

CONTRACT

FOR THE

CONSTRUCTION OF A STEEL TWIN-SCREW SEAGOING TORPEDO BOAT

Of about One Hundred and Eighty Tons Displacement.

"TORPEDO BOAT No. 7."

Contract, of two parts, made and concluded this _____ day of October, A. D., 1895, by and between THE HERRESHOFF MANUFACTURING COMPANY, a corporation created under the laws of the State of Rhode Island, and doing business at Bristol, in said State, represented by the President of said corporation, PARTY OF THE FIRST PART, and THE UNITED STATES, represented by the Secretary of the Navy, PARTY OF THE SECOND PART.

WHEREAS the act entitled "An act making appropriations for the naval service for the fiscal year ending June thirtieth, eighteen hundred and ninety-six, and for other purposes," approved March 2, 1895, authorized the construction of three torpedo boats; and

WHEREAS, after due advertisement, the proposal of the said party of the first part to construct two of said vessels, to wit: two steel twin-screw seagoing torpedo boats of about one hundred and eighty tons displacement each, one of which vessels is, for the purposes of this contract, designated and known as "Torpedo Boat No. 7," has been duly accepted by the Secretary of the Navy; and

WHEREAS it is provided by the advertisement of the Secretary of the Navy, dated July 1, 1895, inviting proposals for building said vessels, that they shall be constructed in accordance with certain provisions contained in the act entitled "An act to increase the naval establishment," approved August 3, 1886, and shall be in all their parts of domestic manufacture; and

WHEREAS the drawings, plans, and specifications required by the said act have been duly provided, adopted, and approved in accordance with the provisions thereof.

NOW, THEREFORE, THIS CONTRACT WITNESSETH: That, in consideration of the premises, and for and in consideration of the payments to be made as hereinafter provided, the party of the first part, for itself and its successors and assigns, and its legal representatives, does hereby covenant and agree to and with the United States as follows, that is to say:

First. The party of the first part will, at its own risk and expense, construct, in accordance with the provisions of the acts of Congress relating thereto, and in conformity with the aforesaid drawings, plans, and specifications, one steel twin-screw seagoing torpedo boat of about one hundred and eighty tons displacement, with fittings and equipment as specified, of the following principal dimensions:

	Feet.
Length on load line, about,	175
Beam on load line	17
Draft, mean, normal	5.5

Such vessel to be constructed of steel of domestic manufacture, and to be provided and fitted with machinery, engines, and boilers, also of domestic manufacture, complete in all their parts, appurtenances, and spare parts, and in all respects as described in the annexed drawings, plans, and specifications, and in the acts of Congress above referred to, and will deliver the same at the Naval Station, Newport, Rhode Island, to such person as the Secretary of the Navy may designate; it being, however, expressly understood and agreed that if any article or thing, included in, or covered by, the drawings, plans, and specifications aforesaid shall be found, during the prosecution of the work under this contract, to be not produced or manufactured in the United States, and if, after reasonable effort, it shall be found impracticable to obtain the same as an article of domestic manufacture, then and in such case provision shall be made, by or with the approval of the Secretary of the Navy, for such alteration in the drawings, plans, and specifications, or for the adoption of such new or different device or plan as may be found necessary in order to carry out and complete this contract, subject, as to increased or diminished compensation by reason of such change, to the conditions applicable to changes as expressed in the second clause of this contract.

Second. The construction of the vessel herein contracted for, (the word vessel as used here and hereafter throughout this contract being intended to include everything covered by the drawings, plans, and specifications above referred to), shall conform in all respects to and with said drawings, plans, and specifications, which are hereto annexed and shall be deemed and taken as forming a part of this contract with the like operation and effect as if the same were incorporated herein. No omission in the drawings, plans, or specifications of any detail, object, or provision necessary to carry this contract into full and complete effect, in accordance with the object and intent of the acts of Congress above referred to, shall operate to the disadvantage of the United States, but the same shall be satisfactorily supplied, performed, and observed by the party of the first part, and all claims for extra compensation by reason of, or for, or on account of, such extra performance, are hereby and in consideration of the premises expressly waived; and it is hereby further provided, and this contract is upon the express condition that the drawings, plans, and specifications aforesaid shall not be changed in any respect, when the cost of such change shall, in the execution of the work, exceed five hundred dollars, except upon the written order of the Secretary or Acting Secretary of the Navy; that, if changes are thus made, the actual cost thereof, and the damage, if any, caused thereby shall be ascertained, estimated, and determined by a board of naval officers, appointed by the Secretary of the Navy, and that the party of the first part shall be bound by the determination of said board, or a majority thereof, as to the amount of increased or diminished compensation which the said party of the first part shall be entitled to receive, if any, in consequence of such change or changes.

