CONTRACT N00024-12-C-4212

CONTRACT FOR THE DONATION OF THE DESTROYER EX-EDSON (DD 946)

THIS CONTRACT (the "**Contract**") entered into this 17TH day of MAY, 2012, by and between the Department of the Navy, United States of America (the "**Government**") and the Saginaw Valley Naval Ship Museum (the "**Donee**") located in Bay City, Michigan (together, the "**Parties**").

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 or any captured vessel, to any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof, the District of Columbia, or any not-for-profit or nonprofit entity; and

WHEREAS, the Donee applied for donation of the Destroyer ex-Edson (DD 946) (the "**Vessel**") (the hull and the structure of the ship), and has indicated its intention to preserve and exhibit the Vessel and its **Appurtenances** (machinery, equipment, and furnishings onboard the Vessel at the time of **Removal** (physical transfer of custody and control to Donee upon the Donee's removal of the Vessel from Navy's custody)); and

WHEREAS, the Donee has entered into an agreement with the Environmental Protection Agency ("**EPA**") concerning the maintenance and continued use of regulated Polychlorinated Biphenyl ("**PCB**") containing materials onboard the Vessel (the "**EPA/Donee Agreement**," attached as Appendix A) and the Department of the Navy has entered into an agreement with the EPA concerning the transfer and distribution in commerce of regulated PCB containing materials onboard the Vessel (the "**EPA/Navy Agreement**," attached as Appendix B); and

WHEREAS, the Donee agrees to maintain the Vessel in a condition satisfactory to the Secretary at no cost to the Government, suitable for public display, and if maintained water-borne, in a towable condition to facilitate periodic dry docking for underwater hull preservation; and

WHEREAS, the Donee agrees to accept title to the Vessel, inclusive of all financial responsibility for the continued maintenance, preservation, periodic dry docking if stored water-borne, and ultimately for disposal of the Vessel at the end of its useful life as a museum/memorial;

NOW THEREFORE, the Government agrees to transfer ownership of the Vessel and its existing Appurtenances to the Donee and the Donee agrees to accept ownership of the Vessel subject to the following terms and conditions:

1. Title

Following execution of this Contract by the Parties and upon the Removal of the Vessel from Navy's custody by the Donee, title to the Vessel shall vest in the Donee and shall remain in the Donee until transferred or terminated pursuant to paragraph 10 of this Contract.

2. No Current or Future Cost or Expense to the Federal Government

In accordance with 10 U.S.C. § 7306, the donation of this Vessel is at no cost to the United States and the Government shall not bear any current or future costs as a result of the donation.

3. Conditions Related to the Vessel

The Donee, including any successor in interest, shall be subject to the following terms and conditions:

(a) *Removal.* Within 60 days of execution of this Contract, the Donee shall remove the Vessel from Navy custody at the Vessel's current location. The Government provides the ship as-is, where-is without warranty of any kind. At least 30 days prior to removal from Navy custody, the Donee shall submit for approval to the Navy its final tow plan in conformance with the U.S. Navy Tow Manual. Failure of the Donee to remove the Vessel from Navy custody within the time allowed and without an approved extension may result in termination of this Contract.

(b) *Operation as Museum.* The Donee shall establish and operate the Vessel as a stationary ship museum and/or memorial for public display in the United States. The Donee shall continuously maintain its non-profit organization status in accordance with Section 501(c)(3) of the U.S. Internal Revenue Service tax code.

(c) *Condition Satisfactory.* In accordance with 10 U.S.C. § 7306(b), maintain the Vessel and its Appurtenances in a condition satisfactory to the Secretary. This means that the Donee shall preserve the Vessel to maintain infinite life as a public museum or memorial by preventing and controlling deterioration and corrosion. If stored water-borne, the Donee shall maintain the Vessel in a towable condition to facilitate transport to a dry dock for periodic underwater hull preservation or to a ship dismantling yard. The Donee shall maintain the Vessel in a configuration consistent with the time period of the Vessel's operational history in the U.S. Navy.

(1) The Donee shall maintain and use cathodic protection and dehumidification systems, or equivalents, to prevent and control underwater hull corrosion and internal condensation and corrosion.

(2) The Donee shall provide the Government reasonable access to the Donee's records, documents, and facilities, including the right to perform Vessel inspections, so that the Government may assess whether the Vessel is maintained in accordance with this

Contract. Inspection by the Government does not relieve the Donee of any responsibility assumed by the Donee.

(d) *Activation of Systems.*

(1) The Donee shall 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.

(2) The Donee shall not activate for use other than cosmetic display, safety or maintenance any weapon system, radar or sonar system, electronic systems, or any installed machinery aboard the Vessel requiring the use of petroleum products.

