



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

CONTRACT N00024-03-C-0201

CONTRACT FOR THE DONATION OF
EX-CAVALLA (AGSS 244)

THIS CONTRACT is entered into this 30th day of June, 2003, by the United States of America (the "Government"), represented by the Department of the Navy, and the Donees who are the Park Board of Trustees of the City of Galveston ("the Park Board"), and the Cavalla Historical Foundation (the "Foundation"), located in Galveston, Texas.

WITNESSETH:

WHEREAS, 10 U.S.C. § 7306 authorizes the Secretary of the Navy (the "Secretary") to transfer by gift or otherwise, after notice to Congress, 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

WHEREAS, the Donees have indicated their intention to preserve and exhibit the submarine ex-CAVALLA (AGSS 244) (the "Vessel") as a museum and memorial; and

WHEREAS, the Donees agree 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 Vessel is presently located at Sea Wolf Park, Pelican Island, Galveston, Texas where it is buried in earth up to its afloat waterline;

NOW THEREFORE, the Government agrees to transfer the Vessel to the Donees and the Donees agree to accept the Vessel subject to the following terms and conditions:

1. **Responsibility of the Government.** The Government shall deliver the Vessel to the Donees at the Vessel's current location on an "as is, where is" basis and without warranty of any kind.
2. **Responsibility of the Donees.** The Donees, including any successor in interest, shall:
 - (a) Take immediate custody and control of the Vessel at its current location in Sea Wolf Park, Galveston, Texas.

(b) Establish and operate the Vessel as a museum and memorial on static display at Sea Wolf Park.

(c) Preserve and maintain the Vessel in a good state of repair, and in accordance with standard marine maintenance practice, at the Donees' own expense and without contribution by the Government. In accordance with 10 U.S.C. § 7306, the Donees shall maintain the Vessel in a condition satisfactory to the Secretary, and 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 the public.

(d) Obtain written approval from the Secretary or his authorized representative prior to any significant change in the management, location, maintenance, operation, use and display of the Vessel and its equipment.

(e) Not use existing galley equipment for the purpose of serving meals.

(f) Acquire, maintain, and use impressed cathodic protection and dehumidification systems where appropriate.

(g) Allow the Government reasonable access to inspect the Vessel on an annual basis, 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 Donees of the responsibilities assumed by the Donees.

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

(i) Comply with all Federal, State and local laws and regulations, and obtain all certificates, licenses and permits required. Upon request by the Government the Donee shall make available for inspection records and documents regarding the Vessel.

(j) Comply with all Federal, State and local laws and regulations including, but not limited to, those relating to public and occupational safety, environmental planning and compliance, and historic, cultural, and natural resource management and preservation. The Donee also agrees to preserve historic features of the Vessel that may qualify the Vessel for inclusion on the National Register of Historic Places.

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

(l) 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 Donees. Similarly, the Donees shall not permit under any circumstances the attachment 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 Donees, by operation of law or otherwise.

(m) Promptly notify the Navy if the Donees are no longer willing or able to maintain the Vessel as a museum and memorial.

3. **Liability.**

(a) The Government shall not be responsible for loss or damage to the environment or to the property of the Donees or property of others, or for bodily injuries to, or death of, the Donees' 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 Donees. To the extent permitted by law, the Donees shall indemnify, hold 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.

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

4. **Insurance.** The Donees shall procure and maintain at their own expense, without reimbursement or contribution by the Government, the following insurance:

(1) General Liability Insurance in an amount not less than \$1,000,000 and such extended or umbrella coverage as it may be able to secure from time to time. The CAVALLA Historical Foundation, a non-profit I.R.S. 501 (c)(3) foundation, shall be named as an additional insured on such coverage.

(2) Public Sector Commercial Inland Marine Insurance in an amount of no less than \$150,000. To the extent permitted by law, the CAVALLA Historical Foundation shall be named as an additional insured on such coverage.