Third. The materials and workmanship used and applied in the construction of the vessel herein contracted for, in details and finish, shall be first-class and of the very best quality, and shall, from the beginning to the end of the work, be subject to the inspection of the Secretary of the Navy; it being hereby understood, covenanted, and agreed that the said Secretary may appoint suitable inspectors, to whom the party of the first part shall furnish such samples of said materials, and such information as to the quality thereof and the manner of using the same, as may be required, and also any assistance such inspectors may require in determining the weight and quality of steel and other metals, and of wood and other materials, either used or intended for use in the construction of the vessel, and that the inspectors may, with the approval of the said

Secretary, peremptorily reject any unfit material or forbid the use thereof. The inspectors shall, at all times during the progress of the work, have full access thereto, and the party of the first part shall furnish them with full facilities for the inspection and superintendence of the same.

Fourth. The steel to be used in the construction of the vessel herein contracted for shall conform to the "Specifications for inspection of steel for use in the construction of the hulls and machinery of torpedo boats Nos. 6, 7, and 8, for the United States Navy," approved by the Secretary of the Navy under date of July 19, 1895, which specifications are annexed to and form a part of this contract.

Fifth. The party of the first part will, at its own expense, prepare such plans or drawings as may be necessary during the progress of the work.

Sixth. The party of the first part, in consideration of the premises, hereby covenants and agrees to hold and save the United States harmless from and against all and every demand or demands of any nature or kind for, or on account of, the adoption of any plan, model, design, or suggestion, or for, or on account of, the use of any patented invention, article, or appliance which has been or may be adopted or used in or about the construction of said vessel, or any part thereof, under this contract, and to protect and discharge the Government from all liability on account thereof, or on account of the use thereof, by proper releases from patentees or otherwise, and to the satisfaction of the Secretary of the Navy.

Seventh. The vessel herein contracted for, and all materials and appliances provided for and used, or to be used, in the construction thereof, shall be kept duly insured, which insurance shall be renewed and increased, from time to time, by and at the expense of the party of the first part, the loss, if any, to be stated in the policies as payable to the Secretary of the Navy; the insurance to be effected in such manner and in such companies as shall be approved by him, and in an amount to be fixed, from time to time, by him, not exceeding the amount of advance payments made under this contract.

Eighth. The vessel herein contracted for shall be completed in accordance with the drawings, plans, and specifications annexed hereto and ready for delivery to the party of the second part, on or before the expiration of thirteen months from the date hereof; but the lien of the party of the second part upon said vessel, and the materials on hand for use in the construction thereof, respectively and collectively, for all moneys advanced on account thereof, shall commence with the first payment, and shall thereupon attach to the work done and materials furnished, and shall, in like manner, attach, from time to time, as the work progresses, and as further payments are made, and shall continue until it shall have been properly discharged. In case the completion of the vessel as aforesaid shall be delayed beyond the said period of thirteen months, deductions shall be made from the price stipulated in this contract for each and every day (excepting Sundays) during the continuance of such delay, and until the vessel shall be completed as aforesaid and ready for delivery to the party of the second part, as follows, viz: During the three months next succeeding the expiration of said period, fifteen dollars (\$15.00) a day; during the seventeenth, eighteenth, and nineteenth months from the date of this contract, thirty dollars (\$30.00) a day; and for each and every day (excepting Sundays) during which such completion shall be delayed beyond the period of nineteen months from the date of this contract, fifty dollars (\$50.00); all such deductions from the price of the vessel to be made, from time to time, from any payment or payments falling due under this contract; *provided, however,* that such delay shall not have been caused by the act of the party of the second part, or by fire or water, or by any strike or stand-out of workmen, employed in the construction of the vessel, or by other circumstances beyond the control of the party of the first part; but such circumstances shall not be deemed to include delays in obtaining materials when such delays arise from causes other than those herein specified; *and provided, further,* that in case of any such alleged delay, the party of the first part shall give immediate notice thereof in writing to the Secretary of the Navy.

In case any question shall arise, under this contract, concerning deductions from the price of the vessel herein contracted for, such question, with all the facts relating thereto, shall be submitted to the Secretary of the Navy for consideration, and his decision thereon shall be conclusive and binding upon the parties to this contract.

