

MEMORANDUM OF AGREEMENT
Between
National Aeronautics and Space Administration
and
Maritime Administration, U.S. Department of Transportation
for the
Transfer of the MV LIBERTY STAR
to the
National Defense Reserve Fleet

1. PURPOSE AND AUTHORITY

This Memorandum of Agreement (MOA) is intended to formalize the understandings and agreements of the National Aeronautics and Space Administration (NASA) under 51 U.S.C. § 20113 and the Maritime Administration (MarAd), United States Department of Transportation with respect to the transfer of custody and control of the vessel MV LIBERTY STAR (hereinafter “the Vessel”) into the National Defense Reserve Fleet (NDRF), 50 App. U.S.C. § 1744, for use as a training ship for the United States Merchant Marine Academy (USMMA) as well as the use of the Vessel for periodic/subsequent NASA missions following its transfer. This MOA sets forth the organizational relationships and defines specific responsibilities for management, use, maintenance and funding of the Vessel, but does not obligate any funding.

2. BACKGROUND

- a. The Vessel is owned by the Federal Government and has been in the custody and control of NASA. NASA no longer has a full-time need or requirement for the Vessel and has a desire to transfer operational and financial responsibility for the Vessel to MarAd. NASA requires future, periodic, occasional access to the Vessel to support certain missions.
- b. MarAd desires to use the Vessel as a school training ship for the USMMA, and has determined that the Vessel adequately meets this requirement. MarAd has the authority under 46 U.S.C. § 50304(d), among other sources, to make the Vessel available for use by NASA for future operational requirements. MarAd will obtain all of the necessary Department of Defense approvals for adding the Vessel to the NDRF.

3. VESSEL TRANSFER

- a. NASA will coordinate with MarAd to prepare the Vessel for transfer before October 1, 2012.
- b. NASA will provide MarAd with copies of all available documents relating to the Vessel, including but not limited to: records of repairs; manuals relating to equipment; materials concerning hazardous wastes; materials relating to vessel documentation; historic documents; the Vessel’s American Bureau of Shipping (ABS) and other documents that support vessel maintenance, operations, classification and inspections.

- c. NASA will locate and identify all appurtenances associated with the Vessel that are not aboard the Vessel, including, but not limited to, spare parts, records, and spare equipment. MarAd will identify all appurtenances it desires to have transferred with the Vessel. Upon mutual agreement NASA will transfer custody and control of the agreed upon desired appurtenances.
- d. MarAd will take delivery of the Vessel at Kings Point, New York.
- e. NASA will provide MarAd with an estimate of the cost to move the Vessel to the delivery location with major cost categories itemized, such as the cost for returning the crew.
- f. MarAd will provide a separate, reimbursable funding document to cover all applicable expenses involved in moving the Vessel to Kings Point, New York.
- g. NASA will transfer custody and control of the Vessel and agreed upon appurtenances. The custody transfer and control document may be executed before, but shall be effective upon acceptance of the Vessel by MarAd at Kings Point, New York. The effective transfer date of the Vessel to the NDRF shall be the date and time MarAd acknowledges receipt of custody and has control of the Vessel.
- h. MarAd and NASA agree to perform a joint inspection of the Vessel at Kings Point, New York to indicate the condition of the Vessel upon its transfer and to formally accept equipment, supplies and parts that may be at other locations. The date and time the representatives sign the inspection document is the date and time of property transfer.
- i. Subject to the provisions relating to the transfer of title to appurtenances not aboard the Vessel, all property relating to the Vessel shall be considered to be transferred to the custody and control of MarAd, unless NASA and MarAd specifically agree otherwise in writing. This includes property that can be removed from the Vessel and transferred ashore. MarAd assumes all responsibility for maintaining the custody and control of all such property following the date the Vessel is transferred.
- j. Upon transfer, the Vessel will be a public vessel owned by the United States of America, represented by the Secretary of Transportation, acting through MarAd and placed in the NDRF. Upon transfer to MarAd, custody and control of the Vessel shall be with the Maritime Administrator. MarAd will provide management, operation, and maintenance services for the Vessel.

