

CONTRACT N00024-09-C-4407

**CONTRACT FOR THE DONATION
OF THE BATTLESHIP EX-WISCONSIN (BB 64)**

THIS CONTRACT (the "Contract") entered into this 14 day of December, 2009, by and between the United States of America ("the Government"), represented by the Department of the Navy, and the City of Norfolk, Virginia ("the Donee") for the National Maritime Center, also known as Nauticus (hereinafter "Nauticus") located in Norfolk, Virginia.

WITNESSETH:

WHEREAS, 10 U.S.C. § 7306 authorizes the Secretary of the Navy ("the Secretary") to transfer by gift or otherwise, any vessel stricken from the Naval Vessel Register to any state, commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof, or the District of Columbia, or any not-for-profit or nonprofit entity; and pursuant to P.L. 109-163 Section 1014 of Fiscal Year 2006 Defense Authorization Act, and

WHEREAS, the Donee applied for donation of the battleship ex-WISCONSIN (BB 64) ("the Vessel"), and has indicated its intention to preserve and exhibit the Vessel and its Appurtenances; and

WHEREAS, the Donee agrees to make and keep the Vessel safe, and in a condition satisfactory to the Secretary, for public exhibition at no cost to the Government; and

WHEREAS, the Donee agrees to accept title to the Vessel;

NOW THEREFORE, the Government agrees to transfer the Vessel and its existing Appurtenances (equipment onboard the Vessel when the parties execute this Contract, except items belonging to the Hampton Roads Naval Museum or to the layberthing contractor) to the Donee and the Donee agrees to accept the Vessel subject to the following terms and conditions:

1. Responsibility of the Government

The Government shall deliver the Vessel and the Appurtenances to the Donee at the Vessel's current location at Nauticus in Norfolk, Virginia, on an "as is, where is" basis and without warranty of any kind, and shall notify the Donee of the delivery date 30-days in advance to enable the Donee to arrange for acceptance of delivery. The Vessel shall be delivered in its current state, including all present mooring equipment and Vessel Appurtenances.

The Government also shall:

(a) Terminate layberth contract No. N00024-06-2217, per clause 52.249-2 Termination for Convenience of The Government, with the Donee upon execution of this Contract.

2. Responsibility of the Donee

The Donee, including any successor in interest, shall:

(a) Accept the Vessel following execution of this Contract, take custody and control of the Vessel moored at Nauticus in Norfolk, Virginia.

(b) Establish and operate the Vessel as a museum and memorial on static display, i.e., exhibited solely at the permanent display site without unnecessary movement or towing of the vessel.

(c) Preserve and maintain the Vessel in a good state of repair, and in accordance with sound marine maintenance practice given that the Vessel is being used as a museum and memorial, at the Donee's own expense and without contribution by the Government. In accordance with 10 U.S.C. § 7306(b), the Donee shall maintain the Vessel in a condition satisfactory to the Secretary given the Vessel's status, no worse than the current condition, normal wear and tear excluded. The Donee shall further maintain the Vessel in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of the Vessel, and shall not allow the Vessel to become a menace to navigation or a danger to public health or safety.

(d) Obtain written approval from the Secretary or his authorized representative prior to any significant change in the management, mooring, towing, maintenance, operation, use and display of the Vessel and its equipment. Any alterations of the Vessel must preserve the capability of being reverted by the Navy, in the event the Navy requests the Donee return the Vessel in case of national emergency, pursuant to clause 9 (a) of this Contract. For the purpose of this Contract, changes will not be considered to be "significant" if they: (a) can be redone, reversed, or repaired in a shipyard in less than three (3) days, (b) are required to ensure safe and reasonable viewing access to the general public, and (c) do not alter the character-defining historic features of the Vessel. If towing is necessary for purposes such as maintenance or repair, the Donee shall submit to the Navy a towing and mooring plan that includes safety and insurance requirements, at least thirty (30) calendar days prior to any proposed movement of the Vessel, for Government review and approval. Donee shall not move the Vessel prior to obtaining such Government approval.

