeds \$5,000. (All proposed contracts specifying "brand name" products shall be considered sole source procurements.)
- (2) All proposed contracts in which the aggregate expenditure exceeds \$100,000.
- (3) All proposed contracts if it has been determined that the Recipient does not comply with the standards listed in 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Recipient is reminded that Executive Orders and U.S. law prohibit transaction with, and the provision of resources and support to, individuals and organizations associated with terrorism. It is the responsibility of Recipient to ensure compliance with these Executive Orders and laws. It is the policy of MARAD to seek to ensure that none of its funds are used, directly or indirectly, to provide support to individuals or entities associated with terrorism. Recipient shall check the Specially Designated Nationals and Blocked Persons List published by the U.S. Department of the Treasury's Office of Foreign Assets Control to assess available information on parties that are excluded from receiving Federal financial and nonfinancial assistance and benefits. This paragraph (with appropriate modifications to the parties) must be included in all subcontracts and subawards issued under this Agreement.

ARTICLE 15 – LIABILITY AND INDEMNITY

- (1) MARAD shall not be liable for any injury to another party's personnel or damage to another party's property unless such injury or damage is compensable under the Federal Tort Claims Act [28 U.S.C. §1346(b)], or pursuant to other Federal statutory authority. Similarly, the Recipient shall not be liable for any injury to another party's personnel or damage to another

party's property unless such injury or damage is compensable under state or federal law without regard to conflicts of law principles.

(2) As required by the Anti-deficiency Act, 31 U.S.C. §§1341 and 1342, all commitments made by parties in this Agreement are subject to the availability of appropriated funds and budget priorities. Nothing in this Agreement, in and of itself, obligates the signatory parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations.

(3) The Recipient agrees to indemnify and hold the Government harmless from all liability for the Recipient's own negligent acts and omissions and the results thereof. The Recipient assumes all risk, responsibility, and liability for itself, its agents, staff, employees and research personnel for monetary or other losses to persons, properties, the environment, or entities resulting in any manner from its performance under this Agreement or the conduct of its operations in which the products and services identified herein are utilized and/or furnished to others.

(4) This Agreement is for the exclusive benefit and convenience of the parties to this Agreement. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties to this Agreement.

(5) In addition to other remedies available to the Government, Recipient's failure to comply with the requirements of this Agreement may render Recipient subject to suspension or debarment, in accordance with 2 C.F.R. Part 180, as implemented by DOT in 2 C.F.R. Part 1200.

(6) In no case shall the Federal Government's financial liability exceed the amount obligated under this Agreement. No legal liability on the part of the Government for any payment may arise for performance under this Agreement beyond the funds obligated unless and until funds are made available to the Agreement Officer for performance and the Recipient receives written notice of availability from the Agreement Officer.

ARTICLE 16 – SUSPENSION OR TERMINATION

The following definitions apply under this Article:

Termination. Termination means the cancellation of a Federal award, in whole or in part, under an agreement at any time prior to the expiration of the period of performance.

Suspension. Suspension means an action by a Federal sponsoring agency that temporarily suspends a Federal award, pending corrective action by the Recipient or pending a decision to terminate the award by the Federal sponsoring agency.

If the Recipient has failed to comply with the terms of this Agreement, MARAD may, but is not required to, suspend this Agreement, pending corrective action by the Recipient, or a decision by MARAD to terminate this Agreement in accordance with this Article. Recipient acknowledges and agrees that suspension is not a prerequisite for any termination of this Agreement by

MARAD and that the Government's forbearance in not suspending does not constitute a waiver of its right to terminate. MARAD shall allow all necessary and proper costs that the Recipient could not reasonably avoid during the period of the suspension provided that they meet the provisions of the applicable Federal cost principles and the appropriation limitations contained herein.

MARAD may terminate this Agreement for cause upon written notice to Recipient if MARAD has determined that Recipient has failed to comply with the terms of this Agreement. Either party may terminate this Agreement for convenience by providing the other party with thirty (30) days advance written notice.

