

REAL ESTATE LEASE

This Lease Agreement ("Lease") is made effective as of February 1, 2006, by and between the Moss Landing Harbor District ("District"), a political subdivision of the State of California, and The Monterey Bay Aquarium Research Institute ("MBARI"), a California non-profit public benefit corporation.

RECITALS

A. MBARI desires to install and operate an undersea cabled observatory ("Project"), known as "The Monterey Accelerated Research System" ("MARS"), which will consist of a submarine research cable ("the Cable") extending 31.7 miles from a station in Moss Landing to an offshore submerged formation known as Smooth Ridge in Monterey Bay. The Cable will be buried approximately 76% of the route. The portion of the Cable located within the District's territorial boundaries will be encased in a conduit ("the Conduit") approximately 5 inches in diameter which will be buried at an approximate depth of fifty (50) feet below the surface of the seabed for the entire distance within the District's territorial boundaries.

B. The Project was subject to analysis pursuant to both the California Environmental Quality Act ("CEQA") and the National Environmental Protection Act ("NEPA"), with the California State Lands Commission ("CSLC") and the Monterey Bay National Marine Sanctuary acting as the co-lead agencies and the National Science Foundation acting as a cooperating agency for preparation of a joint Environmental Impact Report/Environmental Impact Statement ("EIR/EIS"). The Final EIR/EIS, which included a Mitigation Monitoring Program to ensure that measures adopted to mitigate or avoid significant impacts associated with the Project are properly implemented, was certified by the CSLC in August of 2005.

C. After due consideration of a Staff Report and a report from the District's Environmental consultant, the EIR/EIS, and comments from the Project proponent and the public at hearings on September 29, 2005 and November 10, 2005, the District's Board of Commissioners issued a Building Permit ("the Permit") for the Project on November 10, 2005.

D. One of the conditions of the Permit requires District and MBARI to enter into a lease for use of the District's property, and District and MBARI now desire to enter a lease agreement setting forth all terms and conditions of MBARI's long-term use of the District's property for the Project.

NOW THEREFORE, IT IS AGREED by the parties hereto that for the consideration set forth below, the parties agree to the following terms and conditions:

1. PREMISES

District, in consideration of the lease payments provided in this Lease, leases to MBARI certain submerged premises (the "Premises") which are part of the lands granted to District

 / MBARI 

pursuant to Senate Bill No. 1116 as approved by the Governor on July 18, 1947 and entered as Chapter 1190 of the Statutes of 1947 ("the District's Lands"). The Premises are specifically described in Exhibit A to this Lease which is incorporated herein by this reference. This Lease includes only the footprint on the seabed actually occupied by the Conduit and the Cable encased therein associated with the Project. MBARI plans to install the Conduit and the Cable by drilling into an area adjacent to but not on the District's Lands, and then through the subsurface area at an approximate and constant depth of fifty (50) feet below the seabed within the District's Lands.

2. TERM

The Lease term will be for a period of twenty five (25) years to begin on February 1, 2006 and will terminate on January 31, 2031 ("the Term").

3. LEASE PAYMENTS

MBARI shall pay to District the sum of Nine Hundred Eighty Dollars (\$980.00) per year, in advance, for each year of the lease term, commencing on February 1, 2006, with each payment thereafter due on February 1 of each year of the lease thereafter. Lease payments shall be made to the District at 7881 Sandholdt Road, Moss Landing, California 95039, or at such location as may be hereafter specified by the District in writing.

Lease payments shall be adjusted every year for inflation commencing February 1, 2007. The basis for computing each increase shall be the United States Department of Labor Consumer Price Index All Urban Consumers, Base 1982=100 (CPI-U) for San Francisco Oakland San Jose, California ("Index"). District shall notify MBARI of each increase in the Lease payment, in writing. At each adjustment date, the Lease payment payable during the immediately preceding year shall be increased by the amount of any percentage increase in the Index last published for the period January-December of the preceding year.

4. POSSESSION

A. MBARI shall be entitled to possession of the Premises on the first day of the Term and shall yield possession to District on the last day of the Term, unless otherwise agreed by both parties in writing.