(e) Not activate or permit to be activated any system aboard the Vessel for the purpose of navigation or movement of the Vessel under its own power.

(f) Not use existing galley equipment for the purpose of preparing meals. Food may be available aboard the Vessel provided that Federal, State and local regulations are met.

(g) Maintain and use impressed cathodic protection and dehumidification systems where necessary to control corrosion.

(h) Allow the Government reasonable access to all of the Donee's records, documents, and facilities including the right to perform inspections annually, or as the Navy determines

necessary, so that the Government may assess whether the Vessel is in a condition satisfactory to the Secretary. Inspection by the Government does not relieve the Donee of the responsibilities assumed by the Donee.

(i) Take all steps necessary to comply with any written direction that the Government may reasonably prescribe for the protection, preservation, maintenance and repair of the Vessel.

(j) Comply with all Federal, State and local laws and regulations including but not limited to those regarding environmental protection, occupational safety and health, and public safety. The Donee shall allow Federal, State and local inspectors access to the Donee's records, documents and facilities to the extent required to ensure compliance with laws and regulations.

(k) Obtain from the appropriate authorities all certificates, licenses and permits required by law, regulation or local ordinance. Upon request by the Government, the Donee shall make current licenses and permits available for inspection.

(l) Neither transfer nor dispose of the Vessel or any part of the Vessel, or any interest the Donee may have in the Vessel, financial or otherwise, unless the Donee obtains prior written consent from the Secretary or his authorized representative.

(m) Require any successor in interest or manager of the Vessel to comply with all provisions of this Contract.

(n) Not assign any interest in this Contract or in the Vessel to a bank, factoring company or any other financial institution for the purpose of meeting financial or contractual obligations of the Donee. Similarly, the Donee shall not permit under any circumstances the attachment of a lien and/or perfection of a security interest regarding the Vessel. In the event of bankruptcy, this Contract shall not be assigned for the benefit of a trustee in bankruptcy, receiver or creditor of the Donee, by operation of law or otherwise.

(o) Notify the Navy should the Donee no longer be able or willing to maintain the Vessel as a museum and memorial.

3. Historic Preservation

(a) The Donee acknowledges that the Vessel may be eligible for listing in the National Register of Historic Places, and the Donee agrees to preserve the characteristics that may qualify the Vessel for inclusion in the National Register.

(b) No construction, alteration, modification or any other action shall be undertaken or permitted to be undertaken on the Vessel which would alter the character-defining historic features of the Vessel without the prior written permission of the Navy, signed by an authorized Navy representative, and consultation with the Virginia State Historic Preservation Officer (SHPO). The SHPO will be afforded thirty calendar days to review and comment on the Donee's submittal. Upon any such consultation, the SHPO will forward its comments to the Donee and the Navy. The Navy will review and consider the SHPO's comments, and within ten

calendar days of receipt of SHPO's comments and no later than forty calendar days from the date of receipt of Donee's request, provide the Donee with Navy's comments and response. The Donee will consult with the SHPO to develop any necessary management plan for the categorization and treatment of various parts of the Vessel. The management plan may incorporate standards from the Secretary of the Interior's Standards for Historic Vessel Preservation Projects.

(c) The Donee may undertake the following actions without prior Navy permission or any consultation under the National Historic Preservation Act:

(i) Any emergency action required to prevent or respond to fire, flooding, collision, or other incident that may endanger human life or the Vessel or pose an imminent threat to the environment;

(ii) Painting of the Vessel in the original color scheme;

(iii) Temporary modifications as specified in an approved tow plan. Stowage for sea as necessary for open-ocean towing.

(iv) Preservation and repair of teak weather decks with materials like-in-kind and species.

(v) Restoration or replacement of topside equipment or features removed during inactivation, such as antennas.