All delays which the Secretary of the Navy shall find to be properly attributable to the party of the second part, or to its authorized officers, or agents, or any or either of them, and to have been delays operating upon the completion of the vessel within the time specified therefor in this contract, shall entitle the party of the first part to a corresponding extension of the period prescribed for the completion of the vessel; *provided, however,* that no delay nor the alleged cause or causes thereof attributed by the party of the first part to the party of the second part, its officers, or agents, shall be considered by the Secretary of the Navy unless the party of the first part shall, at the time of the occurrence of such delay, notify him in writing of the facts and circumstances in each case, and of the extent to which the said party of the first part claims that the completion of the vessel is thereby delayed.

Ninth. The party of the first part hereby further covenants and agrees that the hull of the vessel to be constructed under this contract shall be sufficiently strong to carry safely her *personnel* and the armament (including torpedoes and their appendages), machinery, fittings, and equipment, prescribed by the Secretary of the Navy and indicated in the annexed drawings, plans, and specifications, together with coal, and such stores of all necessary kinds as would constitute a liberal allowance for use during the longest period of "fuel endurance" that can be obtained by expending, at the most economical speed, the full bunker capacity of coal; that when the vessel is loaded with all the stores and other articles above enumerated, and her *personnel*, or when she has on board any less amount of coal or other consumable stores than those aforesaid, she shall be able to carry the same properly and safely at sea, and that when the vessel is completed and ready for delivery to the party of the second part, as required by the drawings, plans, and specifications, she shall be subjected to trials, under conditions prescribed or approved by the Secretary of the Navy, to test her hull, fittings, machinery, including engines, boilers and appurtenances, and equipment, and the installation of the ordnance and ordnance outfit, and her stability, speed, and maneuvering and seagoing qualities, and that such vessel shall be accepted only on fulfillment of, and subject to the conditions and agreements hereinafter set forth:

(1.) That the working of the machinery in all its parts shall be to the satisfaction of the Secretary of the Navy.

(2.) The party of the first part hereby guarantees that the speed developed by said vessel, upon her speed trial, under conditions prescribed or approved by the Secretary of the Navy, shall be not less than an average of twenty-seven and a half (27½) knots an hour, maintained successfully for two (2) consecutive hours, the vessel to carry the following weights additional to that of the complete hull, machinery, and spare parts, viz: torpedo gear and torpedoes, rapid-fire guns and ammunition, six and thirty-two hundredths (6.32) tons; coal, twelve (12) tons; crew, boats, anchors, electric plant, equipment, etc., nine (9) tons; total, twenty-seven and thirty-two hundredths (27.32) tons.

(3.) That said vessel shall be found to be strong and well built, and in strict conformity with the contract, drawings, plans, and specifications, and shall be approved by the Secretary of the Navy.

(4.) That the carrying capacity, the stability, and the maneuvering and seagoing qualities of the vessel shall be to the satisfaction of the Secretary of the Navy.

(5.) That if, upon such trials, there shall be any failure of the vessel to meet fully the requirements of this contract, the party of the first part shall be entitled to make further trials, sufficient in number to demonstrate

her capabilities; *provided*, that the number of trials shall be determined and limited by the Secretary of the Navy, and that all the expenses of all trials of the vessel prior to her preliminary or conditional acceptance shall be borne by the party of the first part.

Tenth. If, at and upon the trials before mentioned, the foregoing requirements and conditions relating to the vessel herein contracted for shall be fulfilled, and if the speed ($27\frac{1}{2}$ knots) guaranteed as aforesaid shall be developed and maintained as aforesaid, then and in such case the vessel shall be preliminarily accepted, and payment of the last installment of the price stipulated in this contract, and of all reservations, shall be made, subject, however, to a special reserve of eight thousand dollars (\$8,000) from and out of the reservations hereinafter provided for; but if the speed developed and maintained by the vessel, on her trial, shall fall below the speed ($27\frac{1}{2}$ knots) guaranteed as aforesaid, but not below twenty-six and a half ($26\frac{1}{2}$) knots an hour, she shall be conditionally accepted, subject to deductions from the price of the vessel at the rate of ten thousand dollars (\$10,000) a knot on account of her failure to reach the speed ($27\frac{1}{2}$ knots) guaranteed as aforesaid; *provided, however*, that all the other requirements and conditions of this contract shall have been fulfilled, and, in case of such conditional acceptance, that the fifth installment of the price of the vessel and the reservations on payments under this contract shall constitute a reserve fund which shall be applicable to or towards the satisfaction of such deductions, and shall be retained by the party of the second part for that purpose; *and provided further*, that if the vessel exhibits an average speed of less than twenty-six and a half ($26\frac{1}{2}$) knots an hour it shall be optional with the Secretary of the Navy to reject her or to accept her at a reduced price and upon conditions to be agreed upon between the said Secretary and the party of the first part.

