Purchase Order # _____
Project # _____

CHARTER AGREEMENT

This Charter Agreement ("this Agreement") is made as of March 5, 2007 by and between Carl Wheeler ("Mr. Wheeler") and Monterey Bay Aquarium Research Institute ("MBARI"), in light of the following recitals:

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

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

WHEREAS, Mr. Wheeler is willing to charter the *Ocean Gypsy* 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. Wheeler, and Mr. Wheeler 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. Wheeler 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. Wheeler of the exact start date as soon as it is known. This charter includes weekend and holiday use of the vessel and Mr. Wheeler's services.

2. **Fees.** In full compensation for this charter, MBARI shall pay Mr. Wheeler a standard rate of $4867 for each full 12-hour shift which it employs the *Ocean Gypsy*, for the first three shifts. Any additional shifts will be paid at a rate of $1800 for each full 12-hour shift. A fee for each partial shift (<12 hours) will be calculated at a rate of $150 per hour.

3. **Payment.** MBARI shall pay the fee due Mr. Wheeler within thirty (30) days following receipt of Mr. Wheeler's invoice upon completion of the charter.

4. **Weather.** Mr. Wheeler will not charge MBARI for any full day that the *Ocean Gypsy* 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 *Ocean Gypsy* 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. Wheeler shall be under no obligation to interrupt his business and other commitments to reschedule the *Ocean Gypsy*.

5. **Operational Responsibility.** The Master of the *Ocean Gypsy* shall be solely responsible for all decisions concerning the operation of the *Ocean Gypsy*, including, but not limited to, decisions concerning the weather, the safety of the *Ocean Gypsy*, other equipment belonging to Mr. Wheeler, and the persons on board the *Ocean Gypsy*. 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 *Ocean Gypsy* are required to execute a standard waiver and release form prior to doing so, if required by Mr. Wheeler. Employees and representatives of MBARI are welcome to observe the trials aboard the *Ocean Gypsy*, provided that they execute the same waiver and release form, if required. Mr. Wheeler will allow agency monitoring representatives to board and inspect the vessel and any documentation if requested by those representatives.

7. **Allocation of Risks.** Mr. Wheeler shall assume all risk of loss of or damage to the *Ocean Gypsy*, and MBARI shall have no liability therefor.

8. **Indemnification.** Mr. Wheeler 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 *Ocean Gypsy* 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. Wheeler be liable for the following specified consequential damages under this Agreement:

9. **Insurance.** At all times during the term of this Agreement, Mr. Wheeler 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. Wheeler 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. Wheeler: Carl Wheeler
    P.O. Box 371
    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. Wheeler. 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. Wheeler'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

for

Michael Pinto, Chief Financial Officer

CARL WHEELER

Carl Wheeler

ACORD

CERTIFICATE OF LIABILITY INSURANCE

CSR PP WHEECA1

DATE (MM/DD/YYYY) 03/05/07

PRODUCER

Douglas Lambert Ins. Services
1825 State Street, 3rd Floor
Santa Barbara CA 93101
Phone: 805-563-6388 Fax: 805-569-3051

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Carl Wheeler
OCEAN GYPSY
P.O. Box 371
Moss Landing CA 95039

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Great American Insurance Co.	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
		☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG	$
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		☐ ANY AUTO				BODILY INJURY (Per person)	$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
		☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
		☐ HIRED AUTOS					
		☐ NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
							$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS / OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$
						E.L. DISEASE - POLICY LIMIT	$
A		OTHER Protect/Indemnity	TBA-GAI OCEAN GYPSY	03/08/07	03/08/08		1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Please See Addendum A Attached

CERTIFICATE HOLDER

MONTER5

Monterey Bay Aquarium
Research Institute
7700 Sandhold Road
Moss Landing CA 95039-9644
ATTENTION: MANDY ALLEN

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Chris Beckett, #0702241&307865

ACORD 25 (2001/08)

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ADDENDUM "A"

INSURED: **Carl Wheeler**
VESSEL: **OCEAN GYPSY**

CERTIFICATE OF INSURANCE
DATED: **March 5, 2007**

PRIMARY POLICY NO.: **TBA-GAI**
PRIMARY POLICY TERM: EFFECTIVE DATE: **03/08/07** EXPIRATION DATE: **03/08/08**

ADDITIONAL INSURED ENDORSEMENT

CERTIFICATE HOLDER IS NAMED AS AN ADDITIONAL INSURED UNDER THIS POLICY, BUT ONLY AS RESPECTS TO NEGLIGENT ACTS OR OMMISSIONS OF THE NAMED INSURED AND ONLY FOR OCCURRENCES, CLAIMS OR COVERAGES NOT OTHERWISE EXCLUDED IN THE POLICY.

IT IS FURTHER AGREED THAT SHOULD NO COVERAGE APPLY HEREIN FOR THE NAMED INSURED, NEITHER COVERAGE NOR DEFENSE SHALL BE AFFORDED TO THE ABOVE-IDENTIFIED ADDITIONAL INSURED.

MOREOVER, IT IS AGREED THAT NO COVERAGE SHALL BE AFFORDED TO THE ABOVE IDENTIFIED ADDITIONAL INSURED FOR ANY BODILY INJURY, PERSONAL INJURY, OR PROPERTY DAMAGE TO ANY EMPLOYEE OF THE NAMED ADDITIONAL INSURED OR TO ANY OBLIGATION OF THE ADDITIONAL INSURED TO INDEMNIFY ANOTHER BECAUSE OF DAMAGES ARISING OUT OF SUCH INJURY.

not entirely clear but okay

3/5/07

DOUGLAS
LAMBERT INSURANCE SERVICES

February 26, 2007

Carl Wheeler
PO Box 371
Moss Landing, CA 95039

RE: Marine Insurance

I have the following indication for coverage.

Vessel	H&M	Deductible
OCEAN GYPSY	$ 250,000	$ 15,000

Protection & Indemnity:

Limits:	$100,000*	$1,000,000**
D/A	$ 2,500	$ 2,500

- LOL for commercial fishing. March – May, with 3 crew
- LOL as a guard boat, 30 days , with 1 crew

Premium $ 9,200 (fully earned at inception)

Thank You

Chris Beckert,

This quotation is only an indication of coverage. All terms and conditions are subject to the actual insurance policy

Home Office: 1825 State Street, 3rd Floor, Santa Barbara, CA 93101 Tel. 805-563-6388 Fax 805-569-3051
Southern/Midwestern Division: Box 325, 2541 W. IH-35, #200, Round Rock, Texas 78664-7357
Tel. 866-954-BOAT (2628) Fax 866-954-6180
http://www.douglasins.com