

# ODYSSEY MARINE EXPLORATION INC

## FORM 10-KT (Annual Transition Report)

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**U.S. SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM 10-KSB**

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(Mark one)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED \_\_\_\_\_

TRANSITION REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM MARCH 1, 2004 TO DECEMBER 31, 2004

Commission File Number 1-31895

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**ODYSSEY MARINE EXPLORATION, INC.**

(Exact name of small business issuer as specified in its charter)

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**Nevada**  
(State or other jurisdiction of  
incorporation or organization)

**84-1018684**  
(I.R.S. Employer  
Identification No.)

**5215 W. Laurel Street, Tampa, Florida 33607**  
(Address of principal executive offices)

**(813) 876-1776**  
(Registrant's telephone number including area code)

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Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B is not contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB.

State issuer's revenues for its most recent fiscal year: \$17,622,092.

As of March 10, 2005, the Registrant had 41,308,099 shares of Common Stock, \$.0001 Par Value, outstanding, and the aggregate market value of the shares held by non-affiliates on that date was approximately \$88,256,000.

Transitional Small Business Disclosure format: Yes  No

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*As used in this Transition Report on Form 10-KSB, “we,” “us,” “our company” and “Odyssey” means Odyssey Marine Exploration, Inc. and our subsidiaries, unless the context indicates otherwise. Previously, Odyssey’s fiscal year was the twelve-month period ending on the last day of February. As a result of a change in our fiscal year, Odyssey’s 2004 transition period consists of the ten-month period ended December 31, 2004, and thereafter Odyssey’s fiscal year will be the twelve-month period ending December 31.*

### PART I

This Transition Report on Form 10-KSB contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Act of 1934. The statements regarding Odyssey Marine Exploration, Inc. and its subsidiaries contained in this report that are not historical in nature, particularly those that utilize terminology such as “may,” “will,” “should,” “likely,” “expects,” “anticipates,” “estimates,” “believes” or “plans,” or comparable terminology, are forward-looking statements based on current expectations and assumptions, and entail various risks and uncertainties that could cause actual results to differ materially from those expressed in such forward-looking statements.

Important factors known to us that could cause such material differences are identified in this report and in our “RISK FACTORS” in Item 1. We undertake no obligation to correct or update any forward-looking statements, whether as a result of new information, future events or otherwise. You are advised, however, to consult any future disclosures we make on related subjects in future reports to the SEC.

#### ITEM 1. DESCRIPTION OF BUSINESS

##### Overview of Odyssey

Odyssey Marine Exploration, Inc. is engaged in the archaeologically sensitive exploration and recovery of deep-water shipwrecks throughout the world. We employ advanced state-of-the-art technology, including side scan sonar, remotely operated vehicles, or ROVs, and other advanced technology, that enables us to locate and recover shipwrecks at depths that were previously unreachable in an economically feasible manner.

Odyssey’s founders have significant experience in deep ocean shipwreck exploration, and have supervised extensive deep-water archeological excavations with ROVs. In addition to operational experience, our officers have taken a leadership role in the development of a shipwreck exploration industry, having founded the Professional Shipwreck Explorer’s Association, served on the United States delegation for the Convention on the Protection of Underwater Cultural Heritage for four consecutive terms, provided advice to various government agencies on shipwreck policy issues in both the United States and abroad, and negotiated the world’s first sovereign shipwreck partnering agreement with any government.

Odyssey continues to build on a foundation of shipwreck research, development of political relationships and advancement of techniques for deep ocean search and recovery.

Odyssey is a Nevada corporation which was formed on March 5, 1986.

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### *Founding Principles*

Odyssey was founded on the following principles:

- Ships have been lost through the centuries in deep water while carrying intrinsically valuable artifacts and cargoes.
- The technology now exists to both find and recover these lost artifacts and cargoes in an archaeologically sound fashion.
- The combination of these factors means that a new industry will likely emerge, and we plan to be the leader within this new industry.

### *Mission and Strategy*

Our mission is to become the premier company engaged in deep water shipwreck exploration through the application of state-of-the-art technology and dedication to the preservation of underwater cultural heritage through sound archaeological practices.

The cost of mobilizing vessels, complex equipment and a professional team of technicians, archaeologists, conservators and scientists capable of conducting deep-water search and recovery is very high. Therefore, our strategy is to build a “pipeline” of well-researched projects and then move equipment and personnel from project to project in a cost-effective and efficient manner.