In case of a preliminary acceptance of said vessel, the said special reserve of eight thousand dollars (\$8,000), or, in case of a conditional acceptance of the vessel, the said reserve fund, or so much thereof as may, in the judgment of the Secretary of the Navy, be necessary, shall be held until the vessel has been finally tried, after being fully equipped, armed, or weighted correspondingly, and in all respects complete and ready for sea, under conditions prescribed or approved by the Secretary of the Navy; *provided*, that such final trial shall take place within four months from and after the date of the preliminary or the conditional acceptance of the vessel, and that the expenses thereof shall be borne by the party of the second part.

If, at and upon such final trial, or at any time within four months after either a preliminary or a conditional acceptance of said vessel, such final trial not having taken place, any weakness or defect in the vessel, or any failure, breaking down or deterioration, other than that due to fair wear and tear, of any part or parts of the machinery, engines, boilers or appurtenances, shall appear, the same shall be corrected and repaired, to the satisfaction of the Secretary of the Navy, at the expense of the party of the first part, and the party of the first part may, if it so desires, have an engineer of its own selection present in the engine room of said vessel at any time or times during said period, who shall have full opportunity to observe and inspect the working of the machinery in all its parts, but without any directing or controlling power over the same, and, in case such engineer shall be a civilian, his compensation shall be paid by the party of the first part.

If said vessel be not in readiness for such final trial within four months from the date of her preliminary or conditional acceptance, through no fault or delay on the part of the party of the first part, and if there shall have appeared no weakness or defects in the vessel, nor any failure, breaking down or deterioration, other than that due to fair wear and tear, of any part or parts of the machinery, engines, boilers, or appurtenances, then the vessel shall be finally accepted, and the said special reserve, or the surplus, if any, of the said reserve fund paid, subject, however, to deduction on account of any reductions that may be made in the price of the vessel under the provisions of this contract.

In case of the rejection of the vessel for any of the causes provided for in this contract, the party of the first part shall refund to the party of the second part on demand, or within sixty days thereafter, all payments theretofore made to the said party of the first part, for or on account of the construction of said vessel.

Eleventh. The party of the second part having adopted, as foundation for this contract, drawings, plans, and specifications of a vessel which it has reason to think would, if properly carried out, result in the production of a speed of not less than twenty-seven and a half ($27\frac{1}{2}$) knots an hour, assumes no responsibility with reference thereto, and will consider any changes suggested by the party of the first part either as to hull or machinery, and, as the responsibility is with the party of the first part, will feel it to be its duty to deal liberally with any proposed changes, so long as the size, strength, and character of the vessel shall remain substantially the same; changes in plans or specifications involving increased or decreased expense to be dealt with as provided for in the second clause of this contract.

Twelfth. It is further mutually understood, covenanted, and agreed that, in case of the failure or omission of the party of the first part at any stage of the work prior to its completion, from any cause or causes other than those specified in the eighth clause of this contract, to go forward with the work and make satisfactory progress towards its completion within the prescribed period, it shall be optional with the Secretary of the Navy to declare this contract forfeited. The party of the first part shall thereupon, and on notice thereof, in writing, be, and the said party of the first part does hereby, in consideration of the premises, for itself and its successors and assigns, and its legal representatives, acknowledge itself to be justly indebted to the party of the second part, as for liquidated and ascertained damages, in a sum equal to the aggregate amount of all advance payments theretofore made to it for, or on account of work done under this contract, and does further covenant and agree, as aforesaid, to refund the same on demand, or within sixty days thereafter, and that the party of the second part shall and may hold, as collateral security for such refund, said vessel, or so much thereof as shall then have been constructed, and all materials furnished or on hand for the purposes of construction. The Secretary of the Navy shall thereupon cause to be taken and filed a full and complete statement and inventory of all work done or commenced in, upon, or about said vessel, and of all materials on hand applicable thereto, and shall cause the same to be duly valued by a board, consisting of not less than five persons, qualified by knowledge and experience for the discharge of their duties, to be appointed by the Secretary of the Navy, which board shall proceed without unnecessary delay to examine such work and materials and ascertain and declare the fair market value thereof, including a reasonable and customary margin of profit upon so much of the work as shall have been, at the time such forfeiture is declared, satisfactorily performed; and upon such examination the party of the first part may attend, by its representative, or, if it so desires, by counsel, and submit such evidence as the board may deem proper.