To the extent permitted by law, the policies shall name the U.S. Government and the Department of the Navy as additional insured so that the Vessel is maintained in a condition satisfactory to the Secretary. The insurance, including form and insurers, shall be subject to the approval of the Assistant Secretary of the Navy, Research, Development and Acquisition (RD&A), Insurance Examiner (ABM-PR), Department of the Navy, Washington, D.C. 20350-1000. All policies 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. This Contract does not preclude the Donees from purchasing additional insurance naming the Donees as loss payees.

5. Health and Safety.

(a) The Donees acknowledge that the Vessel was used for military purposes, and was not designed for public display or for use as a museum.

(b) The Donees understand that toxic substances including Polychlorinated Biphenyls (PCBs) may be present on the Vessel. The Donees acknowledge that PCB items and others require special precautions to ensure against risks to health and the environment. The Donees shall manage all these items on board the Vessel in accordance with the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.* and regulations implementing this statute.

7. Disputes.

(a) This Contract is subject to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613. Any claim by the Donees against the Government, or by the Government against the Donees, 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 Donees shall certify that the claim is made in good faith, that the supporting data are accurate and complete, that the amount requested accurately reflects the amount for which the Donees believe the Government is liable, and that the certifier is duly authorized to certify the claim on behalf of the Donees.

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

8. 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 Donees to return the Vessel and the Donees shall return the Vessel to the Government on an "as is, where is" basis. Unless the Donees are notified otherwise, title to the Vessel shall revert to the Government immediately upon the Government's request.

(b) *Default by Donees.* In the event the Donees, or its assigns, fail to perform the obligations assumed under this Contract, 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 Donees. The Donees 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

Donees shall forfeit to the Government any and all rights that they may have in the Vessel, including rights in any improvements made to the Vessel or fixtures attached by the Donees, as the Secretary or his authorized representative may decide. If this Contract is terminated for cause, 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 this Contract, and the Vessel shall be returned to the Government at its current location.

(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.

9. **Non-Appropriation.** The obligations of the Park Board to expend funds for the maintenance and operation of the Vessel are subject to appropriation by the Park Board of funds that are lawfully available to be applied for such purpose. If the Park Board fails to make such an appropriation prior to a fiscal period of the Park Board, for the expenditure of funds and payments scheduled in an upcoming fiscal period, the Park Board will promptly notify the Government of the funding shortfall. The Park Board may terminate this Contract for lack of funding by providing written notice of such termination to the Government not less than forty-five (45) days prior to the first day of any fiscal period of the Park Board during which the expenditure of funds or payments are scheduled. In the event funding by the Park Board is discontinued, all of the Park Board's right, title, and interest in and its obligations under this Contract, shall end on the last day of the last fiscal period for which the Park Board appropriated funds.

10. **Equipment.** At its own expense, the Donees shall maintain the machinery, equipment and appurtenances transferred with the Vessel in a good state of repair and preservation and in accordance with sound marine maintenance practice. After donation, the Government may remove equipment from the Vessel to satisfy Fleet material needs, provided that the Donees agree to the removal. If removal affects the display of the Vessel, the Government will use its best efforts to provide suitable material or equipment as a replacement.

11. **Acknowledgment.** The Donees acknowledge that they have executed and furnished to the Government, the Navy Form "Assurance of Compliance" with Title VI of the Civil Rights Act of 1964, Section 606 of the Federal Property and Administrative Services Act of 1949, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended.

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 Donees.

13. **Title.** Upon execution of this Contract by the parties, title to the Vessel shall vest in the Donees and title shall remain in the Donees, subject to Sections 8 and 9 above.

14. **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 Donees, 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,
Represented by the Department of the Navy

By Hansford T. Johnson
Name: Hansford T. Johnson
Title: Secretary of the Navy
Acting

CAVALLA HISTORICAL FOUNDATION
Galveston, Texas

By Zeb Alford
Name: Zeb Alford
Title: Chairman

PARK BOARD of TRUSTEES
Sea Wolf Park, City of Galveston, Texas

By Lou Muller 10/31/02
Name: Lou Muller
Title: Acting Executive Director