### *Project Criteria*

Since 1994, we have spent much of our time and resources conducting research in an attempt to identify shipwreck projects that meet the following criteria:

- The shipwreck must be in deep water, thereby minimizing the possibility that it has been broken up and covered by shifting sands or the target of previous recovery efforts.
- The research must indicate that the shipwreck was carrying enough intrinsically valuable cargo to pay for the high cost associated with deep-ocean archaeological recovery, and to provide an attractive return for our investors and stockholders.
- The research must provide good navigational information concerning the sinking location in order to minimize the search area and provide a reasonable expectation that the wreck can be found.
- The issues relating to ownership of the shipwreck and its cargo must be resolved or reasonably predictable prior to beginning any recovery in order to minimize potential for litigation.

The United Nations Educational Scientific and Cultural Organization, or UNESCO, has estimated that there are up to 3,000,000 shipwrecks contained within the oceans of the world. Historical records suggest that many were lost with verifiable cargoes of intrinsically valuable material. Of this universe of potential projects, we have identified more than a dozen projects that could be initiated immediately.

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### Revenue Sources

Although we believe the majority of our future revenue will continue to be generated through the sales of intrinsically valuable cargoes, we also plan to produce revenue from other activities including marketing shipwreck merchandise, expedition sponsorships, sale of intellectual property rights, adventure tourism, archaeological services, and operation of themed attractions and exhibits. During December 2004 we conducted a test to determine if direct telemarketing was a viable method to sell our ungraded coins and other shipwreck related items. Based upon the test, we have decided to operate a telemarketing sales center.

### Active Projects

In the past we have from time to time disclosed information concerning each of our existing and planned search operations. In order to protect the identities of the targets of our planned search operations, we have decided to defer disclosing specific information relating to our search targets until we have located the targeted shipwreck or shipwrecks and determined a course of action to protect our property rights.

We have completed an extensive target development program for our 2005 search season. Our research team has designated five shipwreck targets that will be the focus of upcoming search operations. According to company research, none are believed to be sovereign immune warships pursuant to the Law of the Sea Convention, nor in the territorial waters of any country. Because of this, archaeological documentation and excavation of each site can be started immediately upon discovery.

We believe that only two of the five targets may have any potential insurance claimants, and it is anticipated that they would be resolved in a manner consistent with the resolution of the insurance claims relating to the *SS Republic* described below.

To undertake this search program, we have leased another ship, similar in size and sea-keeping capabilities to our vessel *Odyssey Explorer*, and we have acquired a new, advanced search system, which allows us to search areas at twice the speed of our previous system. It is anticipated the entire area of possibility for these five sites, some of which overlap, can be searched completely during approximately twelve months of search operations, which are scheduled to begin in April 2005. We anticipate that the areas of highest probabilities for two primary targets will be completed within four months. The ship is scheduled to begin mobilization in April 2005, and search operations should begin shortly thereafter.

*Odyssey Explorer* has recently completed working on the *SS Republic* project described below and has been relocated to the western Mediterranean Sea to begin recovery operation on the *HMS Sussex* project, which is also described below. Our 113-foot search vessel, *RV Odyssey*, is currently conducting search and survey operations in the western Mediterranean Sea as well.

Set forth below is information relating to two of our active projects, the ongoing recovery of the shipwreck *SS Republic* and the recovery of a shipwreck believed to be *HMS Sussex*.

#### ***SS Republic Project***

The *SS Republic* was a side-wheel steamer lost in deep water in 1865 after battling a hurricane for two days. The ship, en-route from New York to New Orleans, was reportedly carrying \$400,000 in specie (1865 face value) when it sank. The ship's history includes service in both the Confederate and Union navies during the American Civil War.

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We discovered the shipwreck in the summer of 2003 nearly 1,700 feet below the surface of the Atlantic Ocean approximately 100 miles off the Georgia coast. In March 2004, Odyssey was awarded title and ownership to the SS *Republic* shipwreck and cargo, including the hull, artifacts and the specie that was on board when she sank.

The archaeological excavation has been ongoing since mobilization and deployment of Odyssey's advanced deep ocean archaeological platform until we finished the current recovery operations during February 2005.

Odyssey completed the pre-disturbance survey work on the SS *Republic* shipwreck site in October 2003. Over 4,600 digital still photographs were taken over the course of 23 dives. The detailed photomosaic produced a high-resolution image of the shipwreck site and debris field. This can be used in later study and documentation of the SS *Republic* and serves as a map to help the Odyssey team determine excavation priorities.