Within thirty (30) days after the termination date, Recipient shall deliver to MARAD a final PPR, which shall include, at a minimum, a summary of progress under this Agreement and any Data generated under this Agreement, and a final FFR, which shall include, at a minimum, an itemized accounting of costs incurred prior to the termination date.

ARTICLE 17 – DISPUTES

All disputes of fact or of interpretation under this Agreement, not disposed of by mutual agreement, shall be decided by the Agreement Officer who shall reduce the decision to writing and mail a copy thereof to the Recipient. Within thirty (30) days of receipt of such written decision, the Recipient may appeal in writing to MARAD's Associate Administrator for Administration. The Associate Administrator for Administration will fix a date for written submissions or oral presentations, or both, by the Recipient and the Agreement Officer, or their representatives. The Associate Administrator for Administration shall hand down a written decision which shall be final and conclusive upon the parties as to questions of fact. The Contract Disputes Act of 1978 does not apply to this Agreement. Subject to the provisions relating to the decision of the Associate Administrator being final and conclusive and Article 23, compliance with this Article does not preclude use of any other legal remedies by the Parties.

ARTICLE 18 – RIGHTS IN DATA/PUBLIC INFORMATION

(1) In consideration of the use of the Government's funding under this Agreement, Recipient hereby grants to the Government, for itself and others acting on its behalf, a paid-up, royalty-free, non-transferable, non-exclusive, irrevocable worldwide license to use, reproduce, distribute, display or make available publicly, and incorporate into any materials prepared by or on behalf of the Government, in whole or in part, in any manner and for any purposes whatsoever, the following (which shall referred to collectively as "Data"): all materials, data, information, designs, drawings, specifications, notes, and other works of any kind created, developed, or prepared by or on behalf of Recipient in the performance of this Agreement.

(2) Incorporation of third-party materials. If Recipient incorporates into its Data any materials copyrighted or copyrightable by a third-party, it shall identify and appropriately mark such

material and acquire on the Government's behalf the minimum rights necessary for Recipient to grant to the Government the license in paragraph (1) of this Article.

(3) **Ownership of Data.** Ownership of any Data which is first developed in the performance of this Agreement shall not transfer at any time to the Government, but shall be subject to the license granted to the Government in this Article. Recipient acknowledges and agrees that ownership of any materials provided by the Government which are incorporated into any Data first developed in the performance of this Agreement shall remain with the Government or third-party owner, as applicable.

(4) **Indemnity.** Recipient shall indemnify the Government and their officers, agents, employees, and contractors acting for them against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of the Data furnished under this Agreement; or any libelous or other unlawful matter contained in such Data.

(5) **Disputes.** All Disputes involving data rights under this Agreement or this Article shall first be attempted to be settled between Recipient and the Agreement Officer.

(6) **Gap-Filling.** To the extent an occurrence is not covered by the express language of this Article, the parties shall rely on the Federal Acquisition Regulation, FAR Data Rights Clauses contained in FAR 52.227-1 through 23 for guidance as applicable.

(7) **Public Information.**

a. Recipient will not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, pictures, still and motion pictures, articles, manuscripts or other publications) which states or implies Governmental or Government employee endorsement of a product, service, or position which Recipient represents. No release of information relating to this Agreement may state or imply that the Government approves of the work product of Recipient or considers Recipient's work product to be superior to other products or services.

b. Recipient will ensure that all information submitted for publication or other public releases of information regarding the activities supported by this Agreement will carry the following disclaimer:

“This material is based on work supported by the U.S. Department of Transportation Maritime Administration under Agreement No. 693JF72450004. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions, policies, or endorsements of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.”

c. Recipient will obtain prior written approval from the Agreement Officer for any public information release, brochure, or other material which refers to the Department of Transportation, any operating mode (including the Maritime Administration) or employee

(by name or title) thereof, or to this Agreement, or which includes the logo of the Department of Transportation or any operating mode thereof. The specific text, layout, photographs, etc., of the proposed public information release, brochure, or other material must be submitted to the AOR who will forward such materials to the Agreement Officer, along with the request for approval.