B. Removal of the Cable from the Conduit at the end of the term of this Lease, or sooner if necessary or appropriate, shall be in accordance with CSLA Lease PRC 8620.9 Special Provision 19, including, but not limited to the requirement that MBARI provide District with notice of the proposed removal and that MBARI provide District with a "Cable Removal Plan.". The parties acknowledge and agree that the Conduit will be removed from the seabed on the expiration or termination of this Lease unless the parties agree otherwise in writing, which agreement shall take into consideration the facts and circumstances at the time, including MBARI's demonstrating to the District's satisfaction that there is no need to remove the Conduit, or that leaving the Conduit in place poses no environmental threat or other material harm to the District and its users, and MBARI further demonstrating that leaving the Conduit in place does not violate the requirements of the California Environmental Quality Act.

5. USE OF PREMISES

Subject to the construction permit issued November 10, 2005 by District, compliance with the District's Ordinance Code, compliance with all conditions and mitigation measures set forth in the Final EIR/EIS, compliance with the terms and conditions of all agreements and rules and regulations of all other regulatory agencies having jurisdiction over any aspect of the Project (Including, but not limited to CSLC Lease PRC 8620.9 and California Coastal Commission Permit E-05-007), and compliance with the provisions of the this Lease, MBARI may use the Premises solely for the installation, operation, maintenance and repair of the Conduit and the Cable. The Conduit and the Cable shall be buried at a depth of approximately fifty (50) feet under the seabed, within the District's Lands. Burial depth will be confirmed in writing to District after installation, in the manner set forth in CSLC Lease PRC 8620.9 Special Provision 16. MBARI shall secure the written consent of District prior to any additions to or alteration or modification of the Conduit or the Cable.

Notwithstanding the foregoing, District has not made an independent investigation of the Premises, soils conditions, or other conditions which might affect the design, location or construction or installation of the Conduit or the Cable, or the suitability of the Premises for MBARI's proposed use. District is offering the Premises in "as is" condition, and makes no representations with respect to the suitability of the Premises or surrounding conditions for MBARI's proposed use.

MBARI shall exercise its rights to use the Premises so as to avoid to the fullest extent reasonably possible, interference with the District's use of the Premises or with the general public's right to use the Premises for public trust purposes, including without limitation, dredging, water-related commerce, navigation, fishing and fishing-related events, water-related recreation, habitat preservation and open space.

District expressly reserves the right to lease, convey or encumber the Premises to third parties for facilities or improvements that may cross over or under MBARI's authorized improvements. MBARI agrees that such crossing shall not constitute or be deemed to be an inconsistent or incompatible use, nor a material interference with MBARI's improvements. MBARI shall cooperate, to the extent necessary, to facilitate the installation, operation, maintenance, and abandonment of such third party facilities. From and after the installation of the Cable and the Conduit, any agreement entered into by District authorizing third-party use of the Premises that will cross under or over the Conduit and the Cable shall provide (i) that the right granted thereunder shall be exercised to minimize, to the fullest extent reasonably possible interference with MBARI's use of the Premises or damage to the Conduit or the Cable; (ii) that the third party give notice to MBARI prior to commencement of construction of the Cable crossing, and (iii) that the third party give MBARI a reasonable opportunity to negotiate and enter into a cable crossing agreement on such terms and conditions as may address and accommodate the respective rights and uses of each party. The consent of MBARI to the terms and conditions of a crossing agreement shall not be prerequisite to the commencement of construction of the crossing. In the exercise of this provision, District, MBARI and any third-party authorized by District, shall give consideration to International Cable Protection

Committee ("ICPC") Recommendation No. 2 (ICPC Handbook Section No. 12.2; Recommendation No. 2. Issue: 8; dated August 7, 2001.).

6. MAINTENANCE

Except as otherwise noted herein, MBARI shall have the responsibility to maintain the Premises in good condition at all times, including, but not limited to, ongoing cable surveying and reburial, as necessary. MBARI shall not permit the Premises to become a danger to navigation or a hazard to vessels lawfully and innocently using the overlying waters. MBARI will make a good faith effort to ensure that any maintenance or repair activities, to the extent possible, will not interfere with District-related dredging, water-related commerce, navigation, fishing and fishing-related events, water-related recreation, and habitat preservation.

7. INSURANCE

MBARI shall maintain insurance policies for injuries to persons, marine life, or damages to property, which shall include comprehensive and general liability, in the total amount One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate. Such insurance policies shall name the District, its appointed and elected officials, employees and agents as additional insureds.