(e) *Compliance with Law.* The Donee shall comply with all applicable Federal, State, and local laws and regulations, including but not limited to those regarding environmental protection, occupational safety and health, and public safety.

(f) *Financial Assignment.* The Donee shall not assign any interest in this Contract or in the Vessel to any institution for the purpose of meeting any financial obligation of the Donee. Similarly, the Donee shall not permit the attachment of a lien or the perfection of a security interest regarding the Vessel. In the event of bankruptcy, neither the Vessel nor this Contract shall be assigned for the benefit of a trustee in bankruptcy, receiver or creditor of the Donee, by operation of law or otherwise.

(g) *Transfer.* The Donee shall not transfer any interest the Donee has in the Vessel and its Appurtenances, or any substantial part of the Vessel or its Appurtenances, unless the Donee obtains the prior written consent from the Secretary.

(1) The Donee shall require any successor in interest of the Vessel to agree to and comply with all provisions of this Contract. Any attempt to transfer the Vessel without such an agreement from the successor in interest will be null and void.

(h) *Disposal.* At the end of the Vessel's useful life as a museum/memorial, the Donee shall dispose of the Vessel in a manner consistent with the DoD Demilitarization manual after obtaining written consent from the Secretary. As the Vessel was not designed for an infinite life, the Donee must accomplish all necessary maintenance and preservation to prevent deterioration and corrosion to ensure its indefinite life or develop an end of life plan for the disposal of the Vessel in compliance with all applicable U.S. laws and regulations. By accepting the transfer of the Vessel, the Donee accepts responsibility and liability for the deferred demilitarization of the hull. The DoD Demilitarization Manual requires complete destruction of a warship's hull.

4. <u>Historic Preservation</u>

(a) *Historic Property.* The Donee acknowledges that the Vessel is listed in the National Register of Historic Places as a National Historic Landmark. The Donee agrees to preserve the characteristics of the Vessel that qualifies it for inclusion in the National Register of Historic Places.

(b) *Prohibition.* No construction, alteration, modification or any other action shall be undertaken or permitted to be undertaken on the Vessel by the Donee that would materially alter the character-defining historic features of the Vessel without the prior consultation with and approval of the Michigan State Historic Preservation Officer (SHPO). The Donee shall afford the SHPO thirty calendar days to review and comment on the Donee's proposed plans. If the Michigan SHPO fails to respond within those thirty days, the Donee may proceed with the undertaking. 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) *Scope.* The Donee may undertake the following types of actions without prior consultation with the Michigan SHPO:

(1) 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;

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

(3) Temporary modifications as specified in an approved transport and tow plan (e.g., tow preparations) as necessary for open-ocean transport/towing.

(4) Preservation and repair of the Vessel with materials like-in-kind and species.

(d) *SHPO Inspection.* The Michigan SHPO shall be permitted at all reasonable times to inspect the Vessel in order to ascertain whether the above conditions are being met.

(e) *Violations.* In the event of a violation of this section, the Michigan SHPO or the Government may, following reasonable written notice to the Donee, institute a suit to enjoin the violation, seek damages, or require the restoration of those aspects that have been materially altered. This is in addition to any other remedy available under this Contract or at law or equity.

5. <u>Liability</u>

(a) The Government shall not be responsible for loss or damage to the environment, to the property of the Donee or 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, fines, enforcement actions, civil suits, 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, damage to natural resources, or failure to comply with any law or regulation (including potential environmental liabilities) caused by, arising from, or relating to, possession or use of the donated property.

6. Insurance

(a) *Towing Insurance*. For any tows, the Donee shall maintain 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. The minimum insurance amounts for (i) and (ii) above shall be one million dollars ($1,000,000).

(b) *Waterborne Insurance*. 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 one million dollars ($1,000,000).

(c) *Permanent Moored Insurance*. 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 five hundred thousand dollars ($500,000) 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 one million dollars ($1,000,000) (Singles Limit) per occurrence.

(d) *Indexed Amounts*. Every fifth anniversary of the execution of this Contract, all dollar amounts in this section shall be indexed to dollars at the time this Contract was signed and shall be adjusted based on the change in the most recent Consumer Price Index for all-urban consumers published by the Bureau of Labor Statistics or any successor index. The Donee shall modify its insurance policies as soon as practicable but no later than 120 days after the index adjustments are made.

(e) *Self-Insurance*. 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 any required coverage amounts.

(f) *Government*. 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 or coverages shall name the Government as an additional insured, and shall include a waiver of subrogation against the Government. All 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.

(g) *Notice*. The Donee shall notify the Government within three business days if the combination of the Donee's purchased insurance and self insurance reserves fall below the minimum insurance requirements.

