**ANNEX H-2**

**FORM OF CONSENT AND AGREEMENT OF SHIPYARD AND SHIPOWNER**

**CONSENT AND AGREEMENT OF SHIPYARD AND SHIPOWNER**

**THIS CONSENT AND AGREEMENT OF SHIPYARD AND SHIPOWNER** (this “***Consent***”) is made as of , 20\_\_\_, by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a (the "***Shipyard***") and , a (the "***Shipowner***"), to and in favor of the United States of America (the "***United States***"), represented by the Maritime Administrator of the Maritime Administration (the "***Administrator***"), pursuant to Chapter 537 of Title 46 of the United States Code (“***Chapter 537***”).

**RECITALS**:

1. The Shipowner and the Administrator are parties to the Consolidated Agreement, Contract No. MA-\_\_\_\_\_\_, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ (the “***Agreement***”);
2. It is a condition of the Agreement that the Shipyard consents, acknowledges and agrees to:
   1. the assignment by the Shipowner of all of the right, title and interest of the Shipowner in and to the certain construction contract(s) dated as of , between the Shipyard and the Shipowner (the "***Construction Contract***"), insofar as it relates to the following vessels, including the hull and all work, material, goods, components, machinery, and equipment which are purchased for, identified for use in the hulls, whether or not located at the Shipyard (“***Vessels***”), together with all of Shipowner’s right, title and interest in and to the Vessels including their component parts and equipment:
      1. \_\_\_\_\_\_\_\_ [Official/Hull] Number \_\_\_\_\_\_\_\_;
      2. \_\_\_\_\_\_\_\_ [Official/Hull] Number \_\_\_\_\_\_\_\_;
      3. \_\_\_\_\_\_\_\_ [Official/Hull] Number \_\_\_\_\_\_\_\_;
      4. \_\_\_\_\_\_\_\_ [Official/Hull] Number \_\_\_\_\_\_\_\_; and
   2. the grant of a continuing security interest in, lien on and right of setoff against, all of the Shipowner’s right, title and interest in and to the Vessels including their component parts and equipment, to the Administrator; and
   3. the Shipyard and the Shipowner to agree to the modification and amendment of the Construction Contract as set forth herein.

***NOW, THEREFORE,*** in consideration of the premises herein, to induce the Administrator to issue a guarantee of the Note (Note Identifier No. \_\_\_\_\_\_\_\_), dated \_\_\_\_\_, issued by the Shipowner to the Federal Financing Bank, a body corporate and instrumentality of the United States (“FFB”), pursuant to the Note Purchase Agreement, dated \_\_\_\_\_\_\_\_, by and among FFB, the Shipowner and the Administrator pursuant to Chapter 537 (the “Administrator’s Guarantee”), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. As used herein, (a) capitalized terms defined above have the respective meanings given such terms above; and (b) unless otherwise defined herein, with respect to the Construction Contract, all capitalized terms shall have the meanings provided for by the Construction Contract and, with respect to Uniform Commercial Code (“UCC”) terms, all other capitalized terms contained in this Consent shall have, the meanings provided for by the UCC, as adopted in \_\_[State]\_\_.
2. The Shipyard acknowledges that it has received a true copy of the form of the Assignment of Construction Contract, dated \_\_\_\_\_\_ (the “***Assignment***”), executed by the Shipowner.
3. The Shipyard hereby acknowledges receipt of notice of, and hereby consents and agrees to the assignment and grant of a continuing security interest, lien and right of setoff in of all of the Shipowner’s right, title and interest in the Construction Contract and the Vessels, including their component parts and equipment, and the proceeds thereof, if any such exist, or shall exist in the future by the Shipowner to the Administrator pursuant to the Assignment. Such proceeds include any amounts that may be due to be refunded to the Shipowner by the Shipyard or by any subcontractor or supplier to the Shipyard arising out of the Construction Contract, as amended, and any subcontracts or supply contracts into which the Shipyard has entered into or may enter into as a part of construction process. In the event of a default of the Shipyard under the Construction Contract, the Administrator may enforce the Shipowner’s rights thereunder. In the event of any discrepancy between a position of the Administrator and a position of the Shipowner, the Administrator’s decision shall be binding on the Shipowner.
4. The Shipyard hereby acknowledges, understands and agrees that:

* + 1. The Administrator shall, by virtue of the Agreement, have no obligation or duty under the Construction Contract and shall not be required to make any payment due and owing by the Shipowner under the Construction Contract;
    2. The Shipyard shall pay any amount coming due to the Shipowner under the Construction Contract promptly to the Administrator for application pursuant to the Assignment so long as it shall not have received written notice from the Administrator that (i) the Guarantees shall have been terminated, and (ii) the Agreement is no longer in effect; upon receipt of such notice, the Shipyard shall promptly pay any such moneys to the Shipowner; and
    3. Except during any period after the Shipyard shall have received written notice from the Administrator indicating the existence of a Default under the Agreement and until the Administrator shall have notified the Shipyard in writing that such Default has been cured or waived, the Shipowner shall be entitled to exercise all of its rights under the Construction Contract with respect to the Vessels and to receive all of the benefits thereunder, subject to Paragraph 3(b) hereof, to the same extent as if the Construction Contract and the Vessels had not in any way been subjected to a continuing security interest, lien and right of setoff under the Agreement.

