



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
2531 JEFFERSON DAVIS HWY
ARLINGTON VA 22242-5160

IN REPLY REFER TO

CONTRACT N00024-98-C-0201

**CONTRACT FOR THE DONATION OF
BATTLESHIP EX-MISSOURI (BB 63)**

THIS CONTRACT entered into this 4th day of May, 1998, by and between the UNITED STATES OF AMERICA (the "Government"), represented by the Department of the Navy, and the USS MISSOURI MEMORIAL ASSOCIATION, INC., located in Honolulu, Hawaii (the "Donee" or "Contractor").

WITNESSETH:

WHEREAS, 10 U.S.C. 7306 authorizes the Secretary of the Navy to transfer by gift or otherwise, on terms prescribed by him, 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 battleship ex-MISSOURI (BB 63) (the "Ex-MISSOURI" or "Vessel"), and has indicated its intention to preserve and exhibit the Vessel; and

WHEREAS, the Donee agrees to and undertakes the obligation to make and keep the Vessel safe, in a condition satisfactory to the Secretary of the Navy, for public exhibition at no cost to the Government; and

WHEREAS, pursuant to 10 U.S.C. 7306, notice of the proposed transfer was duly sent to the Congress.

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, subject to the provisions of Section 4 below, deliver the Vessel to the Donee at its current location at the Inactive Ship Maintenance Facility, 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 make the necessary arrangements 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 Department of the Navy.

(b) 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, and also not activate or permit to be activated the galley for the purpose of serving meals.

(c) Keep the Vessel at a safe, long-term mooring location and not permit the Vessel to be towed for any purpose other than maintenance, repair, or safety considerations without the express, written consent of the Secretary or his authorized representative. Prior to location of the Vessel at a long-term mooring location in Hawaii, the parties anticipate temporary mooring at a pier located in Bremerton, Washington, for several weeks under a separate license, followed by temporary mooring at a suitable site at Naval Station Pearl Harbor for approximately three years under a property license/lease agreement. The Vessel will not be towed to Hawaii unless and until a license/lease for temporary mooring in Hawaii has been executed by both parties to the license/lease.

(d) Establish and operate the Vessel on a non-profit basis as a static public memorial and museum only, exhibited at a Pearl Harbor, Hawaii location.

(e) Maintain the Vessel in a condition satisfactory to the Secretary of the Navy in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of the Vessel, and will not allow the Vessel to become a menace to navigation, public health or safety.

(f) At its own expense, without reimbursement or contribution by the Government, protect, preserve and maintain the Vessel, including the hull, machinery, and appurtenances in a good state of repair and in efficient operating condition in accordance with sound marine maintenance practice. The Donee agrees to acquire and maintain cathodic protection and dehumidification systems aboard the Vessel.

(g) Allow representatives of the Government access to all of the Donee's records, documents, and facilities, including the right to perform inspections annually or as determined necessary by the Navy, to assure the accuracy of information provided the Government and compliance with the terms of this contract.

(h) Take all steps necessary to comply with any written directions or instructions that the Navy may prescribe for the protection, preservation, maintenance and repair of the Vessel.

(i) Comply with all Federal, State and local laws and regulations in being, or that may be enacted or issued in the future, with respect to the preservation, documentation and display of the Vessel and its equipment, including those relating to public safety, protection of the environment, and historic preservation.

(j) Obtain all certificates, licenses and permits required by law or regulation from the appropriate authorities.

(k) Not transfer or otherwise dispose of the Vessel or any part of the Vessel or any interest the Donee may have unless the prior written consent of the Secretary of the Navy or his authorized representative has been obtained.

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

(m) Obtain written approval from the Secretary or his authorized representative prior to any significant change in the movement, operation, use, management or maintenance of the Vessel and its equipment.

(n) Notify the Navy should the Donee no longer be willing or able to maintain the ex-MISSOURI as a museum and memorial.

3. **Liability.** The Government shall not be responsible for loss or damage 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 arising from or incident to the use, operation and maintenance 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 attorney's fees, arising out of, claimed on account of, or in any manner predicated upon bodily injury, death, or property damage including natural resources caused by or resulting from possession or use of the donated property.

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. Upon completion of a long-term mooring arrangement, the Donee may substitute for Marine Hull insurance 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 insurance shall at all times protect the United States Government, its agents or employees, in berthing, preparation for use, repairing or any other use. The Marine Hull insurance policy shall name the Secretary of the Navy as loss payee. The liability insurance policy 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, Research, Development and Acquisition (RD&A), Insurance Examiner (ABM-PR), Department of the Navy, Washington, D.C. 20350-1000. All policies shall provide for 30 days' written notice of cancellation to the Naval Sea Systems Command, Department of the Navy, 2531 Jefferson Davis Highway, Arlington, Virginia 22242-5160.

5. **Prior to Delivery.** 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 Contract shall become void and of no effect.

6. **Toxic Substances.** The Donee acknowledges that Polychlorinated Biphenyls (PCBs) are present on the Vessel and that use of many of the PCB items on the Vessel is not authorized by the Toxic Substances Control Act, 15 U.S.C. 2601 et seq. or regulations implementing it. The Donee further acknowledges that the PCB items require special precautions to ensure against risks to health and the environment. Accordingly, the Donee agrees that it will manage all items on board the Vessel in accordance with the provisions of Section 2 above except as provided by Agreement between the Donee and the Environmental Protection Agency.

7. **Disputes.** (a) This contract is subject to the Contract Disputes Act of 1978 as amended (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 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 \$100,000.00 is not a claim under the Act until certified as required by subparagraph (d)(2) below.

(d) (1) A claim by the Contractor shall be made in writing and submitted within six years after accrual of the claim to an authorized representative of the Secretary of the Navy for a written decision.