7. Escrow Fund

(a) The Donee shall develop and maintain an escrow plan for the long-term maintenance of the Vessel. The Donee agrees to use the fund only for long-term maintenance (including periodic drydocking and underwater hull preservation, if water-borne), ship disposal, or contract termination costs. The Donee agrees not to use this fund for any other purpose, including the Donee's day-to-day operations or regular maintenance of the Vessel. Each fiscal year, the Donee shall place sufficient amounts in escrow to fully fund the applicable escrow plan.

(c) If the Donee is unable to develop and maintain a realistic escrow plan with sufficient funds, the Donee shall either transfer or dispose of the Vessel at its own costs pursuant to paragraph 10.

8. 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 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. 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 EPA/Donee Agreement.

9. Disputes

(a) This Contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) ("**CDA**").

(b) All disputes arising under or relating to this Contract shall be resolved under the CDA.

(c) For purposes of the CDA, all references to the contractor in the CDA shall be the Donee and all references to the contractor officer in the CDA shall be to the Secretary's duly authorized representative.

10. Termination/Transfer/Disposal

(a) *Termination in the Event of a National Emergency.* The Secretary may terminate this Contract and retake possession of the Vessel as-is, where-is, should the Secretary determine that the Vessel is needed for reactivation in the event of a national emergency.

(b) *Default by Donee.*

(1) The Government may, by written notice of default to the Donee, unilaterally terminate this Contract if the Donee fails to:

(i) Remove the Vessel from Navy's custody within the time specified in this Contract or any extension;

(ii) Comply with the EPA/Donee Agreement such as to constitute a breach of that Agreement;

(iii) Perform any provision of this Contract; or

(iv) Prevent the Vessel from becoming a hazard to navigation, public health, safety, or property.

(2) The Government's right to terminate this Contract under subdivisions (b)(1)(i) to (iii) of this section may be exercised if the Donee does not cure such failure within 90 days (or more if authorized in writing by the Secretary) after receipt of the notice from the Secretary specifying the failure. The Government's right to terminate this Contract under subdivision (b)(1)(iv) of this section may be exercised by the Secretary immediately, without a cure period.

(3) If the Government terminates this Contract, it may acquire, under the terms and in the manner the Secretary considers appropriate, supplies or services necessary to bring the Vessel into compliance with paragraph 2(c) of this Contract. The Donee shall be liable to the Government for any and all costs of those supplies or services.

(4) If this Contract is terminated for default, the Donee shall, if requested by the Secretary, transfer title to the Vessel, including title to any improvements made to the Vessel or fixtures attached by the Donee and all Appurtenances transferred to the Donee under this Contract, to the Government.

(i) If the Government elects to take title to the Vessel, the Donee shall be liable for damages for all costs associated with returning the Vessel and its Appurtenances to the Government including, without limitation, dredging, towing, and repairs.

(ii) If the Government terminates this Contract due to a breach of (b)(1)(ii) of this section, the parties shall continue to have the rights, obligations, and remedies provided by the EPA/Navy Agreement and the EPA/Donee Agreement, which shall remain binding and unaffected by the termination. The rights provided under the EPA/Navy and the EPA/Donee Agreements shall be in addition to the rights and remedies under this Contract.

(5) The rights and remedies of the Government in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

(c) *Transfer of Vessel.* With the Consent of the Secretary, the Donee may transfer the Vessel and its Appurtenances pursuant to paragraph 3(g). Once the new owner is bound by the terms of this Contract and the Vessel is transferred, the Donee shall have no further obligations under this Contract, unless otherwise agreed to by the Parties.

(d) *Disposal of Vessel.* With the consent of the Secretary, the Donee may dispose of the Vessel and its Appurtenances pursuant to paragraph 3(h). Once the Vessel and its Appurtenances are properly disposed of, the Donee shall have no further obligations under this Contract, unless otherwise agreed to by the Parties.

11. Compliance with Social Policies

This Contract incorporates the terms of the Navy's "Assurance of Compliance." The Donee agrees to comply 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 0f 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 Donee. Copies of all modifications shall be kept with all executed copies of this Contract.

13. Severability

If any provision of this Agreement is found to be unenforceable, the unaffected provisions will remain in effect and the Parties will negotiate a mutually acceptable replacement provision consistent with the Parties' original intent.

14. Point of Contact

Any decision by the Secretary may be made by his duly authorized representative. All communications and notifications shall be sent to the Department of Navy, Naval Sea Systems Command, Washington Navy Yard, D.C. 20376-2701 or to such address as may be provided from time to time by the Government.

15. Entire Agreement

This Contract, including any attachments and incorporations, constitutes the entire agreement between the Parties and supersedes all prior written and verbal agreements, representations, promises, or understandings by and between the Parties.

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 _____
President
Saginaw Valley Naval Ship Museum
Bay City, Michigan

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