

## CONSTRUCTION AGREEMENT

This Construction Agreement, hereinafter referred to as AGREEMENT, is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the COUNTY OF ORANGE, a political subdivision of the state of California, hereinafter referred to as "COUNTY" and Curtin Maritime Corp., hereinafter referred to as "CONTRACTOR,"

That COUNTY and CONTRACTOR, for considerations hereinafter named, mutually agree as follows:

1. CONTRACTOR shall accomplish to the satisfaction of the ENGINEER, as defined in Section B of the Special Provisions, all work described in this AGREEMENT and the plans and specifications, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for the:

### **SUNSET/HUNTINGTON HARBOUR MAINTENANCE DREDGING AND WATERLINE INSTALLATION PROJECT**

hereinafter referred to as PROJECT in accordance with this AGREEMENT. This AGREEMENT includes the following documents and their provisions which are incorporated herein by reference and made a part hereof as though fully set forth:

- A. "Standard Specifications for the Public Works Construction (Greenbook)," hereinafter referred to as STANDARD SPECIFICATIONS, except Sections 209, 214, 307, and 314 of the 2015 edition as published by Building News, Inc.
- B. The following portions of the "Standard Plans and Specifications" (and all standard specifications and plans referenced therein), Department of Transportation, State of California, 2010 Edition, hereinafter referred to as the CALTRANS STANDARD PLANS and CALTRANS STANDARD SPECIFICATIONS respectively:
  - a. Standard Specifications Sections: 9, 12, 15, 19, 42, 46-60, 61-67, 70, 72, 75, 82-86, 88, 90-91, and 95.
  - b. Standard Plan Nos.: A10, A20A-A20D, A24A-A24E, A62, A73A-A73C, A77, A81, D80-D86, T1-T5, T10-T17, all B Sheets, all RS Sheets, and all ES Sheets.
- C. The California Manual on Uniform Traffic Control Devices (CA MUTCD), 2012 Edition. This manual may be downloaded by accessing the following Department of Transportation, State of California, website:

[http://www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/ca\\_mutcd2012.htm](http://www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/ca_mutcd2012.htm)

- D. The OC Public Works Department (formerly the EMA/PFRD/RDMD) Standard Plans (current issue and Supplement(s) thereto) hereinafter referred to as STANDARD PLANS.
  - E. Notice to Contractors.
  - F. Proposal requirements and conditions (Section A of the Special Provisions).
  - G. Supplement to Part 1 of the Standard Specifications for Public Works Construction (Section B of the Special Provisions).
  - H. General Miscellaneous (Section C of the Special Provisions).
  - I. Permits (Section D of the Special Provisions).
  - J. Construction Details (Section F and G of the Special Provisions).
2. COUNTY agrees to pay and CONTRACTOR agrees to accept in full payment for the work to be performed pursuant to this AGREEMENT the sum of **\$8,031,508** subject to additions and deductions at the unit prices set forth in CONTRACTOR's proposal in accordance with the AGREEMENT documents. COUNTY agrees to make work progress payments in accordance with the provisions of Section 9-3.2 "Partial and Final Payment" of the STANDARD SPECIFICATIONS, which sums shall be computed from the prices set forth in the bid submitted by CONTRACTOR.

Interest shall begin to accrue on any unpaid progress payment thirty (30) days after the ENGINEER'S submittal of the progress payment estimate. Interest shall be equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

3. CONTRACTOR agrees to commence construction of the PROJECT within thirty (30) calendar days after receipt of a Notice to Proceed issued by the ENGINEER; CONTRACTOR shall notify the ENGINEER at least five (5) working days in advance of starting work and agrees to continue construction of PROJECT in strict compliance with the plans and Special Provisions, in a due and diligent workmanlike manner without interruption, and to complete construction thereof within:

**120 Working Days**

from the date of commencement of work. CONTRACTOR's notice to ENGINEER shall specify the commencement of work date and that date shall be used to compute the AGREEMENT completion date. CONTRACTOR may perform mobilization work prior to the commencement of work date. In the event that CONTRACTOR commences any other work prior to the date specified in the notice to ENGINEER, that earlier date shall be used to compute the AGREEMENT completion date.

With the consent of ENGINEER and submission and approval of all the following documents: bonds, insurance certificates, signed CONSTRUCTION AGREEMENT, each certified by COUNTY, and a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) in accordance with the State General Construction Activity Storm Water Permit, CONTRACTOR may commence work prior to issuance of Notice to Proceed. If consent is granted, the AGREEMENT completion date, as computed per paragraph 3, shall remain unchanged. Payment shall be made for work in accordance with Paragraph 2 above of the AGREEMENT.