Shortly after commencement of archaeological excavation of the site, a substantial number of gold and silver coins were revealed using Odyssey's Sediment Removal and Filtration, or SeRF, system.

During the SS *Republic* excavation, more than 51,000 gold and silver coins and approximately 14,000 artifacts were recovered. Our ROV *ZEUS* completed 262 dives to the shipwreck site and debris field, logging almost 3,500 hours of bottom time.

The excavation system has proven very effective, and the hull of the shipwreck has been excavated and cleaned down to the wooden hull timbers, so that there is no possibility of coins or artifacts remaining in the excavated areas. The operations team has encountered large beams, significant amounts of iron and other obstructions that have slowed down excavation, but our ROV *ZEUS* and the recovery team have proven the effectiveness of the system by clearing every obstacle.

In late 2003, when it appeared that all the coins might have been located in one small area, we anticipated recovering them all within 60 days. We recovered significantly more coins than were expected because many of them were smaller denomination silver half dollar coins. The coin recovery was efficient, allowing for recovery of up to 2,000 coins or more per day, even though they were recovered one at a time. The necessity of excavating the entire shipwreck site in an attempt to locate the balance of the coins, which our research suggests should still be there, required a significantly longer timeframe for the site excavation.

The coins recovered to date represent approximately 25% of the "\$400,000 in specie" (face value in 1865) that historical research indicates was on board the *Republic* when she sank.

Upon completion of the search of the main hull, we began searching the debris field in order to determine whether a purser's safe, which could have contained the missing specie, could have fallen from the ship as it descended to the bottom of the ocean. While several artifacts were recovered in the debris field search, we determined that it would be prudent to return to the site at a later date with tools better suited to searching the debris field. We do not have this return scheduled at this time, and timing on any additional search operations will depend on the deployment of our search ships and appropriate weather windows. We have been declared the owners of the wreck and there is a federal injunction in place preventing others from disturbing the site in our planned absence.

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To date more than 51,000 coins and approximately 14,000 artifacts have been recovered from *SS Republic*, including \$20.00 Double Eagles, \$10.00 Eagles, Half Dollars and Quarter Dollars. Coins from the *SS Republic* have been divided into two categories. The first category, our “numismatic collection,” consists of coins that are indistinguishable from coins that have never been underwater. These have been priced to correlate with their numismatic value. The second category includes ungraded shipwreck coins (“shipwreck effect”) that have been conserved and encased in a certified tamper-resistant holder by Numismatic Conservation Services, or NCS, and Numismatic Guaranty Corporation, or NGC.

The *SS Republic* “shipwreck” effect Liberty Seated Half Dollars are unique. Unlike the graded numismatic coins from the *SS Republic* shipwreck site, an expert can tell that these coins have been lying on the ocean floor for many years. These “shipwreck effect” coins were the first available for sale, and the marketing program for them was launched, on May 15, 2004, at a 24-hour marathon of Shop at Home Television “Coin Vault” program. *SS Republic* ungraded silver half dollar coins were offered in a package that included a souvenir wooden box with engraved plaque, a 16-page color booklet and DVD of a National Geographic/MSNBC television special that aired April 25, 2004. These were offered in four one-hour segments dedicated exclusively to *SS Republic* coins.

### *HMS Sussex Project*

The *Sussex* project is an expedition to locate, recover and market the artifacts and cargo of a large colonial-period British warship, HMS *Sussex*, which was lost in a severe storm in 1694. Based on research conducted by contract researchers and our in house research team, we believe that there is a high probability that the ship was carrying a cargo of coins with a bullion value of approximately \$100 million and a much higher numismatic value. We conducted offshore search operations on this project in 1998, 1999, 2000 and 2001. Based on the results of these search operations, we believe that there is a high probability we have located the remains of HMS *Sussex*.

On September 27, 2002, we entered into an agreement with the Government of the United Kingdom of Great Britain and Northern Ireland, which we refer to as the British Government, which allows us to conduct an archaeologically sensitive exploration of the shipwreck believed to be HMS *Sussex* and to recover artifacts from the shipwreck site. The agreement provided for us to submit a Project Plan to the British Government concerning the equipment, personnel and methodologies we intend to use in the exploration of the shipwreck, and the conservation and documentation of any artifacts and cargo that may be recovered. This Plan was submitted and was declared fit for purpose during 2004 with the exception of the staffing plan, which could not be completed until the actual start date was agreed upon and the availability of personnel could be determined.