(d) The SHPO of the Commonwealth of Virginia shall be permitted at all reasonable times to inspect the Vessel in order to ascertain if the above conditions are being met.

(e) Violation of this section may constitute grounds for termination of this Contract under the provisions of Section 9(b) below.

4. Liability

(a) The Government shall not be responsible for loss or damage to the environment or to the property of the Donee or property of others or for bodily injuries to or death of the Donee's officers, agents, servants or employees, or other persons, including but not limited to invitees, arising from or incident to the use, operation, display, maintenance or mooring of the Vessel by the Donee.

(b) To the extent allowable by law, the Donee shall indemnify, save harmless and defend the Government from and against all claims, demands, actions, liabilities, judgments, costs, and any and all other costs of any kind, including but not limited to attorney's fees, arising out of, claimed on account of, or in any manner predicated upon or relating to bodily injury, death, property damage, or damage to natural resources caused by, arising from, or relating to possession or use of the donated property.

(c) To the extent allowable by law, the Donee shall indemnify the Government and hold the Government harmless for any fine, enforcement action, civil suit or other liability arising out of the Donee's failure to comply with Federal, State, or local laws or regulations, particularly with respect to potential environmental liabilities.

5. Insurance

(a) The Donee shall provide purchased insurance and/or a self-insurance plan equivalent to (i) tower's broad form liability insurance, including damage to the Vessel, and (ii) Tower's protection and indemnity insurance. During a necessary tow for hull repairs or maintenance, the minimum insurance amounts for (i) and (ii) above shall be two million dollars (\$2,000,000). While the Vessel is waterborne, the Donee shall maintain purchased insurance and/or a self insurance plan equivalent to Marine Hull and Protection and Indemnity Insurance in an amount not less than two million dollars (\$2,000,000). Once permanently moored, the Donee shall maintain purchased insurance and/or a self insurance plan equivalent to Marine Hull insurance in an amount not less than one million dollars (\$1,000,000) per occurrence and shall cover all physical damage risks to the vessel including, but not limited to risks of vandalism and malicious mischief. Additionally, the Donee shall maintain purchased insurance and/or a self-insurance plan equivalent to General Liability insurance, or the marine equivalent (P&I coverage), in an amount not less than two million dollars (\$2,000,000) (Singles Limit) per occurrence. Such insurance shall at all times, to the extent permitted by law, insure or cover the United States Government, its agents and employees, from liabilities incurred in berthing, preparation for use, repairing, displaying to the public, or any and all activities associated with this Contract.

(b) To the extent that the Donee does not procure purchased insurance, the Donee shall maintain the reserves in the Donee's self-insurance program in an amount equal to or greater than the coverage amounts defined in paragraph 5 (a) above. The Donee shall respond to requests by the Department of the Navy to provide confirmation and documentation of the Donee's programs of risk financing and insurance as they may pertain to this Contract. The Donee shall provide prompt (within three (3) business days) notification to the Department of Navy if the combination of the Donee's purchased insurance and self insurance reserves fall below the minimum insurance requirements as defined in paragraph 5 (a). Notification shall be sent to the Department of Navy, Naval Sea Systems Command, Washington Navy Yard, Washington, D.C. 20376-2701 or to such address as may be provided from time to time by the Department of the Navy.

(c) As to form and insurers, all purchased insurance shall be subject to the review by the Assistant Secretary of the Navy, Research, Development and Acquisition (RD&A), Department of the Navy, Washington, DC 20350-1000, to ensure full compliance with any of the insurance requirements of this Section 5 of the Contract. To the extent that the Assistant Secretary determines that such insurances do not reasonably meet the requirements of the Contract, the Donee shall timely cure the same or else be subject to the Default or Termination provisions of Section 9 below.