For AGREEMENTS which contain a plant establishment and plant maintenance period, the following applies:

The sixty (60) calendar day plant establishment period shall be accomplished prior to ENGINEER recommending AGREEMENT construction acceptance by the Board of Supervisors, hereinafter referred to as "BOARD". The plant establishment period shall be included within the working day period allowed for this AGREEMENT. For the limited purpose of determining the completion of CONTRACTOR's plant maintenance responsibility, the sixty (60) calendar day plant maintenance period shall commence on the date of AGREEMENT construction completion as determined by the ENGINEER.

4. Liquidated Damages; Extension of Time:

In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay to the COUNTY as liquidated damages the sum of

**Two Thousand Five Hundred Dollars (\$ 2,500.00)**

for each and every calendar day's delay in finishing the work in excess of the summation of the number of working days prescribed herein and the number of working days granted for delays as prescribed in Section 6-6 of the STANDARD SPECIFICATIONS.

CONTRACTOR further agrees that such sum shall be deducted from payments due to or to become due to CONTRACTOR.

5. Change Orders:

COUNTY, through its Director, OC Public Works Department, or his designee, hereinafter referred to as "DIRECTOR," may approve contract cost increases in accordance with Public Contract Code Section 20142.

6. Wage Rates and Payroll Records:

The CONTRACTOR and subcontractors shall comply with Section 1777.6 which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

Travel and subsistence payments to each workman needed to execute the work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

CONTRACTOR and all Subcontractors shall comply with all applicable requirements of the Labor Code throughout the performance of the Contract, including but not limited to the following:

#### 6.1 WAGE RATES

CONTRACTOR and any Subcontractor(s) shall comply with the provisions of California Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. CONTRACTOR shall post all job site notices as required by Labor Code Section 1771.4(a), including a copy of these wage rates for each craft, classification, or type of worker needed in the performance of this Contract. Copies of these rates are on file at the principal office of COUNTY's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, CONTRACTOR and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

The COUNTY will not recognize any claim for additional compensation because of the payment by the CONTRACTOR of any wage rate in excess of the prevailing wage rate set forth in the AGREEMENT. The possibility of wage increases is one of the elements to be considered by the CONTRACTOR in determining his bid, and will not under any circumstances be considered as the basis of a claim against the COUNTY on the AGREEMENT.

#### 6.2 WAGE RATE PENALTY

CONTRACTOR and any Subcontractor(s) shall comply with the provisions of Labor Code Section 1775. CONTRACTOR and any Subcontractor(s) shall be subject to a penalty in an amount up to \$200, or a higher amount as provided by Section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done by the CONTRACTOR or Subcontractor(s) under the Contract.

#### 6.3 WORK HOUR PENALTY

As provided by Labor Code Section 1810, 8 hours of labor shall constitute a legal day's work, and 40 hours shall constitute a legal week's work. The time of service of any worker employed under the Contract shall be restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as provided herein.

CONTRACTOR shall forfeit to COUNTY \$25, or a higher amount as provided by Labor Code Section 1813, for each worker employed in the performance of this Contract by CONTRACTOR or by any Subcontractor(s) for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except as provided by Labor Code Section 1815.

#### 6.4 REGISTRATION OF CONTRACTORS

All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, CONTRACTOR and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

#### 6.5 PAYROLL RECORDS

CONTRACTOR and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

CONTRACTOR and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR or any Subcontractor(s) in connection with the work.

Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (i) The information contained in the payroll record is true and correct.
- (ii) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

The payroll records shall be certified and shall be available for inspection at the principal office of CONTRACTOR on the basis set forth in Labor Code Section 1776.

CONTRACTOR shall inform COUNTY of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

Pursuant to Labor Code Section 1776, CONTRACTOR and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that CONTRACTOR or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to COUNTY, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. CONTRACTOR acknowledges that, without limitation as to other remedies of enforcement available to COUNTY, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due CONTRACTOR. CONTRACTOR is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.

CONTRACTOR and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. CONTRACTOR shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of COUNTY's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, CONTRACTOR and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

7. Apprentices:

The CONTRACTOR shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his subcontractors.

CONTRACTOR agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000).

CONTRACTOR and subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

8. Antitrust Claims:

In accordance with Public Contract Code Section 7103.5, by entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code, arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the CONTRACTOR, without further acknowledgment by the parties. CONTRACTOR shall cause the above requirement to be inserted in all agreements with subcontractors.