8. INDEMNITY REGARDING USE OF PREMISES

MBARI agrees to indemnify, hold harmless, and defend District, and its appointed and elective officials, employees and agents from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which District may suffer or incur in connection with MBARI's use of the Premises which arise out of the acts, errors or omissions of MBARI or its agents. The District will hold harmless, and defend MBARI, its officers, directors, employees and agents against any and all losses, claims, liabilities and expenses that MBARI, its officers, directors, employees and agents may suffer or incur which arise out of the acts, error or omission of District.

9. TAXES

Pursuant to California Revenue and Taxation Code Section 107.6, MBARI is hereby advised that this Lease creates a possessory interest subject to property taxation and, as the party in whom the possessory interest is vested, MBARI will be subject to payment of any taxes levied on said interest. MBARI shall pay promptly all taxes and assessments of any kind whatsoever assessed or levied for or upon the Premises, including taxes and assessments assessed or levied on any machines, appliances, property, property interest, possessory interest or improvement of any kind erected, installed, maintained upon, or used in connection with the Premises. MBARI shall also pay promptly any taxes levied upon the business or other activities of MBARI upon or in connection with the Premises. Furthermore, MBARI shall promptly pay any fees imposed by law for any licenses or permits for any business or activity of MBARI upon the Premises. Payment of any such taxes, fees, or charges shall not constitute cause for modification of rent payable to District.

 MBARI 

10. DESTRUCTION OR CONDEMNATION OF PREMISES

If the Premises, the Conduit or the Cable are damaged in a manner that prevents or impairs MBARI's use of the Premises, and if the cost to repair and the time to repair the Conduit, the Cable or the Premises is deemed reasonable by MBARI, then MBARI shall promptly repair the Conduit, the Cable and the Premises. Lease payments shall not abate during the period of such repair. However, if MBARI determines that the damage to the Conduit, the Cable or the Premises is not repairable within a reasonable time after the occurrence of the damage or destruction, or if the cost of repair is deemed unreasonable by MBARI, or if MBARI is prevented from repairing the damage to the Conduit, the Cable or the Premises by forces beyond MBARI's control, or if the Premises are condemned by a third party, this Lease shall terminate upon ninety (90) days written notice of such event or condition by MBARI.

Upon termination of the Lease by destruction or condemnation, or any other reason by which MBARI effectively abandons the Premises, MBARI shall return the Premises to the District within one hundred twenty (120) days in substantially the same condition in which it was received, with the Cable and Conduit removed unless the parties otherwise agree in writing as herein provided. If the event which caused the damage or destruction to the Conduit, the Cable or the Premises is an Act of God, which materially changes the Premises, MBARI shall not be required to restore the Premises to their condition prior to the event causing the damage or destruction. Except as otherwise provided herein, District retains the right to accept the Premises in "as is" condition upon termination. District's right to accept the Premises and all improvements thereon after termination, as set forth herein, must be exercised in writing within ninety (90) days after MBARI tenders return of the Premises.

11. DEFAULTS

MBARI shall be in default of this Lease if MBARI fails to fulfill any lease obligation or term by which MBARI is bound. Subject to any governing provisions of law to the contrary, if MBARI fails to cure any financial obligation within thirty (30) days, or any other obligation within sixty (60) days, after written notice of such default is provided by District to MBARI, District may take possession of the Premises without further notice, and without prejudicing District's rights to damages. In the alternative, District may elect to cure any default and the cost of such action shall be added to MBARI's financial obligations under this Lease.

12. ASSIGNABILITY/SUBLETTING

MBARI may not assign or sublease any interest in the Premises without the prior written consent of District which consent shall not be unreasonably withheld.

13. ADDITIONAL PROVISIONS

MBARI agrees that it is familiar with the dredging activities of the Moss Landing Harbor District as presently conducted, and acknowledges that such activities do not and will not be detrimental to the Project. If there are any impacts to the Project, MBARI will make no effort to

 / MBARI CSP

cause such dredging activities to stop or be suspended now or in the future. MBARI will ensure that the Project does not interfere with the Harbor's dredging activities.

14. OTHER PERMITTING AGENCIES

This Lease shall remain in force only as long as all permits that are required by other agencies for the construction, operation and maintenance of the Project remain valid. Other agencies may include, but not be limited to the U.S. Army Corps of Engineers, the CSLC, and the California Coastal Commission. Prior to construction, MBARI shall provide District with copies of permits and any special requirements from all other agencies having jurisdictional authority over the Project. (Including rights to cross property, improvements, or facilities owned by any person or entity other than the District.)