1. The Shipyard and the Shipowner hereby agree that the terms and conditions of the Construction Contract are hereby modified as follows:

1. Inspection by the Administrator’s Representatives. The Shipyard shall permit inspection by, supply information to, and cooperate with representatives of the Administrator at its yard where the assembly of the Vessels is now taking place and at such other yards of the Shipyard, its affiliates and subcontractors where parts of the Construction Contract or subcontracts may be performed. The Shipyard acknowledges that such cooperation may include, but is not limited, to providing the Administrator: (i) access to the Vessels and areas of the Shipyard where work related to the Vessels is being performed by the Shipyard, its contractors and subcontractors, at all reasonable times during normal working hours to inspect performance of the work on the Vessels performed by the Shipyard/Contractor pursuant to the Construction Contract, and to observe trials and other tests; (ii) copies of detailed production and construction schedules for the Vessels along with changes to such documents as they occur; (iii) access to contract plans and specifications for the Vessels; (iv) reasonable access to the Shipyard’s production manager or supervisor; (v) information on the origination and source of materials; and (vi) access to progress payment and construction milestone information. In conjunction with any such inspections by the Administrator, the Shipyard will furnish, on a temporary basis, reasonable space at its yard for the Administrator’s representatives and communication, copying and other facilities as appropriate. The Administrator’s access to the Vessels shall be at the Administrator’s and Shipowner’s sole risk. The Shipyard assumes no responsibility save for its own negligence or intentional acts, and Shipowner assumes full liability for any injury that the Administrator or its representatives, agent or contractor may sustain on the Vessels during its construction and the Shipowner hereby fully releases and discharges the Shipyard from any liability with respect thereto.
2. Changes in Construction Contract. Notwithstanding anything to the contrary contained in the Construction Contract, the Construction Contract shall not be amended, modified or terminated except in writing duly signed by the Shipyard and Shipowner with the Administrator’s prior written consent, provided that the Administrator’s prior written consent shall not be necessary, but prior written notice to the Administrator shall be given, for (i) any mandatory changes to the Construction Contract as a result of any requirements of any governmental agency, or (ii) any non-mandatory changes that Shipyard and Shipowner desire to make which do not exceed, with respect to any item of the Vessel’s construction, one (1%) percent of the Vessel’s contract price and which do not, in the aggregate, cause the Vessel’s contract price to be increased more than five (5%) percent or the delivery and completion date of the Vessel to be extended more than ten (10) days. Notwithstanding the foregoing, no change shall be made in the general dimensions and/or characteristics of the Vessel which would diminish the capacity of the Vessel to perform as originally intended by the Construction Contract, without the Administrator’s prior written consent.
3. Insurance. (i) From the time the first material destined for inclusion as part of the Vessels becomes at risk and until the Vessels have been physically delivered to and accepted by the Shipowner, the Vessels and all materials, outfit and equipment provided by the Shipowner for and to be used in the construction thereof, shall be kept fully insured under a full form Builder’s Risk Policy with a war risk endorsement under the latest American Institute Builder’s Risk Clauses, including loss or damage caused by strikers, locked out workmen, or persons taking part in labor disturbances, or riot or civil commotion and protection and indemnity clauses. The amount of such insurance shall be equal to the aggregate value of the work done including material, appurtenances, equipment and outfit delivered to the Shipyard for the Vessels at any time during the construction period including any such items furnished by the Shipowner. The amount of insurance, the terms of the policies and the underwriters shall at all times be satisfactory to the Shipowner and the Administrator.

(ii) The Shipyard shall, at its own cost and expense keep the vessel fully insured under the aforementioned Builder’s Risk Policy with a war risk endorsement. In addition, the Shipyard shall provide acceptable total loss only insurance covering the expenses of design and inspection, construction period interest and the Chapter 537 guarantee fee. All the above policies shall provide the following:

(A) All losses in excess of $ [INSERT Maximum Payment Amount of Losses Directly to Shipowner] shall be payable to the Administrator for distribution by him to himself, the Shipowner and the Shipyard as appropriate;

(B) The Shipowner, the Shipyard and the United States shall be named assureds;

(C) The policy shall provide no recourse against the United States and Shipowner for payment of premium; and

(D) At least ten (10) days prior written notice of any cancellation or material change in the policy shall be given to the Administrator, c/o the U.S. Department of Transportation, Maritime Administration, Attn: Division of Marine Insurance, 1200 New Jersey Ave., S.E. Washington, D.C. 20590.