9. Auditor - Controller Inspection:

CONTRACTOR agrees to permit COUNTY's Auditor-Controller, or his authorized representative (including auditors from a private auditing firm hired by COUNTY) or DIRECTOR, access during normal working hours to all books, accounts, records, reports, files and other papers or property of CONTRACTOR for the purpose of auditing any aspect of performance under this AGREEMENT. CONTRACTOR agrees to maintain such records in Orange County, California, for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this AGREEMENT or by law. CONTRACTOR agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, CONTRACTOR agrees to include a similar right to COUNTY to audit records and interview staff of any SUBCONTRACTOR related to performance of this AGREEMENT.

Should CONTRACTOR cease to exist as a legal entity, CONTRACTOR's records pertaining to this AGREEMENT shall be forwarded to the surviving entity in a merger or acquisition, or in the event of liquidation, to the DIRECTOR.

10. Federally Assisted Contract:

If this AGREEMENT is funded in whole or in part by the Federal Government, CONTRACTOR agrees to comply with the Federal labor standards provisions set forth in the Special Provisions. If the Federal prevailing wage determinations differ from the State's, CONTRACTOR shall not pay less than the higher of the two rates.

11. State Audit:

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this AGREEMENT involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this AGREEMENT.

The CONTRACTOR shall maintain records for all costs connected with the performance of this AGREEMENT including, but not limited to, the costs of administering the contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

12. Successors and Assigns:

The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

13. Entirety:

This AGREEMENT contains the entire agreement between the parties with respect to the matters provided for herein.

14. Severability:

If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

15. Governing Law and Venue:

This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

The parties specifically agree that by soliciting and entering into and performing services under this AGREEMENT, the CONTRACTOR shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under this AGREEMENT is completed, and continuing until the expiration of any applicable limitations period.



Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into this AGREEMENT, to waive any and all rights to request that an action be transferred for trial to another County under Code of Civil Procedure, Section 394.

16. Child Support Enforcement Requirements:

In order to comply with child support enforcement requirements of the COUNTY, within thirty (30) days of notification of selection for award of CONTRACT but prior to official award of CONTRACT, CONTRACTOR agrees to furnish to DIRECTOR the following:

1. In the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address;
2. In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security Number, and residence address of each individual who owns an interest of ten (10) percent or more in the CONTRACTOR's contracting entity;
3. A certification that the CONTRACTOR has fully complied with all the applicable federal and state reporting requirements regarding its employees; and
4. A certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

It is expressly understood that this data will be transmitted by COUNTY to governmental agencies charged with the establishment and enforcement of child support orders.

Failure of the CONTRACTOR to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment may result in the CONTRACT being awarded to another CONTRACTOR, or, in the event a CONTRACT has been issued, shall constitute a material breach of the CONTRACT. Failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute grounds for termination of the CONTRACT.

17. Charges, Fines, Penalties and Assessments

CONTRACTOR shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the COUNTY by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the CONTRACTOR, CONTRACTOR's subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the COUNTY. COUNTY is authorized to deduct any such charge, fine penalty, or assessment from any payment COUNTY is otherwise required to make to CONTRACTOR.

If any such charge, fine, penalty, or assessment is levied against the COUNTY subsequent to the completion of the PROJECT as a result of any action or omission as set forth above, CONTRACTOR shall nevertheless be responsible to the COUNTY for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the COUNTY.

CONTRACTOR shall be liable to the COUNTY for attorney's fees and costs incurred by the COUNTY in enforcing the provisions of this paragraph.

18. Amendments

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

19. Acceptance

Unless otherwise agreed to in writing by COUNTY acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of COUNTY.

20. Non-Discrimination

In the performance of this AGREEMENT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

