



February 5, 2007

Steve Fosmark
3059 Sherman Road
Pebble Beach, CA 93953

Dear Mr. Fosmark,

Please find enclosed an updated version of the Charter Agreement for your bid to provide guard vessel services for MBARI during the MARS cable installation. In November 2006, we sent you an earlier version of the contract. Since that time, we have removed the requirement for vessels to carry Workers' Compensation and USL&H insurance, unless the vessel operator is required to carry this type of insurance during the normal course of your operation. Please see the agreement for further details about this requirement.

As I mentioned on the phone, cable installation is currently scheduled to begin around March 9th, 2007, and should last approximately 10 days. However, the final schedule is still being refined, so slight adjustments are possible. We will send you a final schedule as soon as it is available. In the meantime, we will need to receive a signed copy of the agreement from you, as well as proof of insurance as detailed in the agreement. If the required coverage exceeds your current coverage, MBARI can reimburse you for the increase in your insurance premium for the period of the MARS cable installation. If this is the case, please supply us with the documentation to show the difference in premium costs between your current coverage and the required coverage for reimbursement.

We are looking forward to working with you. Please feel free to contact me if you have any questions. I can be reached at (831) 775-1885 or email at mandy@mbari.org.

Sincerely,

Mandy Allen
Operations Administrator

CHARTER AGREEMENT

This Charter Agreement ("this Agreement") is made as of _____, 2007 by and between Steve Fosmark ("Mr. Fosmark") and Monterey Bay Aquarium Research Institute ("MBARI"), in light of the following recitals:

WHEREAS, Mr. Fosmark is engaged in the business of commercial fishing and is available to perform duties as a guard vessel during installation of the MARS cable;

WHEREAS, MBARI is engaged in scientific research and development in various marine-related fields, including, but not limited to, cabled observatory development;

WHEREAS, pursuant to telephone discussions between Mr. Fosmark and MBARI in October and November 2006, Mr. Fosmark expressed interest in providing guard vessel services for MBARI during MARS cable installation;

WHEREAS, Mr. Fosmark is the owner of a vessel capable of performing the necessary functions; and

WHEREAS, Mr. Fosmark is willing to charter his vessel to MBARI in accordance with the terms of this Agreement.

In consideration of the mutual promises contained herein, the parties agree, as follows:

1. **Charter.** MBARI hereby agrees to charter a vessel from Mr. Fosmark, and Mr. Fosmark agrees to charter the vessel to MBARI, in accordance with the terms of this Agreement. The charter services shall include use of the vessel to conduct guard vessel duties during MARS cable installation. Mr. Fosmark will perform duties, including monitoring the area surrounding the cable installation vessel and communicating via radio to approaching vessels, as necessary; maintaining a logbook to be submitted to MBARI detailing activities throughout operations; and perform duties in 12-hour shifts (midnight to noon or noon to midnight, as assigned by MBARI) throughout cable installation. Installation operations will be conducted 24 hours a day, 7 days a week. Cable installation activities include a pre-lay grapnel run along the cable route, placement of a science node on Smooth Ridge, cable lay and burial, and pulling the cable ashore. Activities are anticipated to last approximately 10 days, but may be more or less depending on unanticipated factors, such as poor weather, mechanical problems, etc. Currently, installation is scheduled to begin on approximately March 9, 2007, and all services should be completed by March 19, 2007. However, these dates may change by a few days as the installation plan is finalized. The completion date may be extended up to March 31 if unexpected circumstances arise. MBARI will inform Mr. Fosmark of the exact start date as soon as it is known. This charter includes weekend and holiday use of the vessel and Mr. Fosmark's services.