This Lease shall become immediately null and void in the event the Project is not approved by all permitting authorities.

15. FISHINGPERSON'S RIGHTS AND REMEDIES

In order to minimize losses to commercial fisherpersons with permanent or temporary berths in the District's harbor or otherwise making use of District's marine facilities or services, that may occur if fishing gear is damaged by, or lost on, the Project improvements, MBARI shall:

- a) Within ninety (90) calendar days of acceptance by MBARI of the work as complete by the contractor, distribute to any fisherperson legally authorized to trawl in proximity of the Project such written documentation indicating the "as-built" Cable coordinates and cable burial depths as are reasonably necessary to show the accurate position and depth of the cable. Such documentation shall also be filed with the District's General Manager, with Monterey Bay Aquarium Research Institute, with the Monterey Bay National Marine Sanctuary office in Monterey, California, and with the California Department of Fish and Game, Marine Region Headquarters in Monterey, California. Such documentation shall also be made available from MBARI on request;
- b) Within ninety (90) calendar days after MBARI's final acceptance of the Project as complete, provide necessary information to NOAA so navigational charts and aids can accurately show the location and depth of the cable. MBARI shall supply the same information to the U.S. Coast Guard by a Local Notice to Mariners;
- c) Within thirty (30) calendar days of the execution of this Lease, MBARI shall provide District with proof that it has met with the designated representative(s) of the Alliance of Communities for Sustainable Fisheries (ACSF) and trawlers legally authorized to fish over any portion of the Premises, for the purposes of Section 15 of the Lease, Premises shall mean all property impacted by the MARS project in its entirety, including that portion located within the District's territorial boundaries) prior to installation of the Conduit and Cable, to coordinate MBARI's and commercial fishing activities to avoid navigational and spatial conflicts, and to discuss operational issues to include, but not be limited to, fishing procedures to be followed in the vicinity of the Cable, and coordination

between fishermen and MBARI research and service activities. MBARI shall participate in similar meetings within 90 calendar days after MBARI's final acceptance of the Project as complete, and thereafter, quarterly for the remainder of the first year of Cable operation, every six months during the second year, and thereafter at least once annually. The meetings shall take place at a time and location in Monterey County, California selected by ACSF and convenient to fishermen, to exchange information and to address any administrative or other issues which have arisen in connection with the cable. MBARI shall designate a Fisheries Liaison ("Liaison") to coordinate with licensed fisherpersons for the same purposes on an ongoing basis throughout the Lease term;

d) MBARI shall maintain its existing, fully-staffed 24-hour telephone hotline and shall provide the hotline telephone number and the name of the Liaison, in writing, to any fisherperson licensed to trawl over the Premises and to any other party who requests such information. MBARI shall also provide its hotline number to NOAA for inclusion in the Notice to Pilots and to the USCG for inclusion in the Notice to Mariners. Should MBARI's hotline number or Liaison change, MBARI shall provide its new number to those persons and entities listed in this sub-paragraph (d) and in sub-paragraphs (a) and (c) immediately above. If a fisherperson believes he or she has snagged or damaged the cable, he or she shall immediately notify MBARI, through MBARI's 24-hour hotline, of the location of his or her vessel by GPS coordinates at the time of the actual or suspected snag or damage. If, due to serious adverse weather conditions or other emergency conditions, the fisherperson is unable to immediately contact MBARI, he or she shall note the date, time and location of the actual or suspected snag, and shall thereafter provide notice to MBARI of the actual or suspected cable snag or injury as soon as the emergency conditions have abated. MBARI will immediately investigate the report and provide its findings on damage to the cable, on written request, to the fisherperson involved, within ten (10) days after MBARI obtains such findings. Such documentation shall also be made available from MBARI on request;

e) After notice by a fisherperson legally authorized to trawl in the Premises to MBARI on MBARI's hotline, of a suspected or actual snag of, or other damage to, the cable, and if, at MBARI's direction, the fisherperson immediately sacrifices trawling gear which snags the cable, MBARI will pay one hundred percent (100%) of actual reasonable retail replacement cost of gear comparable to the sacrificed gear, or the reasonable cost to repair any damaged gear, and the wholesale market value, at the fisherperson's port of destination, of any catch lost with the gear. The Liaison will consult with the designated representative(s) of the ACSF and may consult with other licensed fisherpersons regarding any submitted claim. MBARI is not required by this Lease to pay claims unless MBARI is notified on its hotline number by fisherperson within 24 hours of any actual or suspected cable snag or damage;