21. Termination for Cause

- A. If CONTRACTOR refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in AGREEMENT or any extension thereof, or fails to complete said work within such time, the Board of Supervisors may and in accordance with Paragraph 40 below (Breach of Contract) by written notice to CONTRACTOR, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event, COUNTY may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the CONTRACTOR's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the COUNTY resulting from his refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in AGREEMENT and if COUNTY so terminates CONTRACTOR's right to proceed, or CONTRACTOR otherwise fails to complete the work to final completion, the resulting damage will include, but not be limited to, such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned by COUNTY in completing the work.
- C. If fixed and agreed liquidated damages are provided in AGREEMENT and if COUNTY does not so terminate CONTRACTOR's right to proceed, or CONTRACTOR otherwise fails to complete the work to final completion, the resulting damage will include, but not be limited to, such liquidated damages until the work is completed or accepted.
- D. CONTRACTOR's right to proceed shall not be so terminated nor the CONTRACTOR charged with resulting damage if:
- (1) The delay in the completion of the work arises from causes beyond the control and without the fault or negligence of CONTRACTOR, including, but not limited to, acts of God, acts of the public enemy, acts of COUNTY, acts of another contractor in the performance of a contract with COUNTY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both CONTRACTOR and such subcontractors or suppliers; and
  - (2) CONTRACTOR within ten (10) days from the beginning of any such delays (unless DIRECTOR grants in writing a further period of time before the date of final payment under the AGREEMENT), notifies DIRECTOR in writing of the causes of delay.

DIRECTOR shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the delay is justified. DIRECTOR shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to appeal as provided by law.

- E. The rights and remedies of COUNTY provided in this Section are in addition to any other rights and remedies provided by law or under this AGREEMENT.

22. Termination for Convenience

Notwithstanding any other provision of the AGREEMENT, the COUNTY may, at any time, and without any cause, terminate this AGREEMENT in whole or in part, upon not less than seven (7) days' written notice to CONTRACTOR. Such termination shall be effected by delivery to CONTRACTOR of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. CONTRACTOR shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the COUNTY. COUNTY shall pay CONTRACTOR for the Work completed prior to the effective date of the termination, and such payment shall be CONTRACTOR's sole remedy under this AGREEMENT. Under no circumstances will CONTRACTOR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The CONTRACTOR shall insert in all subcontracts that the sub-consultant shall stop work on the date of and to the extent specified in a notice of termination, and shall require sub-consultants to insert the same condition in any lower tier subcontracts.

23. Consent to Breach Not Waiver

No term or provision of this AGREEMENT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

24. Remedies Not Exclusive

The remedies for breach set forth in this AGREEMENT are cumulative as to one another and as to any other remedy provided by law, rather than exclusive; and the expression of certain remedies in this AGREEMENT does not preclude resort by either party from resorting to any other remedies provided by law.

25. Independent Contractor

CONTRACTOR shall be considered an independent CONTRACTOR and neither CONTRACTOR, its employees, nor anyone working under CONTRACTOR shall be considered an agent or an employee of COUNTY. Neither CONTRACTOR, its employees nor anyone working under CONTRACTOR shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

26. Indemnification

CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, their elected and appointed officials, officers, employees, agents and those special districts and agencies which County of Orange Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this AGREEMENT. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve CONTRACTOR of any insurance requirements of obligations created elsewhere in this AGREEMENT.

27. Bills and Liens

CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

28. Changes

CONTRACTOR shall make no changes in the work or perform any additional work without the COUNTY'S specific written approval.

29. Changes of Ownership

CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR'S business prior to completion of this AGREEMENT, the new owners shall be required under terms of sale or other transfer to assume CONTRACTOR'S duties and obligations contained in this AGREEMENT and complete them to the satisfaction of COUNTY.

30. Force Majeure

CONTRACTOR shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this AGREEMENT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and CONTRACTOR avails himself of any available remedies.

31. Confidentiality

CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY - related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this AGREEMENT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR'S staff, agents and employees.

32. Compliance with Laws

CONTRACTOR represents and warrants that services to be provided under this AGREEMENT shall fully comply, at CONTRACTOR'S expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. CONTRACTOR acknowledges that COUNTY is relying on CONTRACTOR to ensure such compliance, and pursuant to the requirements of the indemnification paragraph above, CONTRACTOR agrees that in accordance with paragraph 26 above, it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

33. Terms and Conditions

CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this AGREEMENT.

35. Headings

The various headings and numbers herein, the grouping of provisions of this AGREEMENT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

36. Calendar Days

Any reference to the word “day” or “days” herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

37. Attorney Fees

In any action or proceeding to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney’s fees, costs and expenses.

38. Interpretation

This AGREEMENT has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this AGREEMENT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the party that has drafted it is not applicable and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of the parties and this AGREEMENT.