4. POST TRANSFER

- a. MarAd will return the NASA vessel delivery crew to Cape Canaveral.
- b. MarAd will perform at MarAd's expense the necessary work to ready the Vessel for operation as a training ship for the USMMA.

- c. MarAd will operate the Vessel as an NDRF training ship at USMMA, at Kings Point, New York. MarAd will rename the vessel "KINGS POINTER".
- d. The selection of awardees, contract type and terms and conditions related to the Vessel's alterations and operation are solely MarAd's responsibility. MarAd is solely responsible for the administration of the contractual documents relating to the Vessel.

5. NASA MISSIONS

- a. Subject to the requirements for use of the Vessel as a training vessel, MarAd will endeavor to make the Vessel available for NASA agency missions.
- b. MarAd will maintain operational control and administrative control of the Vessel during all NASA missions. This will include, at a minimum, manning the Vessel with an operating crew, procuring all fuel and stores, preparing the Vessel for operations, and coordinating any port calls.
- c. MarAd will work with NASA to resolve schedule conflicts with the goal of meeting both USMMA and NASA requirements. By May 15 of each year, MarAd will provide NASA with the anticipated schedule for the Vessel for the following Fiscal Year. The schedule will identify planned USMMA operations, significant inspections, repairs and overhaul periods that will result in the Vessel not being available. MarAd will update the schedule as required. MarAd will notify NASA within 48 hours of any unplanned operations or events that result in the Vessel not being available.
- d. NASA will fund MarAd for all NASA related vessel related costs during NASA missions. NASA shall be responsible for the cost of all NASA personnel and NASA contractors aboard during NASA missions. NASA will be responsible for accomplishing all mission specific preparations or reimbursing MarAd for the cost of said preparations should MarAd accept the responsibility.
- e. On July 1 of each year, NASA shall provide MarAd with a preliminary schedule of its need for the Vessel for all anticipated missions for the following fiscal year. The schedule shall include planned start dates, duration, area of operations, and concept of operations including the number of NASA personnel to be boarded, and identification of any required equipment to be temporarily installed on board the Vessel. NASA shall provide updates to the schedule as it changes. NASA shall confirm start dates for each NASA operation with a minimum 30 days advanced notice to MarAd.
- f. NASA missions will be performed by the Vessel in accordance with the Vessel's agreed upon schedule. NASA shall provide MarAd with a Statement of Work (SOW) at least 60 days prior to the mission. MarAd will provide NASA with a not-to-exceed estimate of the funds required to perform the work delineated in the SOW as a daily charter rate that includes the cost of fuel. NASA shall provide a funding document to MarAd at least 30 days before the Vessel is scheduled to commence preparations for the mission, which obligates NASA to meet the estimated charter rate expenses and all associated mission costs. Use of a Military Interdepartmental Purchase Request (MIPR) funding document

or equivalent is acceptable. Extended use of the Vessel beyond the estimated days shall be covered with a funding document amendment or an additional funding document.

- g. NASA will allow MarAd personnel, USMMA midshipmen, and cadets from the State Maritime Academies to serve aboard the Vessel during NASA missions if personnel berthing space is available. MarAd and academy personnel will remain MarAd's responsibility.
- h. MarAd will be responsible for paying the salaries and transportation costs for MarAd personnel and USMMA personnel with respect to serving aboard the Vessel during NASA missions.
- i. MarAd will be administratively responsible for handling all claims or other legal actions arising during its operation of the Vessel and for working with the Department of Justice when appropriate.
- j. NASA will provide the necessary support in the event of legal actions arising from any claims or other legal actions arising out the operation of the Vessel during a NASA mission.
- k. Reimbursable technical and operational support and details of specific mission tasks will be cited in specific funding documents. Such documents shall be sent to:

MARITIME ADMINISTRATION
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001
Attn: Pamela Andrews
E-Mail: Pamela.Andrews@dot.gov

6. POINTS OF CONTACT AND NOTICES

- a. All notices hereunder shall be sent either by email with a request for a confirmed receipt or in writing to the address set forth in this paragraph. The Point of Contact may be changed by written notice sent to the other party.

- b. MarAd Point of Contact:

Director, Office of Ship Operations
1200 New Jersey Ave. S.E.
Washington, DC 20590-0001
Attn: William Cahill
E-Mail: William.cahill@dot.gov

- c. NASA Point of Contact:

Thomas F. Erdman
Resident Office

Mail Code SK-PL
Building M7-0630, Room 3006H
Kennedy Space Center, Florida 32899
E-Mail: thomas.f.erdman@nasa.gov

7. EFFECTIVE DATE AND DURATION

- a. This MOA becomes effective upon the latest date of signature.
- b. This MOA may be modified by mutual agreement of the signatories that are memorialized in writing.
- c. This MOA shall be terminated by MarAd with respect to the Vessel upon the determination by MarAd that such Vessel is no longer of sufficient value to MarAd to merit further preservation.
- d. Any liability that NASA, MarAd, or another federal agency incurs as a result of the Vessel's operation does not terminate upon the termination of this MOA.

8. THIRD PARTY RIGHTS

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity in anyone other than the parties to this MOA. This MOA does not direct or apply to any person outside the signatory parties to this MOA. There are no third party beneficiaries of this MOA.

9. LIABILITY PROVISIONS

- a. Except where the Vessel is damaged due to the fault, either in whole or part, by NASA, MarAd assumes all risk of loss to the Vessel. MarAd shall not be responsible for repairing any damage to the Vessel where it determines that undertaking the costs of such repair would not be prudent.
- b. Under no circumstances will NASA or MarAd be responsible to compensate anyone for the loss or loss of use of the Vessel.
- c. Costs, fines, and damages to the environment arising from the use of the Vessel in the course of a NASA mission will be borne by the mission sponsor.
- d. Each party to this MOA shall be responsible for all damages to third persons, or the property of third persons, attributable to its negligence or other statutory liability. Any claims filed by third persons for death, injury, or damages, shall be adjudicated in accordance with laws covering claims against the Federal Government.
- e. Where the matters in question relate to the operation of the Vessel, MarAd will be responsible for conducting an investigation for any property damage, death or injury to

any person(s) occurring onboard the Vessel or berths and at other times when property damage, death, or injury occurs.

- f. Data and information pertaining to and resulting from compliance with applicable environmental laws, regulations, Executive Orders, policy, directives and regulations shall be the responsibility of MarAd as of the effective date of the transfer of the Vessel.

10. ANTI-DEFICIENCY ACT

As required by the Anti-deficiency Act, 31 U.S.C. §§1341 and 1342, all commitments made by MarAd and NASA in this MOA are subject to the availability of appropriated funds and budget priorities. Nothing in this MOA, in and of itself, obligates the signatory parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations beyond their available appropriated funds and budget authorities. Any transaction involving transfers of funds between the parties to this MOA will be handled in accordance with applicable laws, regulations, and procedures.

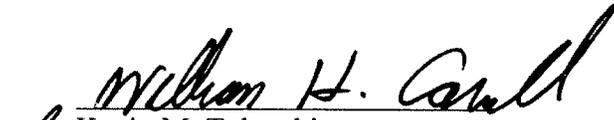
11. DISPUTES

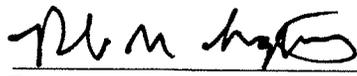
Should a dispute arise under this MOA that cannot be resolved, resolution of that dispute shall occur by the following process. Both parties will brief their most senior executive directors. Copies of such briefs shall be provided to the other party. The Associate Administrator for National Security and the NASA Associate Administrator will be the final and conclusive decision authorities.

12. SIGNATURE

FOR
THE MARITIME ADMINISTRATION

FOR
THE NATIONAL AERONAUTICS
SPACE ADMINISTRATION


for Kevin M. Tokarski
Associate Administrator
for National Security


Robert M. Lightfoot
Acting Associate Administrator

Date: 8/20/12

Date: 8/20/12