The following sharing arrangements have been agreed upon with respect to the aggregate amount of the appraised values and/or selling prices of the artifacts, net of agreed selling expenses:

<u>Range</u>	<u>British Government</u>	<u>Odyssey</u>
\$0 - \$45 million	20%	80%
\$45 million to \$500 million	50%	50%
Above \$500 million	60%	40%



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In addition to the percentages specified above, we will also pay the British Government 10% of any net income we derive from intellectual property rights associated with the project.

We also received the exclusive worldwide right to use the name “HMS *Sussex*” in connection with sales and marketing of merchandise (exclusive of artifacts) related to the shipwreck, and the British Government will receive 3% of the gross sales of such merchandise.

Our agreement with the British Government is for a period of 20 years, and can only be terminated if:

- the shipwreck is not HMS *Sussex* ;
- we are in serious breach of our obligations under our agreement with the British Government.

Pursuant to our agreement with the British Government, our staffing plan was recently approved, and we were cleared to begin the archaeological exploration of the HMS *Sussex* site. Operations are scheduled to begin during March 2005. Once the preliminary stages of the excavation, including pre-disturbance survey, photomosaic and environmental sampling are completed, we will begin excavation of the site. Depending upon the outcome of the initial recovery operations, specifically whether or not the wreck is that of the *Sussex* and whether or not we locate any valuable bullion or specie, the balance of the recovery operation may take anywhere from 3 to 18 months.

The shipwreck that we believe is the HMS *Sussex* is located in the search area for a project that we have referred to as our “Cambridge Project.” We sold through private placements of Revenue Participation Certificates, or RPCs, the right to share in our future revenues derived from the Cambridge Project. As of April 30, 1999, when the offering was closed, we had sold \$825,000 of the RPCs. As a group, the holders are entitled to 100% of the first \$825,000 of gross revenue, 24.75% of gross revenue from \$4 million to \$35 million, and 12.375% of gross revenue above \$35 million generated by the Cambridge Project. Additionally, on May 26, 1998, we signed an agreement with a subcontractor that entitled it to receive 5% of the post-finance cost proceeds from any shipwrecks in a certain search area of the Mediterranean Sea. The shipwreck that we believe is the HMS *Sussex* is located within the specified search area, and we will be responsible to share future revenues, if any, from this shipwreck with the subcontractor. The subcontractor’s rights were foreclosed upon during 2002 and the purchaser, Blue Sky Investments, LLC is partially owned by John Morris and Greg Stemm, officers and Directors of the Company. At the time of the foreclosure, the Company was offered the opportunity to acquire the foreclosure rights but declined.

## Technology

Odyssey is a pioneer in the use of advanced deep-ocean technology for shipwreck exploration. We are not, for the most part, inventors of the technologies required for deep ocean search and recovery. We use technologies that others, primarily the military, oil industry, and telecommunications industry, have developed at great expense.

We have learned how to apply these technologies specifically to locate shipwrecks and to conduct precise archaeological recoveries at depths of 100 to 2,000 meters and beyond. Although we tend to use “off the shelf” technology because it is cost effective, we do have several proprietary software and equipment applications that maximize the effectiveness of our search and recovery systems. Software to precisely document the complete archaeological excavation and advanced sediment removal and filtration systems are two examples of our technological innovations.

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### Equipment

Most of our projects are conducted in two phases. The search phase is usually conducted from a smaller vessel outfitted with survey equipment and an inspection ROV. The recovery phase requires a vessel equipped with a work-class ROV, sophisticated positioning systems, and certain Odyssey technology and proprietary software, which allows us to record the recovery in an archaeologically sound manner.

In 2003, we purchased the 113-foot search and survey vessel RV *Odyssey* and equipped it with sophisticated search and identification equipment. That ship and search team successfully concluded the SS *Republic* search operation with location of the shipwreck in August 2003. RV *Odyssey* will be our primary search vessel for coastal projects and can recover small artifacts that may aid in identifying our targets on a cost-effective basis. This vessel operates with a minimum ship's crew of five and a technical crew of two to four.

During September 2003, we purchased a 251-foot dynamically-positioned ship that we named *Odyssey Explorer* and a 2,500 meter 200 HP work-class ROV that we nicknamed *ZEUS*. Coupled with a sophisticated suite of cameras, lighting and positioning equipment, as well as advanced computer monitoring and proprietary data management systems, *ZEUS* provides us with the ability to perform extensive archaeological excavation work to depths of 2,500 meters.

The Odyssey Explorer and Zeus were mobilized in Baltimore and deployed to the SS *Republic* site in October 2003, where they conducted the recovery of the SS *Republic* prior to being relocated to the western Mediterranean in March 2005.