39. Notices

Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties’ project managers’ routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For CONTRACTOR: Name: Curtin Maritime, Corp.  
Address: P.O. Box 2531  
City: Long Beach, CA 90801  
Attn: Kelly Curtin  
Phone: (310)991-7330  
Email: [Kelly@Curtinmaritime.com](mailto:Kelly@Curtinmaritime.com)  
Fax: (562)983-7269

For COUNTY: Name: Octavio Rivas, Deputy Director, OC  
Construction  
Address: 1152 E. Fruit Street  
City: Santa Ana, CA 92702  
E-mail: [Octavio.Rivas@ocpw.oc.gov](mailto:Octavio.Rivas@ocpw.oc.gov)  
Fax: (714) 667-7570

#### 40. Breach of Contract

The failure of the CONTRACTOR to comply with any of the provisions, covenants or conditions of this AGREEMENT shall be a material breach of this AGREEMENT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this AGREEMENT:

1. Afford the CONTRACTOR written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this AGREEMENT within which to cure the breach;
2. Discontinue payment to the CONTRACTOR for and during the period in which the CONTRACTOR is in breach; and
3. Offset against any monies billed by the CONTRACTOR but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

#### 41. Default

In the event any equipment or service furnished by the CONTRACTOR in the performance of this AGREEMENT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY's acceptance of the equipment or service, or any performance period specifically specified within the specifications or AGREEMENT, whichever is greater, the COUNTY may reject same, and it shall become the duty of the CONTRACTOR to reclaim and remove the items without expense to the COUNTY and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the CONTRACTOR fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the COUNTY shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the CONTRACTOR the difference between the price specified in this AGREEMENT and the actual cost to the COUNTY.



In the event the CONTRACTOR shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this AGREEMENT.

“Any loss or damage sustained by the COUNTY in procuring any equipment or service which the CONTRACTOR agreed to supply under this AGREEMENT but, by reason of the default or breach by the CONTRACTOR, failed to supply, shall be borne and paid for by the CONTRACTOR. Default shall include failure to carry out any of the requirements of this AGREEMENT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this AGREEMENT.”

#### 42. Conflict of Interest Contractor Personnel

The CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the CONTRACTOR; the CONTRACTOR’s employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. The CONTRACTOR’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

#### 43. Non-Employment of COUNTY Personnel

CONTRACTOR agrees that no employee of COUNTY or COUNTY INDEMNITEES who is involved in this PROJECT shall be given or offered employment by CONTRACTOR during the life of this AGREEMENT regardless of the assignments said employee may be given or the days or hours employee may work. By accepting this AGREEMENT, CONTRACTOR agrees, for the duration of this AGREEMENT, not to offer or discuss employment with any COUNTY or COUNTY INDEMNITEES employee involved in the performance of this AGREEMENT.

#### 44. Ownership of Documents

The COUNTY has permanent ownership of all directly connected and derivative materials produced under this AGREEMENT by the CONTRACTOR. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the CONTRACTOR without the express written consent of the COUNTY.

45. Title to Data

All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the CONTRACTOR in the performance of this AGREEMENT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the CONTRACTOR after completion or termination of this AGREEMENT without the express written consent of the COUNTY. All materials, documents, data or information, including copies furnished to CONTRACTOR by COUNTY must be returned to the COUNTY at the end of this AGREEMENT unless otherwise authorized in writing by the ENGINEER.

46. Availability of Funds

The obligation of COUNTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

47. Employee Eligibility Verification

The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this AGREEMENT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this AGREEMENT.

48. Contingency of Funding

CONTRACTOR acknowledges that funding or portions of funding for this AGREEMENT may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of California and Federal government to COUNTY. If such funding and/or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate or modify this AGREEMENT without penalty.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hand and seal the day and year first hereinabove written.

Curtin Maritime Corp.  
**CONTRACTOR**

By\* Kelley Curtin, CFO  
**TITLE**

By\* [Signature] **VICE PRESIDENT**  
**TITLE**

**FUNDING AGENCY**  
**COUNTY OF ORANGE**

By \_\_\_\_\_  
Chairman of its Board of Supervisors

**Signed and certified that a copy of this document has been delivered to the Chairman of the Board per Government Code Section 25103 and Board Resolution 79-1535**

Attest:

\_\_\_\_\_  
Clerk of the Board of Supervisors  
County of Orange, California

**Approved as to form:**  
**Office of the County Counsel,**  
**Orange County, California**

By [Signature]  
Deputy

**\* Note:** Pursuant to the requirements of the California Corporations Code Section 313, one of the following two methods must be used by a corporation when it enters into a contract:  
1) Two people must sign the document; One of them must be the Chairman of the Board, the President or any Vice-President. The other must be the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.  
2) One Corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be by a corporate resolution