(2) For Contractor claims exceeding \$100,000.00, or for disputes of any amount when arbitration or alternative dispute resolution techniques are used, the Contractor shall submit with the claim a certification in the following form:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification must be executed by an individual who has authority to bind the Contractor and has knowledge of the claim or request, its basis, and of the accuracy and completeness of the supporting data.

(e) A decision by an authorized representative of the Secretary shall be final unless the Contractor appeals or files a suit as provided in the Act.

(f) 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 by an authorized representative of the Secretary.

8. Termination. (a) 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 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) In the event that the Donee, or its assigns, fails to perform the obligations assumed under this contract, or obligations under the EPA/Donce PCB Agreement, 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. 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 such time, it appears to the Secretary of the Navy, or his authorized representative, that the violations have not been cured, then the 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 of the Navy or his duly authorized representative may decide, and if the Secretary of the Navy or his duly authorized representative so directs, shall transfer title and return the Vessel to the Navy at Pearl Harbor at no cost to the Government. If the contract is terminated for cause, title to the Vessel shall revert to the Navy without further remediation or removal of environmental encumbrances that were associated with the Vessel at the time of original donation, provided that any such existing encumbrances whose condition has deteriorated as a consequence of the Association's possession of the ship shall be remediated to the satisfaction of the Navy at no cost to the Government. 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 of the Navy or his authorized representative may terminate this contract immediately.

9. Equipment. The Government reserves the right to remove equipment from the Vessel required to satisfy Fleet material needs. In cases where such removal affects the display of the Vessel, the Navy will attempt to provide a cosmetically suitable piece of equipment as a replacement.

10. **Right to Approve.** The Government reserves the right to approve or disapprove the nature and types of displays, exhibits, retail sales and other activities to be installed or to take place on or near the Vessel, for the purpose of assuring that such displays, exhibits, retail sales, promotional, ceremonial or similar activities will not cast discredit upon the Navy or upon the proud tradition of this historic Vessel.

11. **Acknowledgment.** The Donee acknowledges that it has executed and furnished to the Government representative under this contract, 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. **Historic Preservation.** The Donee acknowledges that the Vessel is listed on the National Register of Historic Places and, in addition to any other requirement of this contract, agrees to maintain and preserve the Vessel as follows:

(a) MMA shall preserve and maintain the ex-MISSOURI in accordance with sound marine maintenance practice consistent with the guidelines in Chapter 50 of the Naval Ships' Technical Manual in order to preserve the characteristics that qualify the Vessel for inclusion in the National Register of Historic Places.

(b) The anticipated towing of the Vessel to Hawaii shall be performed as an open-ocean tow in accordance with the United States Navy Towing Manual (SL740-AA-MAN-010) and in accordance with a towing plan reviewed by the Hawaii and Washington SHPOs and approved by the United States Navy. The MMA will provide copies of the preliminary towing plan to the Hawaii and the Washington SHPOs for their review. The SHPOs will have thirty calendar days from receipt of the preliminary towing plan to provide their comments to MMA. MMA will consider the SHPOs' comments to the extent that they are consistent with the Navy Towing Manual. The Navy will review and approve the final towing plan.

(c) No construction, alteration, modification or any other action shall be undertaken or permitted to be undertaken on the ex-MISSOURI which would alter the character defining historic features of the Vessel without the prior written permission of the Navy, signed by a fully authorized representative thereof, and consultation with the State Historic Preservation Officer (SHPO) of the State in which the Vessel is located at the time of the construction, alteration, or modification. The SHPO will be afforded thirty calendar days to review and comment on MMA's submittal. The SHPO will forward its comments to the MMA and the Navy. The Navy will review and consider the SHPO's comments, and within ten calendar days of receipt of SHPO's comments and no later than forty calendar days from the date of receipt of MMA's request, provide MMA with the Navy's comments and response.

(d) MMA 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 hull and superstructure in the present color scheme;

(iii) Temporary modifications as specified in the approved towing plan to conduct the anticipated towing of the Vessel from Washington to Hawaii. Stowage for sea as necessary for open-ocean towing.

(iv) Preservation and repair of teak weather decks with materials like-in-kind and species.

(v) Restoration or replacement of topside equipment or features removed during inactivation, such as antennas.

(e) The SHPO of the State in which the ex-MISSOURI is located shall be permitted at all reasonable times to inspect the Vessel in order to ascertain if the above conditions are being met.

(f) Violation of this section constitutes grounds for termination of this contract under the provisions of Section 8(b) above.

(g) The Donee shall provide without charge one copy of any document, as approved or accepted by the Keeper of the National Register or his or her designee, that establishes or modifies the Vessel's status on the National Register of Historic Places to the Naval Historic Center (SH), Building 57, Washington Navy Yard, 901 M Street S.E., Washington, D.C. 20374-5060.

13. **Definitions.** (a) 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; or any other duly authorized representatives, acting within the limits of their authority.

(b) The term "static display" means that the Vessel is donated to be exhibited solely and exclusively as a public memorial and museum in the same location, without unnecessary movement or towing of the Vessel. If towing becomes necessary, the Government reserves the right to approve the tow plan, including safety and insurance requirements prior to any movement of the Vessel.

14. **Amendments.** The Government reserves the right to amend this Contract periodically as necessary to reflect any changes in applicable statutes, regulations or established Navy policy.

15. **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 Section 8 above.

16. **No Cost to Government.** No cost 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 of this contract.

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 H. Dalton*
Title SECNAV

The USS MISSOURI MEMORIAL ASSOCIATION, Inc., Honolulu, Hawaii

By *Erwin L. Carter*
Title Chairman