We have also purchased new manipulators and integrated them with Zeus to provide the capability for recording the X, Y and Z position of artifacts as they are recovered. This resulted in a more efficient and accurate site excavation. We have also integrated a new high-definition, or HD, camera system that will add HD filmmaking to our intellectual property and media capabilities.

We have recently integrated substantial additions to our computer control, navigation and guidance systems that significantly improve our capability for conducting pre-disturbance surveys and creating photomosaics. We have also added a new flotation pack that significantly increases the payload on *ZEUS*, enabling us to operate multiple tooling packages simultaneously.

### Sales and Marketing

The recovery of coins and artifacts from the SS *Republic* required us to create a marketing plan specifically to sell these coins and artifacts. Initially we wholesaled silver coins to coin dealers who sold them through telemarketing and television outlets. During May of 2004, we began to sell gold coins through the same dealer network. These dealers provided an immediate outlet for our coins and enabled us to generate revenue during 2004. While the coins sold well, we realized that the buyers were not Odyssey customers and we were missing out on the opportunity to contact the buyers with a view to selling them additional Odyssey products such as artifacts.

During December 2004 we conducted a test with a small group of telemarketers from our office. During the month we sold approximately \$50,000 worth of coins and artifacts. Based upon the results of this test marketing, we decided to open and operate our own telemarketing group.

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In addition to telemarketing, we are working on several other sales initiatives including the development and operation of shipwreck attractions; joint marketing in connection with jewelers and sales through strategically located kiosks.

It is our intention to develop marketing strategies that can be employed to sell a wide variety of material that we expect to recover from our various shipwrecks. We intend to continue to sell our graded gold coins through our dealer network.

### **Shipwreck Attractions**

The development and operation of shipwreck attractions has always been a fundamental building block in the Odyssey business plan. A team of experienced professionals has been assigned to create and locate attractions to share the drama and discovery of shipwrecks and celebrate the return of trade goods and artifacts to mankind.

The Odyssey attractions will share the dramatic stories of the people, the turmoil and the circumstances that took ships to the bottom of the sea. Interpretation of the findings will unfold through the artifacts and images gathered from shipwreck sites. A variety of historic and beautiful artifacts along with compelling high definition video images from the sea bed will be featured in dozens of interactive exhibits and on LCD screens throughout the state of the art attractions. The Odyssey collection of artifacts will feature valuable, sometimes priceless artifacts. The gold and silver specie recovered from SS Republic encompasses one of the most remarkable coin collections from this period.

The Odyssey attractions will attract, entertain and educate a multi-generational market. The attractions have been designed to appeal to the entire family from pre-schoolers to grand parents. Education programs will further share the discovery, history and revelations of shipwrecks with students of all ages.

Revenue will be derived through admissions and retail sales, including coins, artifacts, replicas, photography and specially designed merchandise.

Odyssey plans to open two attractions in the 2005 calendar year.

### **Archaeology and Science**

Many of the shipwrecks that we intend to pursue may have important historical and cultural characteristics. Every such project undertaken by us will be subject to stringent archaeological standards, thus adding to the body of knowledge of the people, the history and the culture of the vessel's time. We believe adherence to these principles will increase the economic value of the artifacts and intellectual property rights of each project as well as enhance the level of cooperation we receive from governmental, archaeological and other interests.

In addition, many deep ocean recovery expeditions will lend themselves to interdisciplinary scientific studies including oceanography, marine biology, environmental research, bioengineering and other fields.

### **Legal and Political Issues**

Odyssey works with a number of leading international maritime lawyers and policy experts to constantly monitor international legal initiatives that might affect our projects. As a matter of policy, we begin with the assumption that some entity, whether a government, private concern or insurance company, may have

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some rights to shipwrecks that are slated for search and recovery operations. Based on this assumption, rigorous legal tests are applied in order to ascertain which entities might be able to create roadblocks to a successful project. In some cases, such as that of HMS *Sussex*, it was determined that the most prudent mechanism for moving forward was to negotiate a contract with the owner of a vessel in order to manage litigation risk.

In other cases, such as the *SS Republic* project, we entered into an agreement whereby we purchased the insurance company's interest in the shipwreck and cargo, opening the way for an immediate grant of title to Odyssey by the federal court that had jurisdiction.

To the extent that we engage in shipwreck search and recovery activities in the territorial, contiguous or exclusive economic zones of countries, Odyssey intends to comply with verifiable applicable regulations and treaties. Prior to beginning operations for any project, the legal and political aspects are carefully researched to ascertain what effect these issues may have on the potential success of the operation.

