



DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO

CONTRACT N000-24-81-C-0203

CONTRACT FOR THE DONATION OF
THE ex-INTREPID (ex-CVS-11)

THIS CONTRACT entered into this 27th day of April, 1981 by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Department of the Navy and the INTREPID MUSEUM FOUNDATION, INC., New York, New York, (hereinafter referred to as the "DONEE"), a non-profit corporation organized under the Not-for-Profit Corporation Law of the State of New York whose Charter denies it the right to operate for profit:

WITNESSETH:

WHEREAS, the Act of August 10, 1956 (P. L. 1028, 84th Congress), 10 U.S.C. 7308, authorizes the Secretary of the Navy to transfer by gift or otherwise, on terms prescribed by him, any obsolete vessel of the Navy to any State of the United States, or any municipal corporation or political sub-division thereof, or any corporation or association whose Charter denies it the right to operate for profit; and

WHEREAS, the DONEE has applied for donation of the obsolete aircraft carrier ex-INTREPID (ex-CVS 11) (hereinafter sometimes called the "Vessel"), and indicated its intention to preserve and exhibit the Vessel; and

WHEREAS, the DONEE will in part finance the exhibition of the Vessel with the proceeds of a bond issued by the Intrepid Museum Foundation Inc. and pursuant which there is an Indenture setting forth the rights and remedies of bondholders; and,

WHEREAS, the DONEE agrees to and undertakes the obligation to make and keep the Vessel safe and presentable for public exhibition and inspection, at no expense to the Government; and,

WHEREAS, pursuant to 10 U.S.C. 7308, notice of the proposed transfer has been duly sent to the Congress, and P.L. 96-488 was enacted to expedite this donation;

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. The Government shall, subject to the provisions of Article 14 hereof, deliver the Vessel to the DONEE at the Philadelphia, Inactive Ship Maintenance Detachment, Philadelphia Naval Shipyard, on an "as is, where is" basis and without warranty of any kind, and shall notify the DONEE of the delivery date sufficiently in advance thereof to enable the DONEE to make necessary arrangements for acceptance of delivery.

2. The DONEE shall accept the Vessel upon delivery by the Department of the Navy.

3. 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, it shall not permit any Flight Operations from the flight deck of the Vessel, and it also shall not activate or permit to be activated the galley for the purpose of serving meals.

4. The DONEE, including any successor in interest, shall establish and operate the Vessel on a non-profit basis as a public memorial/museum only, exhibit it at Pier 86 on the North (Hudson) River, Manhattan, New York, and maintain the Vessel in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of this historic Vessel, and not allow the Vessel to become a menace to navigation, public health or safety.

5. The DONEE shall maintain the Vessel in a condition satisfactory to the Department of the Navy. Prior to delivery of the Vessel the DONEE, pending completion of the permanent-base mooring, shall present evidence satisfactory to the Government that there has been successful initiation of pier refurbishment and required dredging. Pending completion of the permanent-base mooring arrangement, temporary mooring of the Vessel shall be effectuated in a manner and at a site acceptable to the Navy. Also, prior to delivery of the Vessel, the DONEE shall present evidence of contract awards for towing, ship refurbishment, and continuing maintenance. The maintenance obligations assumed by the DONEE shall include, but shall not be limited to (a) the performance of all necessary painting and cleaning of exterior surfaces and interior compartments and passageways open to the public, (b) the provision and maintenance in all public and private spaces of such handrails, flight deck fencing, warning signs, fire protection systems, smoke detection systems, ventilation systems, and other safety devices as are necessary to ensure the safety of the visiting public and of maintenance personnel aboard the Vessel, (c) the assurance of the watertight integrity of the hull while the Vessel is afloat, (d) the provision and maintenance of safe and efficient means of access and egress, (e) the provision and maintenance of suitable sanitary facilities, and (f) such other safety and maintenance work as may be determined 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. All work performed hereunder shall be subject to approval of the Supervisor of Shipbuilding, Conversion and Repair, USN, Brooklyn, New York.

6. The DONEE shall procure and maintain at its own expense, without reimbursement or contribution by the Government, from and after the delivery of the Vessel, Tower's broad-form liability insurance and Tower's coverage for negligent damage to the Vessel during any tow and marine hull and protection and indemnity liabilities, all in an amount not less than \$2,000,000 to cover the waterborne Vessel until it is permanently moored at Pier 86. Upon completion of the permanent mooring arrangement, the DONEE shall procure the amount of fire and broad-form insurance coverage as is set forth in Section 6.19B1 of the Indenture, and third-party bodily-injury liability insurance in an amount of not less than \$2 million per person, \$20 million per occurrence and third-party property damage in an amount not less than \$2 million for any occurrence. Such insurance shall at all times protect the United States Government and any agency thereof, its agent or employees from all :

claims resulting or alleged to have arisen from fault, negligence, wrongful act or omission of the Government, its agents or instrumentalities or their agents or employees in berthing, preparation for use, repairing or any other use, and shall, as to form and insurers, be subject to the approval of the Insurance Section (MAT 08C4N), Naval Material Command, Department of the Navy, Washington, D.C. 20360.

7. The DONEE shall present evidence satisfactory to the Government that, prior to the delivery of the Vessel, the DONEE has the financial means necessary to assure accomplishment of all the obligations hereunder.

8. The DONEE shall prohibit members of the general public from visiting aboard the Vessel prior to the accomplishment of all work necessary to make the Vessel safe and presentable for the public inspection, except as may be authorized by the Department of the Navy.

9.(a) The DONEE may transfer its interest in the Vessel to the City of New York, pursuant of Articles VII and IX of the Indenture, or to the Trustee under the Indenture, either as an agent of the City of New York or in a capacity as a receiver for the DONEE. In the event the Trustee takes the Vessel as a receiver of the DONEE, the Trustee shall take all appropriate actions to effect a transfer to another entity which is qualified to receive such a donation and is satisfactory to the Department of the Navy. In the event the Trustee is unable to locate a suitable entity within a reasonable period of time, under the circumstances, the Vessel shall be returned, at no cost or expense, to the Government. Any transfer by the Trustee shall be subject to paragraph (c) below.

(b) Notice of any transfer, to the City of New York or to the Trustee shall be provided in writing to the Commander, Naval Sea Systems Command within five (5) working days of the transfer.

* { (c) Except as provided in (a) above the DONEE, or any successor in interest, including but not limited to the City of New York and the Trustee, may transfer its interest in the Vessel only with the advance written approval of the Secretary of the Navy or his authorized representative, to any other entity qualified to receive a donation pursuant to the provisions of 10 U.S.C. 7308, then in effect, which is otherwise satisfactory to the Department of the Navy.

(d) Any transfer, or attempt to transfer, other than as set forth in (a) above, to any entity which is not qualified to receive a donation pursuant to the provisions of 10 U.S.C. 7308 then in effect, shall be null and void.

(e) Any transferee, including the City of New York, the Trustee, and any other successor in interest to the Intrepid Museum Foundation, Inc., shall take the Vessel subject to the conditions of this contract and no rights and remedies of the United States shall be waived or otherwise impaired as a result of any transfer under this contract or otherwise.

10. The DONEE shall indemnify, save harmless, and defend the Government from and against all claims, demands actions, liabilities, judgements, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession and/or use of the donated property.

11. 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.

12. The DONEE shall submit to the Naval Sea Systems Command (SEA 992), Washington, D.C. 20362, an annual material inspection report on the condition of the Vessel on or before June 30th of each year that this agreement is in effect. The Government will conduct an annual physical inspection of the Vessel.

13. 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."

14. In the event that the Vessel is lost or destroyed prior to the time of delivery by fire, shipwreck, act of Providence or of a foreign power, or by any other means whatsoever, whether by negligence on the part of the Government, or not, this Agreement shall become void and of no effect.

15. Upon delivery to and acceptance by the DONEE, title to the Vessel shall vest in the DONEE and title shall remain in the DONEE unless transferred under Article 9 or Article 19 of this contract.

16. No expense shall result to the Government as a consequence of the transfer of the Vessel to the DONEE or as a consequence of the terms and conditions prescribed hereunder.

17. The Government will have authority to approve or disapprove the nature and types of displays and exhibits, and retail sales activities to be installed in the Vessel, for the purpose of assuring that such displays, exhibits and retail sales activities will not cast discredit upon the Navy or the proud historic tradition of this historic Vessel. The Chief of Naval Operation (CNO) shall nominate and appoint up to four retired officers who shall comprise the Advisory Commission and shall monitor the DONEE'S plans for displays, exhibits, and retail sales activities on the Vessel. In the event the Advisory Commission disapproves any proposed display, exhibit or retail sales activity on the Vessel, and the DONEE does not concur, the Advisory Commission shall notify the CNO. If the matter is not resolved with the DONEE, the CNO shall be requested to make a final determination consistent with the Government's interest in such display, exhibit or retail sales activity and the obligations of the DONEE under its Bond Indenture and/or Lease of Pier 86 from the City of New York. The decision of the CNO shall be treated as a "Contracting Officers" decision for purposes of the disputes clause of this contract. (See Article 18).

18.(a) This contract is subject to the Contract Disputes Act of 1978 (P. L. 95-563).

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

(c)(1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this contract. However, a written demand by the Contractor seeking the payment of money in excess of \$50,000 is not a claim until certified in accordance with (d) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim pursuant to the Act by complying with the submission and certification requirements of this clause.

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

(d) For contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by 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 Contractor, render a decision within 60 days of the request. For contractor-certified claims in excess of \$50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when 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) Interest on the amount found due on a contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due, if such date is later, until the date of payment.

(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.

19. The Government may, during a national emergency, request the DONEE to return the Vessel and the DONEE shall if and when requested to do so, return the Vessel at no cost or expense to the Government. In the event that the DONEE, or its assigns, shall fail to perform the obligations assumed under this contract, the Secretary of the Navy or his duly 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, to the City of New York and to the Trustee under the DONEE's Bond Indenture. The DONEE, the City of New York and/or such Trustee shall have ninety (90) days from the date of receipt of the written notice to cure the violations or deficiencies set forth in said 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 such time, it appears to the Secretary of the Navy, or his authorized representative, that the same 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 of the Navy or his duly authorized representative may decide, and shall transfer title and return the Vessel to the location at which original delivery was made at no cost or expense to the Government if the Secretary of the Navy or his duly authorized representative so directs.

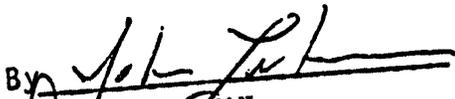
20. The DONEE agrees to allow representatives of the Government access to all of the donee's records, documents, and facilities, including the Vessel, to assure the accuracy of information provided the donor and compliance with the terms of this contract.

21. To the extent that there is any conflict between this contract and any other contract or agreement, including but not limited to the "Indenture" and the "Pier Lease", entered into by the DONEE, this contract shall control to the extent that any rights, interest, or remedies of the Department of the Navy or the United States of America are involved.

22. The term "Government" as represented by the Department of the Navy means the Secretary, Under Secretary, or Assistant Secretary of the Navy, the Commander, Naval Sea Systems Command, and any other duly authorized representative, acting within the limits of his authority, that the aforesaid designated officials may appoint.

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 
JOHN L. LERMAN
Secretary of the Navy

27 APR 1981

THE INTREPID MUSEUM
FOUNDATION, INC.

By 