

CONTRACT N00024-08-C-0201

CONTRACT FOR THE DONATION OF EX-DOLPHIN (AGSS 555)

THIS CONTRACT entered into this 9th day of September 2008, by and between the United States of America (the "Government"), represented by the Department of the Navy (the Navy) and the Maritime Museum of San Diego (the "Donee"), located in San Diego, California.

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 Donee has submitted an application for donation transfer of the former auxiliary research submarine ex-DOLPHIN (AGSS 555) (the "Vessel") and appurtenances, and has indicated its intention to preserve and exhibit the Vessel; 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 and ownership of the Vessel and all financial liability associated with the continued maintenance and ultimate disposal of the Vessel.

NOW THEREFORE, the Government agrees to transfer the Vessel 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 appurtenances to the Donee at the Vessel and appurtenances' current location on an "as is, where is" basis and without warranty of any kind. Appurtenances consist of the Vessel's submarine separator, currently used for mooring the vessel to a pier, and the dry-dock blocking cradle.

2. Responsibility of the Donee

The Donee, including any successor in interest, shall:

(a) Accept title of the Vessel upon execution of this contract and remove the Vessel from Navy custody not later than September 30, 2008. Donee previously submitted an updated tow plan at least thirty (30) days prior to tow, consisting of a final completed Appendix H checklist from the Navy Tow Manual.

(b) Establish and operate the Vessel as a static museum and/or memorial at its permanent location within the existing leasehold of the Donee as authorized by the Unified Port of San Diego.

(c) Preserve and maintain the Vessel in a good material condition, protecting the Vessel from fire, flooding, corrosion, and deterioration, and maintain physical security of the Vessel at the Donee's own expense and without contribution by the Government. In accordance with 10 U.S.C. § 7306, the Donee 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 navigation or a danger to public health or safety. The maintenance obligations of the Donee shall include, but not be limited to, (i) the performance of all necessary painting and cleaning of exterior surfaces and interior compartments and passageways open to the public; (ii) the provision and maintenance in all public and private spaces of such handrails, warning signs, fire protection, lighting, and ventilation systems and other safety devices as are necessary to ensure the safety of the visiting public and of maintenance personnel aboard the Vessel; (iii) the assurance of the continued preservation of the hull of the Vessel; (iv) the provision and maintenance of safe and efficient means of access and egress; (v) the provision and maintenance of suitable sanitary facilities for visitors; and (vi) such other safety and maintenance work as the Government may determine to be reasonably necessary. All the obligations hereunder shall be performed by the Donee at its own expense and without reimbursement or contribution by the Government.

(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. All proposed changes must be consistent with the Donee's responsibilities of paragraph 2 of this contract. 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) days prior to the scheduled tow to allow for Government review and 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 serving meals. Food may be served aboard the Vessel provided that Federal, State, and local regulations are met.

(g) Acquire, maintain, and employ a cathodic protection system to protect the exterior underwater hull from corrosion. Acquire, maintain, and use dehumidification and/or air conditioning systems where appropriate to protect interior spaces from deterioration.

(h) Allow the Government reasonable access to all of the Donee's records, documents, and facilities, including the right to inspect the Vessel annually, or as the Navy determines necessary, so that the Government may assess whether the Vessel is being maintained and preserved 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 or instruction that the Government may reasonably prescribe for the protection, preservation, maintenance, and repair of the Vessel or for the public health or safety.

(j) Comply with all Federal, State, and local laws and regulations regarding preservation, documentation, and display of the Vessel and its equipment.

(k) Obtain from the appropriate authorities all certificates, licenses, and permits required by law, regulation, or local ordinance. This includes permits required under the Federal Water Pollution Control Act and other environmental laws and regulations. Upon request by the Government, the Donee shall make current licenses and permits available for inspection.

(l) 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 the historic features of the Vessel that may qualify the Vessel for inclusion in the National Register of Historic Places.

(m) 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.

(n) Promptly notify the Navy if the Donee is no longer willing or able to maintain the Vessel as a museum and/or memorial.

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

(p) 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 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.

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 it for inclusion in the National Register of Historic Places.

(b) No construction, alteration, modification, or any other action shall be undertaken or permitted to be undertaken on the Vessel by the Donee that would alter the character-defining historic features of the Vessel without prior written consent of the Navy, and consultation with the California State Historic Preservation Officer (SHPO). The Donee shall afford the SHPO thirty (30) calendar days to review and comment on the Donee's proposed plans. 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 (10) calendar days of receipt of SHPO's comments and no later than forty (40) 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 transport and tow plan (e.g., tow preparations) as necessary for open-ocean transport/towing; and

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

(d) The California SHPO 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(a) 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) 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) 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 at its own expense, without reimbursement or contribution by the Government, 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 amount for (i) and (ii) above shall be one million dollars (\$1,000,000) in equivalent 2008 dollars. While the Vessel is waterborne, the Donee shall maintain purchased insurance equivalent to Marine Hull and Protection and Indemnity Insurance an amount not less than one million dollars (\$1,000,000) in equivalent 2008 dollars. Once permanently moored, the Donee shall maintain purchased insurance equivalent to Marine Hull insurance in an amount not less than one million dollars (\$1,000,000) in equivalent 2008 dollars 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 equivalent to General Liability insurance, or the marine equivalent (P&I coverage), in an amount not less than one million dollars (\$1,000,000) in equivalent 2008 dollars (Single Limit) per occurrence. Such insurance shall at all times insure or cover the United States Government, its agents, and employees, from liabilities in berthing, preparation for use, repairing, displaying to the public, or any and all activities associated with this Contract.

(b) 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 Donee's purchased insurance falls 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, D.C. 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) All such purchased 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 thirty (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 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 Donee personnel unfamiliar with structures, designs, arrangements, and equipment commonly found in a marine or military environment.

(b) The Donee understands that regulated Polychlorinated Biphenyl (PCB) containing materials may be present on the Vessel. The Donee acknowledges that regulated PCB containing materials require special precautions to ensure against risks to health and the environment. The Donee shall manage any such items that may be found aboard the Vessel in accordance with the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq. and regulations implementing this statute.

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 (6) years after accrual of the claim.

(b) When a claim exceeds one-hundred thousand dollars \$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, 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) *Default by Donee.* In the event the Donee, or its assigns, fails 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 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 by the Secretary or his authorized representative, 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 cause, title to the Vessel shall revert to the Government without further remediation or removal of environmental conditions that were associated with the Vessel at the time of original donation, provided that any such conditions that have 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.

(b) *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.

10. Equipment

(a) The Government reserves the right to remove equipment from the Vessel to satisfy Navy active Fleet requirements, 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.

(b) The portion of the hull cut and removed by the Donee to facilitate public access shall be retained and transferred to Portsmouth Naval Shipyard for display by the Navy in Portsmouth, NH. The Navy will assume the cost of transportation of the hull section from San Diego.

11. Acknowledgment

The Donee acknowledges that it has 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 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 delivery to and acceptance by the Donee, 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,

MARITIME MUSEUM OF SAN DIEGO

Department of the Navy

San Diego, California



David Architzel, VADM/USN
Principal Deputy (RD&A)



Dr. Raymond Ashley
Executive Director