(d) To the extent that the Donee elects to purchase commercial, third-party insurance coverage for the Vessel or for Vessel related activities, all such insurance policies / coverages shall name the United States Government as an additional assured, shall include a waiver of subrogation against the United States Government, and shall provide for 30 days written notice of cancellation to the Department of the Navy, Naval Sea Systems Command, Washington Navy Yard, Washington, D.C. 20376-2701, or to such address as may be provided from time to time by the Department of the Navy.

(e) This Contract does not preclude the Donee from purchasing additional insurance naming the Donee as loss payee.

6. Loss Prior to Delivery

In the event the Vessel is declared a total loss or is substantially destroyed prior to delivery by fire, shipwreck, act of Providence or of a foreign power, or by any means whatsoever, whether by negligence on the part of the Government or not, this Contract shall become void and of no effect.

7. Health and Safety

(a) The Donee acknowledges that the Vessel was used for military and other purposes, and was not designed for public display or for use as a museum. As a result, the Vessel may contain potential hazards to the general public and individuals unfamiliar with structures, designs, arrangements and equipment commonly found in a marine or military environment.

(b) The Donee acknowledges that toxic substances including Polychlorinated Biphenyls (PCBs) are present on the Vessel and that the transfer to and use by the Donee of the Vessel are prohibited by the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, unless authorized by the Environmental Protection Agency (EPA). The Donee acknowledges that PCB items require special precautions to ensure against risks to health and the environment. The Donee shall manage all items on board the Vessel in accordance with TSCA and regulations implementing this statute, and in accordance with the requirements prescribed in the Donee's agreement with EPA.

8. Disputes

(a) This Contract is subject to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613. Any claim by the Donee against the Government, or by the Government against the Donee, shall be in writing and shall be submitted to an authorized representative of the Secretary for a written decision within six years after accrual of the claim.

(b) ~~When a claim exceeds \$100,000, or when arbitration or alternative dispute resolution~~ techniques will be used to resolve a claim in any amount, the Donee shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of the Donee's knowledge and belief, that the amount requested accurately reflects the amount for which the

Donee believes the Government is liable, and that the certifier is duly authorized to certify the claim on behalf of the Donee.

(c) The decision by the Secretary's representative on the claim shall be final and conclusive unless the Donee timely files an appeal or suit in accordance with the CDA. Pending final decision of an appeal, action, or final settlement, the Donee shall proceed diligently with performance of this Contract and in accordance with the Government's decision.

9. Termination

(a) *National Emergency.* In the event the President declares a national emergency pursuant to 50 U.S.C. § 1621, the Government may request the Donee to return the Vessel and the Donee shall return the Vessel to the Government on an "as is, where is" basis. Unless the Donee is notified otherwise, title to the Vessel shall revert to the Government immediately upon the Government's request.

(b) *Default by Donee.* In the event the Donee, or its assigns, fails to perform the obligations assumed under this Contract, including the Donee's obligations under the EPA/Donee PCB Agreement, the Secretary or his authorized representative may terminate this Contract, provided that written notice to terminate, specifying the particulars wherein it is claimed that this Contract has been violated, is transmitted by registered mail to the Donee. The Donee shall have ninety (90) days from the date of receipt of the written notice to cure the violations or deficiencies set forth in the notice or to begin diligent efforts to effect any cure which may require more than ninety (90) days to complete. If at the end of the notice period, the violations have not been cured, this Contract may be terminated, in which event the Donee shall forfeit to the Government any and all rights that it may have in the Vessel, including rights in any improvements made to the Vessel or fixtures attached by the Donee, as the Secretary or his authorized representative may decide. If this Contract is terminated for default, title to the Vessel shall revert to the Government without further remediation or removal of environmental encumbrances that were associated with the Vessel at the time of original donation, provided that any such encumbrances whose condition has deteriorated as a consequence of the Donee's actions or neglect shall be remediated to the satisfaction of the Government. The Donee shall be liable for costs associated with remediation and return of the Vessel to the Government.

