

CHARTER AGREEMENT

This Charter Agreement ("this Agreement") is made as of Feb 26, 2007 by and between Tim Maricich ("Mr. Maricich") and Monterey Bay Aquarium Research Institute ("MBARI"), in light of the following recitals:

WHEREAS, Mr. Maricich 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. Maricich and MBARI in September and October 2006, Mr. Maricich expressed interest in providing guard vessel services for MBARI during MARS cable installation;

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

WHEREAS, Mr. Maricich is willing to charter the FV DONNA KATHLEEN 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. Maricich, and Mr. Maricich 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. Maricich 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. Maricich of the exact start date as soon as it is known. This charter includes weekend and holiday use of the vessel and Mr. Maricich's services.

2. **Fees.** In full compensation for this charter, MBARI shall pay Mr. Maricich a standard rate of \$2500 for each full 12-hour shift which it employs the DONNA KATHLEEN. 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. Maricich within thirty (30) days following receipt of Mr. Maricich's invoice upon completion of the charter.
4. **Weather.** Mr. Maricich 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 DONNA KATHLEEN 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. Maricich shall be under no obligation to interrupt his business and other commitments to reschedule the DONNA KATHLEEN.
5. **Operational Responsibility.** The Master of the DONNA KATHLEEN shall be solely responsible for all decisions concerning the operation of the DONNA KATHLEEN, including, but not limited to, decisions concerning the weather, the safety of the DONNA KATHLEEN, other equipment belonging to Mr. Maricich, and the persons on board the DONNA KATHLEEN. 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 and agency monitoring representatives who intend to board the DONNA KATHLEEN must board the vessel while it is in port; no at-sea boarding will be permitted. MBARI warrants that any of its employees and representatives who board the DONNA KATHLEEN are not to be deemed employees of the vessel owner. Further, any MBARI employees or representatives will not be permitted to perform any activities customarily recognized as crewmember navigational or guard duties while aboard the DONNA KATHLEEN and will only have the status and activities of "business invitees" while aboard the vessel. In the event an employee or representative of MBARI alleges that he or she was an employee of the vessel owner, MBARI agrees to hold harmless and defend the vessel owner, the DONNA KATHLEEN and the Seine Vessels' Reserve against any such claim, including reimbursement of attorney fees and costs. Mr. Maricich will allow agency monitoring representatives to inspect the vessel and any documentation if required by those representatives. MBARI employees and agency representatives will limit the number of persons and the frequency with which they board the vessel to only that which is necessary to accomplish any required functions.
7. **Allocation of Risks.** Mr. Maricich shall assume all risk of loss of or damage to the vessel, and MBARI shall have no liability therefor.

8. **Indemnification.** Mr. Maricich 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 DONNA KATHLEEN 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. Maricich be liable for consequential damages under this Agreement.
9. **Insurance.** At all times during the term of this Agreement, Mr. Maricich 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. Maricich 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. Maricich: Tim Maricich
P.O. Box 954
Moss Landing, CA 95039
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. Maricich. 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. Maricich'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**

TIM MARICICH


Michael Pinto, Chief Financial Officer


Tim Maricich

SEINE VESSELS' RESERVE

1900 West Nickerson St., Suite 320
Seattle, WA 98119
T (206) 283-7733 F (206) 283-7795
psvoa@psvoa.com / www.psvoa.com

CERTIFICATE OF INSURANCE

INSURED/VESSEL

Tim & Donna Maricich
FV DONNA KATHLEEN
13680 Donnell Rd
Anacortes WA 98221

LOSS PAYEE**ADDITIONAL INSURED**

Ventura Harbor Village
Ventura Port District
1603 Anchors Way Dr.
Monterey Aquarium
Research Institute
7700 Sandholt Rd.
Moss Landing, CA 95039

POLICY TERM: JANUARY 1, 2007 TO JANUARY 1, 2008 N.P.S.T

The insurance afforded under this certificate is only for those coverages indicated by a specific amount of insurance and contribution charge. The indicated coverages and the liability thereunder with respect to the payment of loss, damage, expenses and/or claims are subject to the terms and conditions of the Articles of Seine Vessels' Reserve as last amended and policy of reinsurance described in Article VII.

SEINE VESSELS' RESERVE

SVR Article	Coverage	Insurance Amount	Deductible	Contribution	2006 Layup	
IV (1)	Hull	\$350,000.00	\$15,000.00	\$8,750.00	\$1,823.00	
IV (1)	Skiff	\$0.00		\$0.00		
IV (1)	Skiff Machinery	\$0.00	\$0.00	\$0.00		
IV (5)	Breach of Warranty	\$0.00		\$0.00		
IV (4)	Pollution	\$500,000.00		\$250.00		
IV (3)	Net/Gear	\$0.00	\$0.00	\$0.00		
	Excess Protection/Indemnity	\$0.00		\$0.00		
	PSVOA Dues			\$300.00		
	Hired Skipper Surcharge			\$0.00		
IV (2)	Protection/Indemnity	\$1,000,000.00	\$5,000.00	\$2,650.00	See cost breakdown below	

PROTECTION/INDEMNITY COVERAGE

CREW	FISHERY	MONTHS	RATE	OPERATOR (if other than self)
1	CA PRAWNS/SQUID LIGHTBOAT	(JAN-MAR, SEPT-DEC)	\$2,650.00	
1	MONTEREY CABLE LAYING	(JAN-FEB)	\$0.00	
			\$0.00	
			\$0.00	
			\$0.00	

TRADING/CREW WARRANTY: Coverage confined to waters and trade incidental to the following fisheries and extended to other approved operators and up to the number of crew written opposite thereto.

TOTAL ANNUAL CONTRIBUTION - PAYABLE TO SVR

\$10,127.00

MBARI
ACCOUNTS PAYABLE

\$5,064.00

DUE MARCH 1

\$5,063.00

DUE SEPTEMBER 30

JAN - 3 2007

Countersigned at Seattle, Washington 12/14/2006

SVR MANAGER

SEINE VESSELS' RESERVE

1900 W NICKERSON SUITE 320
SEATTLE WA 98119
(206) 283-7733 T (206) 283-7795 F

831-775-1620
Attn: Mandy Allen
Monterey Bay Aquarium

ENDORSEMENT TO 2007 CERTIFICATE**INSURED/VESSEL**

AccountID: MARICICH TIM/Donna Kathleen

Tim & Donna Maricich
FV DONNA KATHLEEN
13680 Donnell Rd
Anacortes WA 98221

ENDORSEMENT**AMOUNT**

02/01/06 Add 1 Crew to 1 Crew-CA Prawns/Squid Lightboat (Feb) for a total of 2 Crew

\$150.00

2/23/07 Extend 1 CREW-MONTEREY CABLE LAYING through MARCH. Covered in base.

\$0.00