2. **Fees.** In full compensation for this charter, MBARI shall pay Mr. Fosmark a standard rate of \$2500 for each full 12-hour shift which it employs the vessel. A fee for each partial shift (<12 hours) will be calculated at a rate of \$210 per hour.
3. **Payment.** MBARI shall pay the fee due Mr. Fosmark within thirty (30) days following receipt of Mr. Fosmark's invoice upon completion of the charter.
4. **Weather.** Mr. Fosmark will not charge MBARI for any full day that his vessel remains in port in Moss Landing because of weather or for any other reason. Any partial day at sea will be charged at the hourly rate. If, after leaving port to commence operations under this Agreement, the vessel is required to take refuge in another port because of weather, the maximum charge to MBARI will be for three (3) days at the standard rate. If the charter is canceled altogether by weather, Mr. Fosmark shall be under no obligation to interrupt his business and other commitments to reschedule the vessel.
5. **Operational Responsibility.** The Master of the vessel shall be solely responsible for all decisions concerning the operation of the vessel, including, but not limited to, decisions concerning the weather, the safety of the vessel, other equipment belonging to Mr. Fosmark, and the persons on board the vessel. MBARI and all of its personnel will cooperate fully with all decisions made by the Master.
6. **MBARI Personnel.** All employees and representatives of MBARI who intend to go on board the vessel are required to execute a standard waiver and release form prior to doing so, if required by Mr. Fosmark. Employees and representatives of MBARI are welcome to observe the trials aboard the vessel, provided that they execute the same waiver and release form, if required. Mr. Fosmark will allow agency monitoring representatives to board and inspect the vessel and any documentation if requested by those representatives.
7. **Allocation of Risks.** Mr. Fosmark shall assume all risk of loss of or damage to the vessel, and MBARI shall have no liability therefor.
8. **Indemnification.** Mr. Fosmark agrees to defend, indemnify and hold harmless MBARI, and its directors, officers, employees, and agents (hereinafter "Indemnitees") from and against any claim, judgment, award, damages, loss or expense, including reasonable attorneys' fees because of, but not limited to, loss of life of, or injury to, or illness of any person, or loss of, or damage to, or expense in connection with any vessel or other property arising out of or related to the charter of the vessel and the guard vessel duties as described, except to the extent caused by the sole negligence and/or willful misconduct of the "Indemnitees." Under no circumstances shall Mr. Fosmark be liable for the following specified consequential damages under this Agreement:
9. **Insurance.** At all times during the term of this Agreement, Mr. Fosmark shall carry Protection & Indemnity including Jones Act crew coverage at limits not less than

\$1,000,000, as reflected on the insurance certificate attached hereto as Exhibit "A". Mr. Fosmark shall cause MBARI and its directors, officers, employees, and agents to be named as additional insureds on these insurance policies and to receive at least thirty (30) days' prior written notice of cancellation of any of these policies. Workers' Compensation, USL&H, and General Liability insurance requirements are removed at this time as the vessel owner attests that these coverages do not apply because the vessel owner does not currently have exposures to which this insurance is applicable. If this should change at any time while the vessel owner is providing services to MBARI, proof of these coverages must be submitted to MBARI immediately.

10. **Notices.** Any notice under this Agreement shall be effective upon delivery by mail, facsimile or express delivery to the following addresses:

To MBARI: Monterey Bay Aquarium Research Institute
7700 Sandholdt Road
Moss Landing, California 95039-0628
Attn.: Michael Pinto, Chief Financial Officer
Fax no.: (831) 775-1620

To Mr. Fosmark: Steve Fosmark
3059 Sherman Road
Pebble Beach, CA 93953

11. **Dispute Resolution.** The parties agree to attempt in good faith to resolve any dispute relating to this Agreement. If they are unable to do so, they agree to endeavor first to settle the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules before resorting to arbitration. Any unresolved controversy or claim relating to this Agreement or its breach or any question of arbitrability shall be settled by binding arbitration administered by the AAA under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Any such mediation or arbitration shall be held in Monterey, California, unless another location is mutually agreed upon.
12. **Invoices:** In accordance with Items 1 & 2 above, Charter, Fees, and Payment, payments will be made for services as rendered within the time period described in Item 1 and within the amount so authorized, upon receipt of itemized invoices, to be submitted no more frequently than monthly by Mr. Fosmark. Invoices must be addressed to MBARI and reference the Purchase Order number assigned by MBARI on the first page of this agreement.
13. **Audit:** MBARI, the Federal Sponsoring Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers or records of Mr. Fosmark's which are directly

pertinent to this Agreement for the purpose of making audits, examinations, excerpts and transcriptions.

14. **Federal Funds:** Agreements made with Federal grant funds are subject to compliance with the standards and requirements as set forth in OMB Circular A-110, section 48, Contract Provisions and Appendix A, and OMB Circular A-133 paragraph 5. All procurement requirements contained in the above referenced Circulars are incorporated here in by reference.
15. **Miscellaneous.** This is the entire agreement between the parties on the subject matter and may not be modified except in writing signed by both parties. This Agreement shall apply to and be binding upon the heirs, personal representatives, successors and assigns of the parties. The rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of California. If any provision of this Agreement is deemed illegal or unenforceable, the remaining provisions shall remain in full force and effect. Neither party shall assign this Agreement or any obligations thereunder without the express written consent of the other. In any action to enforce or interpret this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees from the other party.

**MONTEREY BAY AQUARIUM
RESEARCH INSTITUTE**

STEVE FOSMARK

Michael Pinto, Chief Financial Officer

Steve Fosmark