(8) Flow-down to Sub-recipients, Subawardees, Contractors, Subcontractors. Recipient shall include this Article, suitably modified to identify the Parties, in all lower tier agreements, regardless of tier, for any Data developed during or as part of this Agreement.

ARTICLE 19 – INSPECTIONS

The Government, through any authorized representatives, has the right at all reasonable times to make site visits to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed, to review financial and performance records, fiscal and administrative control systems, and to provide such technical assistance as may be required. The Government shall make every effort to notify Recipient at least seven (7) calendar days in advance of any site visit by Government representatives. If any site visit is made by the Government on the premises of the Recipient or its subrecipient, subawardee, subcontractor, or consultant, the Recipient shall provide and shall require all subrecipients, subawardees, subcontractors, and consultants to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits shall be conducted in such a manner as to not unduly delay the work being performed hereunder.

ARTICLE 20 – CLOSEOUT PROCEDURES

- (1) Recipient must account for any equipment acquired with funds provided by MARAD hereunder. No later than 120 calendar days before the expiration of this Agreement, Recipient shall request disposition instructions from MARAD for all equipment with a current per unit fair market value in excess of \$5,000. In accordance with 2 C.F.R. § 200.313, equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to MARAD.
- (2) Recipient shall submit a final PPR/SF-PPR and a final FFR/SF-425 within the time period set forth in Article 5.
- (3) If cost sharing is required, the failure to provide the required cost sharing amount shall result in disallowance of all or part of otherwise allowable Federal share costs, equal to Recipient's cost share amount required under this Agreement less Recipient's cost share actually provided.

- (4) In the event that a final audit has not been performed prior to the closeout of this Agreement, MARAD shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

ARTICLE 21 – OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or public official, shall be admitted to any share or part of this Agreement, or to any benefit arising from it. However, this provision does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

ARTICLE 22 – COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Recipient 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 recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 23 – PAYMENT OF INTEREST ON RECIPIENT'S CLAIMS

If an appeal is filed by the Recipient from a final decision under the Disputes Article, above, denying a claim arising under this Agreement, interest on the amount of the claim finally determined by the Associate Administrator for Administration to be owed by MARAD shall be payable to the Recipient. Such interest shall be at the rate determined pursuant to Public Law 103-160 and shall be computed from the date of the request for decision by the Associate Administrator for Administration.

ARTICLE 24 – PROHIBITION ON USE OF FUNDS FOR CERTAIN PURPOSES

While charging time to this Agreement, the Recipient, and anyone acting under the supervision or authority of the Recipient, may not engage in the following activities:

- (1) Attempting to influence legislation.
- (2) Organizing or engaging in protests, petitions, boycotts, or strikes.
- (3) Assisting, promoting or deterring union organizing.
- (4) Impairing existing contracts for services or collective bargaining agreements.
- (5) Engaging in partisan political activities or other activities designed to influence the outcome of an election to any public office.

- (6) Participating, in or endorsing, events or activities that is likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected Officers.
- (7) Engaging in religious instruction; conducting worship services; providing instruction as part of a Program that includes mandatory religious instruction or worship; constructing or operating facilities devoted to religious instruction or worship; maintaining facilities primarily or inherently devoted to religious instruction or worship; or engaging in any form of religious proselytization.
- (8) Providing a direct benefit to:
- a. A labor union;
 - b. A partisan political organization;
 - c. An organization engaged in the religious activities described in the preceding sub-clause, unless Agreement funds are not used to support the religious activities; or
 - d. A nonprofit entity that fails to comply with the restrictions contained in section(c)(3) of U.S.C. Title 26.

ARTICLE 25 – SEAT BELT USE/ TEXT MESSAGING WHILE DRIVING POLICIES AND PROGRAMS

(1) In accordance with Executive Order 13043, the Recipient of this award is encouraged to adopt on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles.

(2) FINANCIAL ASSISTANCE POLICY TO BAN TEXT MESSAGING WHILE DRIVING

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O.

"Driving"-

(1) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text Messaging" ---means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, financial assistance recipients and subrecipients of grants and cooperative agreements are encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving--

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as--

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Assistance Awards.* All recipients and subrecipients of financial assistance to include: grants, cooperative agreements, loans and other types of assistance, shall insert the substance of this clause, including this paragraph (c), in all assistance awards.

ARTICLE 26 – LOBBYING ACTIVITIES

Lobbying and fundraising. Funds provided by MARAD for project expenditures under this Agreement may not be used with the intent of influence a member of the U.S. Congress, a member of any U.S. Congressional staff or any official of any Federal, state, or local government in the United States (hereinafter “government official’s), to favor, adopt, oppose, by vote or otherwise, any U.S. legislation, law, ratification, policy, or other appropriation, or to include in any way the outcome of a political election in the United States, or for activities carried out for the purpose of supporting or knowingly preparing for such efforts. This includes awareness raising and advocacy activities that include fundraising or lobbying of U.S. Federal, State, or Local Governments. This does not include communications for the purpose of providing information about the Recipient and its programs or activities, in response to a request for any government official, or for consideration of action on the merits of a Federally-sponsored agreement or relevant regulator matter by a government official. Recipient will submit all applicable certifications and reports required under 49 C.F.R. Part 20.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

By signing this Agreement, the Recipient 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 grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant 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 grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

3. Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers and that all subawardees shall certify and disclose accordingly.

4. 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.

ARTICLE 27 – PRIVACY ACT

Records developed pursuant to this Agreement may be subject to the Privacy Act of 1974 and applicable Privacy Act rules and regulations.

ARTICLE 28 – SYSTEM OF AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for System of Award Management

Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you

review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this award term:

1. System of Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
4. Subaward:
 - a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. § 200.330).

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

ARTICLE 29 – APPLICABLE CIRCULARS/REGULATIONS

This Agreement shall be administered in accordance with and shall be subject to 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as implemented by the DOT in 2 C.F.R. Part 1201, which is incorporated by reference into this Agreement. All references in this Agreement to 2 C.F.R. Part 200 and any individual sections therein shall mean such Part and sections as implemented by DOT in 2 C.F.R. Part 1201 (regardless of whether Part 1201 is specifically mentioned). The following regulations and other administrative materials are also incorporated by reference.

A. Department of Transportation Regulations.

- 1) 49 C.F.R. Part 17 “Intergovernmental Review of Department of Transportation Programs and Activities”
- 2) 49 C.F.R. Part 20 “New Restrictions on Lobbying”
- 3) 49 C.F.R. Part 21 “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964”
- 4) 49 C.F.R. Part 32 “Government-wide Requirements for Drug Free Workplace (Financial Assistance)”

B. Others.

- 1) Treasury Circular No. 1075 “Regulations Governing Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs (31 C.F.R. 205)”
- 2) 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)”, as implemented by DOT in 2 C.F.R. Part 1200

ARTICLE 30 – CHOICE OF LAW

This Agreement shall be governed by the Federal law of the United States.

ARTICLE 31 – MISCELLANEOUS

1. No Assignment. No part of this Agreement may be assigned by Recipient to any other party without the prior written approval of MARAD.
2. Non-Exclusive Agreement. This Agreement in no way restricts Recipient or MARAD from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
3. Survival. Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
4. Partial Invalidity. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
5. No Employment or Agency Relationship. This Agreement is not intended to and shall not be construed to create an employment or agency relationship between MARAD and Recipient or Recipient members. Neither Recipient nor any of its members shall perform any function or make any decision properly reserved by law or policy to the federal government. Recipient and MARAD are separate and independent entities, and neither is the agent of the other.