(iii) The Shipyard shall also purchase and maintain, at its expense, during the life of the Construction Contract, Worker’s Compensation Insurance at statutory amounts, with Longshoreman & Harbor Workers Compensation Act coverage endorsements, Employer’s Liability Insurance in the amount of at least $10,000,000 and Public Liability Insurance against property damage, death and bodily injury in the amount of not less than $10,000,000.

(iv) A satisfactory confirmation of insurance outlining the pertinent terms and conditions of the Builder’s Risk Polic(ies) referred to above shall be provided to the Shipowner and the Administrator. The Shipowner shall be furnished a certificate of insurance for all other policies required hereunder. The original of the said Builder’s Risk Policy shall be available in the Shipyard’s office. All of the policies of insurance and certificates referred to herein shall contain a provision requiring the insurer at risk to give Shipowner and the Administrator ten (10) days’ notice, in writing prior to cancellation of any such insurance.

1. Progress Payments. Notwithstanding any provisions in the Construction Contract to the contrary, the Construction Contract and related contracts shall contain provisions for making periodic payments for the work performed under such contracts as are set forth on Exhibit A of this Consent and Agreement (each a “***Progress Payment***”). To be eligible for receipt of a Progress Payment, the Shipyard shall, as well as satisfying any other requirements of the Construction Contract, provide the Administrator and Shipowner a duly certified list, in form and substance satisfactory to the Administrator, identifying all Equipment (as hereinafter defined) and including any Equipment furnished by the Shipowner, which was received or paid for by the Shipyard, its subcontractors or its agents, on or prior to such Progress Payment.
2. Certificate of No Liens. At the time of delivery of the Vessels, the Shipyard agrees, on behalf of itself, or any party claiming through the Shipyard, to execute certificates of no liens, in form and substance satisfactory to the Administrator, with respect to the applicable Vessel, hull, or component parts, and all work that has previously been accomplished.
3. Title. Notwithstanding anything to the contrary contained in the Construction Contract, upon payment by the Shipowner of a progress payment due the Shipyard under the Construction Contract, title shall vest in Shipowner for all work performed and all materials, goods, and components incorporated in, attached to, or intended to be incorporated in or attached to the hull or the Vessels which were performed or received by the Shipyard or its agents and subcontractors prior to the date of said payment (such work, materials, goods, and components are hereinafter called the “***Equipment***”). Title shall also vest in the Shipowner when (i) any work is subsequently performed on any of the Equipment, or (ii) any materials, goods, or components which are subsequently received which have been incorporated in or attached to any of the Equipment, whether or not such work, materials, goods, or components have been paid for by the Shipowner (the “***Unpaid For Items***”).
4. Subordination. The Shipyard agrees to and does hereby fully subordinate to the rights of the Administrator all liens and security rights and remedies to enforce such rights which the Shipyard has or may have with respect to the Equipment or the Unpaid For Items. Upon the execution of this Consent and Agreement, the Shipyard shall provide to the Administrator the release or subordination of any claim to a security interest or other encumbrance, and the remedies to enforce such rights, held or claimed by any of the Shipyard’s lenders. Said release or subordination shall be in form and substance satisfactory to the Administrator. The Shipyard expressly warrants to the Shipowner and the Administrator that it has not entered into, and during the life of the Construction Contract shall not enter, into any indemnification agreement or other agreement whereby the Shipyard grants any liens, encumbrances or security interests, of any manner or type, which are superior in rank to the Administrator’s interests on any of the Equipment, Unpaid For Items, or any Vessel.
5. Equipment Proceeds. In the event that prior to delivery of the Vessel and (i) following the occurrence or during the continuance of any default by Shipowner under the Agreement or (ii) the occurrence or during the continuation of any material default by the Shipyard under the Construction Contract which would permit the Shipowner to cancel the Construction Contract, the Administrator shall have the sole right to sell the Equipment or the Unpaid For Items. Any proceeds the Administrator receives from the sale of the Equipment or the Unpaid For Items, after deducting any fees or costs it incurs in connection with the enforcement of its rights under the Assignment, shall be distributed promptly to the Administrator for payment of all amounts secured by the Agreement.
6. Distinct Obligations. The Shipyard hereby agrees and acknowledges that the obligations of the Shipowner under the Construction Contract with regard to the Vessel are separate, distinct and independent of any other obligation or agreement of the Shipowner and that a default by the Shipowner under such other obligation or agreement shall not in any way affect the obligations of the Shipyard under the Construction Contract with regard to the Vessel or permit the Shipyard to exercise any right of set-off or other remedy (all of which the Shipyard expressly waives and agrees not to assert) which could materially adversely affect the Construction Contract, the Vessel or the construction thereof.