Thirteenth. Upon receipt of the report and finding of said board, and upon his approval thereof, the Secretary of the Navy may, in his discretion, proceed to complete said vessel, in accordance with the contract, drawings, plans, and specifications, using for that purpose all suitable materials on hand and included in the inventory aforesaid; and the title to said vessel, or so much thereof as shall have been completed, and to all such materials shall forthwith vest in the party of the second part; and the party of the first part does hereby for itself and its successors and assigns, and its legal representatives, covenant and agree to and with the party of the second part that, on receiving notice of the intention of the Secretary of the Navy to proceed to the completion of the work, it will surrender said vessel and all materials on hand, together with the use of the yard or plant, and all machinery, tools, and appliances appertaining thereto and theretofore used or necessarily to be used in and about the completion of the work.

Fourteenth. In case the Secretary of the Navy shall proceed, under the foregoing clause, to complete the

work, such procedure shall be without unnecessary delay, and shall be at the risk and expense of the party of the first part, which party shall be chargeable with any increase in the cost of materials or labor incurred by reason of its failure to perform this contract. Upon the final settlement of the liability of the party of the first part an account shall be stated substantially as follows:

The party of the first part shall be charged—

1. With all advance payments.
2. With the extra cost, if any, of materials and labor and all other extra expenses, if any, incurred in the completion of the work.

The party of the first part shall then be credited with the value of the work done up to the time of suspension, and of the materials on hand, as ascertained by the board, under the provisions of the twelfth clause of this contract and approved by the Secretary of the Navy; and with such advance payments, if any, as may have been refunded. If a balance shall thereupon appear in favor of the party of the first part, the same shall be paid to and accepted by the said party of the first part in full discharge of all claims under this contract; but if a balance shall appear in favor of the party of the second part, the party of the first part hereby covenants and agrees as aforesaid to pay and discharge the same on demand.

Fifteenth. It is mutually understood, covenanted, and agreed by and between the respective parties hereto that it shall not, under any circumstances, be obligatory upon the party of the second part to accept or pay for the vessel, or any part thereof, to be constructed under this contract, unless she shall have been completed in strict conformity with this contract, and in accordance with the provisions of the acts of Congress relating thereto, and that this qualification shall be deemed and taken as applicable and applying to each and every clause, covenant, and condition, express or implied, in this contract contained.

Sixteenth. It is mutually understood, covenanted, and agreed by and between the respective parties hereto that this contract shall not, nor shall any interest herein, be transferred by the party of the first part to any other person or persons.

Seventeenth. It is hereby mutually and expressly covenanted and agreed, and this contract is upon the express condition that no member of or delegate to Congress, officer of the Navy, nor any person holding any office or appointment under the Navy Department, is or shall be admitted to any share or part of this contract, or to any benefits to arise therefrom, but this stipulation, so far as it relates to members of or delegates to Congress, shall not be construed to extend to this contract, it being made with an incorporated company.

Eighteenth. The party of the second part, in consideration of the premises, does hereby contract, promise and engage to and with the party of the first part, as follows:

1. The price to be paid for the vessel constructed and furnished, in accordance with this contract, shall be one hundred and forty-four thousand dollars (\$144,000).

2. Payments shall be made by the party of the second part in five equal installments, as the work progresses, with a reservation of ten per cent from each installment.

3. No payment shall be made except upon bills, in quadruplicate, certified by the General Inspector of the vessel, in such manner as shall be directed by the Secretary of the Navy, whose final approval of all bills thus certified shall be necessary before payment thereof.

4. All warrants for payments under this contract shall be made payable to the party of the first part or its order.

5. The payment of the last installment shall not be made except as provided for in the tenth clause hereof.

6. When all the conditions, covenants, and provisions of this contract shall have been performed and fulfilled by and on the part of the party of the first part, said party of the first part shall be entitled, within ten days after the filing and acceptance of its claim, to receive the said special reserve, or the surplus, if any, of the said reserve fund, or so much of either as the said party of the first part may be entitled to, on the execution of a final release to the party of the second part in such form as shall be approved by the Secretary of the Navy, of all claims of any kind or description under or by virtue of this contract.

Nineteenth. If any doubts or disputes arise as to the meaning of anything in the drawings, plans, or specifications, or if any discrepancy appear between said drawings, plans, or specifications, and this contract, the matter shall be at once referred to the Secretary of the Navy for determination, and the party of the first part hereby binds itself and its successors and assigns, and its legal representatives to abide by his decision in the premises.

In witness whereof the respective parties hereto have hereunto set their hands and seals the day and year first above written.

SIGNED AND SEALED IN THE PRESENCE OF: