



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
OF THE AIRCRAFT CARRIER EX-MIDWAY (CV 41)**

THIS CONTRACT entered into this 28th day of August, 2003, by and between the United States of America (the "Government"), represented by the Department of the Navy, and the San Diego Aircraft Carrier Museum (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 applied for donation of the aircraft carrier ex-MIDWAY (CV 41) (the "ex-MIDWAY" or "Vessel"), 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 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 to the Donee at the Vessel's current location at the Inactive Ships On-Site Maintenance Office, Bremerton, Washington, 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 to enable the Donee to arrange for acceptance of delivery.

2. **Responsibility of the Donee.** The Donee, including any successor in interest, shall:

(a) Accept the Vessel upon delivery by the Government, take immediate custody and control, and relocate the Vessel to a mooring location as soon as practicable. Prior to long-term mooring at Pier 11A in downtown San Diego, California, the Donee anticipates temporary mooring in Port of Astoria, Oregon.

(b) Establish and operate the Vessel as a museum and memorial on static display at a long-term mooring location.

(c) Preserve and maintain the Vessel in a good state of repair, and in accordance with sound marine maintenance practice, at the Donee's own expense and without contribution by the Government. In accordance with 10 U.S.C. § 7306 (b), 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.

(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. 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 with sufficient time 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 use impressed cathodic protection and dehumidification systems where appropriate.

(h) Allow the Government reasonable access to all of the Donee's records, documents, and facilities including the right to perform inspections annually, 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 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.

(j) Comply with all applicable Federal, State and local laws and regulations including but not limited to those regarding environmental protection, occupational safety and health, public safety, historic preservation, and preservation, documentation and display of the Vessel and its equipment. The Donee shall allow federal, state and local inspectors, including EPA, access to the Donee's records, documents and facilities to the extent required to ensure compliance with such laws and regulations. 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) 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.

(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 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. **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. 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.

(b) 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.

4. **Insurance.** 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,

(i) Tower's broad form liability insurance, including damage to the Vessel, and

(ii) Tower's protection and indemnity insurance in the minimum amount of two million dollars (\$2,000,000) for both (i) and (ii) above during any necessary tow; and maintain Marine Hull and Protection and Indemnity insurance in the same minimum amounts while the Vessel is waterborne. Once permanently moored, the Donee shall maintain Marine Hull insurance with not less than one million dollars (\$1,000,000) of fire and extended-coverage insurance, including risks of vandalism and malicious mischief; and shall maintain General Liability insurance in an amount not less than two million dollars (\$2,000,000) (Single Limit) per occurrence. Such

General Liability insurance shall at all times protect, defend, save harmless, and indemnify the United States Government, its agents and employees, in berthing, preparation for use, repairing, displaying to the public, or any and all activities associated with this Contract. The Marine Hull insurance policy shall name the Secretary of the Navy as loss payee. This liability insurance policy shall name the United States Government and Department of the Navy as additional insured so as to assure that the Vessel is maintained in a condition satisfactory to the Secretary. Such insurance shall, as to form and insurers, be subject to the approval of the Assistant Secretary of the Navy, Research, Development and Acquisition (RD&A), Insurance Examiner (ACQ-PAS), 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 Donee from purchasing additional insurance naming the Donee as loss payee.

5. **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.

6. **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 acknowledges that toxic substances including Polychlorinated Biphenyls (PCBs) are present on the Vessel and that the transfer to and use by the Donee of the Vessel would therefore be prohibited by the Toxic Substances Control Act (TSCA) unless authorized by EPA. 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 the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.* and regulations implementing this statute, and in accordance with the requirements prescribed in its agreement with EPA.

7. **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 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 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.

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

(b) *Default by Donee.* In the event the Donee, or its assigns, fails to perform the obligations assumed under this Contract, including the Donee's obligations under the EPA/Donee Agreement, 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, 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 encumbrances that were associated with the Vessel at the time of original donation, provided that any such encumbrances whose condition has 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.

(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. **Equipment.** At its own expense, the Donee 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 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.

10. **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.

11. **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.

12. **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.

13. **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,
Department of the Navy

SAN DIEGO AIRCRAFT CARRIER
MUSEUM
San Diego, California

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

By Alan K. Uke
Alan K. Uke
Title: President

By David L. Flohr
David L. Flohr
Title: Treasurer