7. Right to Cure. Notwithstanding anything to the contrary contained in the Construction Contract, the Shipyard agrees to give the Administrator written notice, concurrent with any notice given to the Shipowner under the Construction Contract, of any default by the Shipowner and hereby grants the Administrator thirty (30) days from the receipt of any such notice to cure any default under the Construction Contract, and the Shipyard agrees to take no action to enforce its rights pursuant to the Construction Contract until the elapse of said thirty (30) days.
8. Shipyard Cooperation. Notwithstanding anything to the contrary in the Construction Contract, the Shipyard agrees to fully cooperate with the Administrator in the event of a default pursuant to this Construction Contract or the Agreement so that the Administrator can enforce its rights to the Vessel, hull, or component parts, whether on board or not, which is located at a shipyard of the Shipyard or in the Shipyard’s possession. Such cooperation by the Shipyard shall be without any charge whatsoever to the Administrator or any other party for use of the Shipyard’s owned or leased land for a period of one hundred twenty (120) days. Following such 120-day period, a reasonable rental charge may be agreed upon by the Administrator. Furthermore, the Shipyard’s cooperation shall include, without limitation, allowing the Administrator and its agents unrestricted access to the Vessel, hull, or component parts, whether on board or not, during normal business hours. The Shipyard further agrees to provide adequate security, utilities, and the use of the Shipyard equipment to assist in removal of the Vessel, hull, or component parts, whether on board or not, solely on a reimbursement of actual cost basis, without any profit component for the Shipyard or its affiliates whatsoever.
9. Rights to Use Patents, Plans, Etc. In the event the Administrator shall declare a default under the Agreement, the Shipyard and the Shipowner shall, upon the Administrator’s request, promptly provide the Administrator a complete set of all plans and drawings for the Vessels, including all detailed construction drawings. To the extent the Shipyard, the Shipowner, or their affiliates hold or may hold any rights to patents associated with the construction of the Vessels or any rights to use technology, knowledge, or other intellectual property rights associated with the construction or use of the Vessels (“***Patent Rights***”), the Shipyard and the Shipowner, on behalf of itself and its affiliates, hereby grants the Administrator and the Administrator’s assignees, a license and full permission to use the Patent Rights for the purpose of completing construction of the Vessels and otherwise operating the Vessels. It is a condition of said license and permission that the Administrator or its assignee may only exercise its rights to use the Patent Rights in the event that the Administrator has been required to enforce its rights under the Assignment, and, provided, further that the exercise of such rights shall be restricted to the completion of construction of the Vessels, subsequent repairs of the Vessels, and modification or operation of the Vessels; such rights are not to be used in conjunction with any other existing or newly constructed vessel.
10. Shipyard Plans. Upon the delivery of the Vessels, or earlier if feasible, upon the Administrator’s request, the Shipyard and Shipowner agree to submit to the Administrator one (1) set of the Shipyard’s plans, in form and substance satisfactory to the Administrator, for the Vessels as built.
11. Notices. Any notice or other communication required or permitted to the Administrator under this Consent and Agreement shall be sent by electronic transmission with original communication sent by (i) registered or certified mail, postage prepaid, or (ii) nationally recognized overnight courier service, with confirmation, addressed as follows:

Maritime Administration

1200 New Jersey Avenue, S.E.

Washington, D.C. 20590

Attention: Director, Office of Marine Financing

Email Address: marinefinancing@dot.gov

1. The title of this Consent and Agreement and the headings of the sections are not a part of this Consent and Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.
2. In the event of any inconsistency or conflict between the terms and conditions of the Construction Contract and this Consent and Agreement, the Construction Contract shall be deemed to be amended to conform to this Consent and Agreement. Except as expressly amended and modified herein, the Construction Contract remains unchanged and in full force and effect.

*(SIGNATURE PAGE ON FOLLOWING PAGE)*

***IN WITNESS WHEREOF***, the undersigned has caused this Consent and Agreement to be duly executed as of the day and year first above written.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (SEAL)  Attest: | |  | SHIPOWNER | |
| By: |  |  | By: |  |
| Name: |  |  | Name: |  |
| Title: |  |  | Title: |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| (SEAL)  Attest: | |  | SHIPYARD | |
| By: |  |  | By: |  |
| Name: |  |  | Name: |  |
| Title: |  |  | Title: |  |

**EXHIBIT A**

**PROGRESS PAYMENTS**

**[TO BE COMPLETED]**

**(END OF ANNEX H-2)**