f) MBARI's payment for damaged or sacrificed gear and lost catch will be made as soon as possible but no later than ten (10) days after MBARI has been provided written documentation, including invoices or bids for the replacement cost of the gear or the reasonable cost to repair the gear, and the wholesale market value of the lost catch with

certification of a claim form that the claim for payment is being made by the owner of the sacrificed or damaged gear;

g) MBARI will release all claims against any fisherperson legally authorized to trawl in the Premises who, while using reasonable care, snags the cable, if the fisherperson immediately notifies MBARI of the snag or other contact with the cable on MBARI's hotline and cuts loose his or her gear, as directed by MBARI, to prevent further damage to the cable. MBARI will also refrain from taking any administrative, legal, or other action to sanction and/or recover damages against a fisherperson who notifies MBARI of a probable snag or damage on MBARI's hotline and who is directed by MBARI to cut loose his or her gear to prevent further damage to the cable. MBARI is not required by this Lease to release claims for cable damage or refrain from taking administrative or legal action against a fisherperson who damages the cable, unless MBARI is notified on its hotline number by the fisherperson within twenty four (24) hours of any actual or suspected snag or damage.

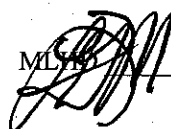
h) MBARI will agree to submit, no later than thirty (30) days after a dispute arises, any dispute with a fisherperson legally authorized to trawl in the Premises over reimbursement for lost or damaged gear or lost catch to mediation by a mediator mutually selected by the parties. As used in this provision, the term mediator includes any individual deemed to be independent by the parties and may include, for example, a representative of a committee associated with any other West Coast Cable. MBARI will agree to pay half the costs of any mediation. If the dispute is not resolved by mediation within thirty (30) days, MBARI will agree to submit the dispute to binding arbitration before a single arbitrator selected by mutual agreement of the parties, or if the parties cannot agree, then selected in accordance with the California Arbitration Act then in effect (Code. Civ. Proc. §1280, et. seq.), with said arbitration to occur no later than sixty (60) days after the dispute arose. MBARI will also agree that the arbitrator will be authorized to award any arbitration costs and attorneys' fees incurred in the arbitration to the prevailing party in the arbitration as a part of the arbitrator's award.

16. NOTICES

Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

District: General Manager
Moss Landing Harbor District
7881 Sandholdt Road
Moss Landing, CA 95039

MBARI: Director of Marine Operations
Mr. Steve Etchemendy
Monterey Bay Aquarium Research Institute
7700 Sandholt Road
Moss Landing, CA 95039

 / MBARI 

Such addresses may be changed from time to time by either party by providing notice as set forth above.

17. ENTIRE AGREEMENT/AMENDMENT

This Lease Agreement and the Construction Permit contain the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the party obligated under the amendment signs the writing.

18. SEVERABILITY

If any provision of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

19. WAIVER

The failure of either party to enforce any provision of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

20. CUMULATIVE RIGHTS

The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

21. GOVERNING LAW

This Lease shall be construed in accordance with the laws of the state of California.

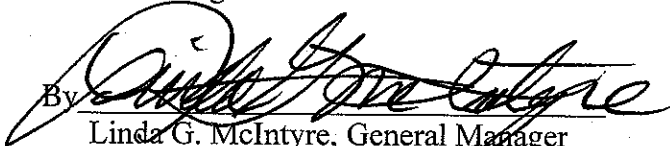
*[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
LEASE CONCLUDES ON FOLLOWING PAGE]*

22. CAPTIONS AND GENDER

The captions used in this Lease are for identification only, are not part of the Lease and shall not be used to interpret the provisions of any part of this Lease. The singular includes the plural as the context requires and the masculine, feminine and neuter gender are used, if at all, interchangeably herein.

DISTRICT:

Moss Landing Harbor District

By 
Linda G. McIntyre, General Manager

MBARI:

MBARI - Monterey Bay Aquarium Research Institute

By 
C. Michael Pinto, Chief Financial Officer

 MBARI as