(i) In the event the Donee breaches the Compliance Agreement Between the City of Norfolk, Virginia and the United States Environmental Protection Agency, such breach shall be deemed to be a breach of this Contract. If the Donee breaches this Contract by breaching its PCB compliance agreement with EPA, or in the event the Donee is no longer able or willing to maintain the Vessel as a museum or memorial, the Parties hereto shall have the right with respect to each other, to exercise their obligations, rights and remedies with respect to EPA pursuant to the Compliance Agreement Between the U.S. Navy and the U.S. Environmental Protection Agency and the Compliance Agreement Between the City of Norfolk, Virginia and the U.S. Environmental Protection Agency, as applicable. Such rights shall be in addition to the Government's right to terminate this Contract under Section 9(b).

(c) *Imminent Danger.* In the event the Vessel becomes a hazard to navigation, public health, safety or property, or in the event insurance coverage is not paid or is permitted to lapse, the Secretary or his authorized representative may immediately terminate this Contract. Upon such termination, the Donee shall forfeit to the Government any and all rights that it may have in the Vessel and title to and possession of the Vessel shall revert to the Government.

10. Equipment

At its own expense, the Donee shall maintain the machinery, equipment and appurtenances transferred with the Vessel in good condition and preservation given its status as a museum and memorial and in accordance with sound marine maintenance practice for such a vessel. After execution of this Contract, the Government may remove equipment from the Vessel to satisfy Fleet material needs, provided that the Donee agrees to the removal. If removal affects the display of the Vessel, the Navy will use its best efforts to provide suitable material or equipment as a replacement.

11. Acknowledgment

The Donee acknowledges that the Donee has executed, and furnished to the Government, the Navy Form "Assurance of Compliance" with Title VI of the Civil Rights Act of 1964.

12. Modification

The parties may modify this Contract by mutual agreement. Any modification shall be in writing and shall be signed by authorized representatives of the Government and the Donee.

13. Severability:

It is the intention of the parties that the provisions of this Contract shall be enforceable to the fullest extent permissible under the applicable law or laws. If any clause or provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, then the remainder of this Contract shall not be affected thereby and any reviewing court shall fully and completely enforce the same as if such illegal, invalid, or unenforceable clause was not a part of the Contract.

14. Title

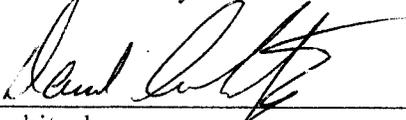
Upon execution of this Contract by both Parties, title to the Vessel shall vest in the Donee and title shall remain in the Donee, subject to the Termination clause above.

15. No Cost to Government

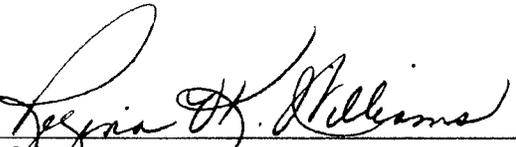
In accordance with 10 U.S.C. § 7306 (c), the Government shall not bear any cost as a result of the donation of the Vessel to the Donee, or as a consequence of the terms and conditions of this Contract.

IN WITNESS WHEREOF, this Contract has been duly executed as of the date first written above.

The UNITED STATES OF AMERICA,
Department of the Navy

By 
David Architzel
Vice Admiral, U.S. Navy
Principal Deputy Assistant Secretary of the Navy (Research, Development and Acquisition)

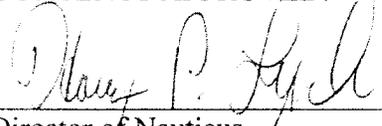
CITY OF NORFOLK

By 
City Manager

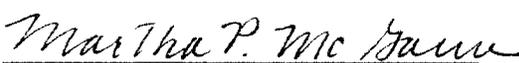
ATTEST:


City Clerk 11-23-09


CONTENTS APPROVED:


Director of Nauticus

FORM AND CORRECTNESS APPROVED:


Deputy City Attorney