

Contract Nobs-3721

Supplemental Agreement No. 2.
and
Novation

The Star Spangled Banner Flag House Association, Incorporated (hereinafter referred to as The Association), a corporation duly organized and existing under the laws of Maryland with its principal office in Baltimore; the U.S.F. Constellation Foundation, Incorporated (hereinafter referred to as The Foundation), a corporation duly organized and existing under the laws of Maryland with its principal office in Baltimore; and the Department of the Navy (hereinafter referred to as the Navy) enter into this Agreement this 26 day of June, 1989.

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Navy has entered into certain contracts with the Association, namely: a contract designated Nobs-3721 and dated 22 July 1955. The term "the contracts" as used in this Agreement, means the above contract and all other contracts, including all modifications, made between the Navy and the Association before the effective date of this Agreement (whether or not performance has been completed and releases executed if the Navy or the Association has any remaining rights, duties, or obligations under these contracts). Included in the term "the

contracts" are also all modifications made under the terms and conditions of these contracts between the Navy and the Association, on or after the effective date of this Agreement.

(2) As of _____, 1989, the Foundation is in a position to fully perform all obligations that may exist under the contracts.

(3) It is consistent with the Government's interest to recognize the Foundation as the successor party to the contracts.

(4) The Foundation has represented that it is approved as a private, not for profit, tax-exempt Foundation under Section 501(c)(3) of the Internal Revenue Code of the United States of America.

(5) The contracts are subject to the Contract Disputes Act of 1978 (P.L. 95-563).

(6) The parties mutually agree to additional terms and conditions to reflect current Navy policy on donations.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT:

(1) The Association confirms the transfer to the Foundation, and waives any claims and rights against the Navy that it now has or may have in the future in connection with the contracts.

(2) The Foundation agrees to be bound by and to perform the contracts in accordance with the conditions contained in the contracts. The Foundation also assumes all obligations and liabilities of, and all claims against, the Association under the contracts as if the Foundation was the original party to the contracts.

(3) The Foundation ratifies all previous actions taken by the Association with respect to the contracts, with the same force and effect as if the actions had been taken by the Foundation.

(4) The Navy recognizes the Foundation as the Association's successor in interest in and to the contracts. The Foundation by this Agreement becomes entitled to all rights, titles, and interests of the Association in and to the contracts as if the Foundation was the original party to the contracts. Following the effective date of agreement, the term "Contractor," as used in the contracts, shall refer to the Foundation.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Navy against the Association.

(6) The Association guarantees payment of all liabilities and the performance of all obligations that the Foundation (i) assumes under this Agreement or (ii) may undertake in the future should these contracts be modified under their terms and conditions. The Association waives notice of, and consents to, any such future modifications.

(7) Article XII of the Contract, entitled "Disputes Clause" is hereby deleted in its entirety and the following is substituted;

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim", as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A

claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that-

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- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by

(A) A senior company official in charge at the contractor's plant or location involved; or

(B) An officer or general partner of the contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(c) THE FOLLOWING TERMS AND CONDITIONS ARE HEREBY ADDED TO THE CONTRACT:

~~1/2/02~~ The Foundation is hereinafter referred to as The DONEE or donee.

_____ The Navy is also referred to as the donor.

XVI. The DONEE shall comply with all Federal, State and local laws and regulations in being or that may be hereinafter enacted or issued relating to protection of the environment, public health, and safety.

XVII. The DONEE shall procure and maintain at its own expense, without reimbursement or contribution by the Government, marine hull and protection insurance in the amount of \$1,000,000.00 and collision protection and indemnity liability insurance in the amount of \$500,000.00. The DONEE shall further procure not less than \$250,000.00 of fire and extended-coverage insurance, including risks of vandalism and malicious mischief, and third-party property damage shall at all times protect the United States Government, its agents from fault, negligence, wrongful acts or omissions of the Government, its agents or instrumentalities or their agents or employees, in berthing, preparation for use, repairing or any other use. Hull insurance shall name the Secretary of the Navy as loss payee. Liability insurance shall name the United States Government and Department of the Navy as additional insured and shall, as to form and insurers, be subject to the approval of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Insurance Section ASN (S&L) (CBM-CM-M), Washington, D.C. 20360.

XVIII. The DONEE acknowledges that it has executed and furnished to the Government representative under this contract the Navy form for "Assurance of Compliance with the Department of

Defense Directive under Title VI of the Civil Rights Act of 1964"; that it has read the explanation of the Department of Defense accompanying said Navy form; and that all sanctions imposed and actions taken as a result of non-compliance therewith shall be in accordance with DOD Directive 5500.11, dated May 27, 1971, "Non-Discrimination in Federally Assisted Programs."

XIX. No expense shall result to the Government as a consequence of the terms and conditions prescribed hereunder.

XX. The DONEE agrees to allow representatives of the Government access to all of the donee's records, documents, and facilities, including the Vessel, to assure the accuracy of information provided the donor and compliance with the terms of this contract.

THE UNITED STATES OF AMERICA
BY:



Title Secretary of the Navy, 26 June 1989

THE STAR SPANGLED BANNER FLAG HOUSE
ASSOCIATION, INC.

BY:



Title President



THE U.S.F. CONSTELLATION FOUNDATION,
INC.

BY:

Herbert E. Witz

Title President



CERTIFICATE

I, Charlotte Moore, certify that I am the Secretary of U.S.F. Constellation Foundation, Inc.; that Herbert E. Witz, who signed this Agreement for this corporation, was then President of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this
26th day of April 1989

By

Charlotte Moore

[CORPORATE SEAL]

CERTIFICATE

I, Charlotte Moore, certify that I am the Secretary of The Star Spangled Banner Flag House Association, Inc.; that Herbert E. Witz, who signed this Agreement for this corporation, was then President of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this
26th day of April 1989

By

Charlotte Moore

[CORPORATE SEAL]