These factors are taken into account in determining whether to proceed with a project as planned. Other factors, such as the new UNESCO Convention for the Protection of Underwater Cultural Heritage are also taken into consideration. New political initiatives such as this Convention could restrict access to historical shipwrecks throughout the world to the extent that they might require compliance with cultural resource management guidelines and regulations. Some of these will require adherence to strict archaeological practices, and we intend to follow reasonable guidelines in all projects to which they are applicable. Greg Stemm, Odyssey's co-founder, was a member of the United States delegation that negotiated the UNESCO Convention, and as such provides us with a thorough understanding of the underlying principles and ramifications of the Convention, and advance notice of other cultural resource management issues that might affect our projects.

The UNESCO Convention is not expected to affect operations in international waters, and the United States, the United Kingdom and other major maritime governments have already stated explicitly that they do not intend to sign the Convention. Nevertheless, some countries in whose waters we may work may sign the Convention. While the UNESCO Convention states that artifacts may not be sold, it also states that this prohibition may not prevent the provision of archaeological services, and we intend to provide such services in contracts with governments. We believe that the primary value of the cargoes we seek are trade goods (such as coins, bullion and gems), which are not artifacts of historical, archaeological or cultural significance and so should not be subject to the rule prohibiting sale.

We believe there will be increased interest in the protection of underwater cultural heritage throughout the oceans of the world. We are uniquely qualified to provide governments and international agencies with resources to help manage these resources while providing the public with educational, scientific, historical and entertainment initiatives that originate from our shipwreck exploration activities.

### Competition

There are a number of competing entities engaged in various aspects of the shipwreck business, and in the future other competitors may emerge. One or more of these competing entities may locate and recover a shipwreck that we intend to locate and recover before we can begin operations on that specific project.

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### Cost of Environmental Compliance

With the exception of vessel operations and conservation activities, our general business operations do not expose us to environmental risks or hazards. We carry insurance that provides a layer of protection in the event of an environmental exposure resulting from the operation of our vessels. The cost of such coverage is minimal on an annual basis. We believe the risk associated with our conservation activities is minimal.

### Employees

We have 45 full-time employees working from our corporate offices in Tampa Florida. Additionally, we employ approximately 20 crewmen who operate the vessels *RV Odyssey* and *Odyssey Explorer*. We also hire technical personnel as needed for marine survey and recovery on the *RV Odyssey* and *Odyssey Explorer*. Depending upon the particular operations they are conducting, the *RV Odyssey* will utilize two to four technicians, and the *Odyssey Explorer* will use from 14 to 20. In addition, we hire subcontractors and consultants from time to time to perform specific services.

### Risk Factors

You should carefully consider the following factors, in addition to the other information in this Transition Report on Form 10-KSB, in evaluating our company and our business. Our business, operations and financial condition are subject to various risks. Some of these risks are described below, and should be carefully considered in evaluating *Odyssey* or any investment decision relating to our securities. This section does not describe all risks applicable to *Odyssey*, its industry or its business. It is intended only as a summary of the principal risks.

#### *Our business involves a high degree of risk.*

An investment in *Odyssey* is extremely speculative and of exceptionally high risk. Although we have access to a substantial amount of research and data which has been compiled regarding various projects, the quality and reliability of such research and data is unknown. Even if we are able to plan and obtain permits for our various projects, there is a possibility that the shipwrecks may have already been salvaged, or may not have had anything valuable on board at the time of the sinking. Even if objects of value are located and recovered, there is the possibility that the cost of recovery exceeds the value of the objects recovered or that others, including both private parties and governmental entities, will assert conflicting claims and challenge our rights to the recovered objects. Finally, even if we are successful in locating and retrieving objects from a shipwreck and establishing good title to them, there can be no assurance as to the value that such objects will bring at their sale, as the market for such objects is very uncertain.

#### *The research and data we use may not be reliable.*

The success of a shipwreck project will be dependent to a substantial degree upon the research and data we have obtained. By its very nature, research and data regarding shipwrecks is imprecise, incomplete and unreliable. It is often composed of or affected by numerous assumptions, rumors, legends, historical and scientific inaccuracies and inaccurate interpretations which have become a part of such research and data over time.

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### ***Recovery efforts may be affected by natural hazards.***

Underwater recovery operations are inherently difficult and dangerous and may be delayed or suspended by weather, sea conditions or other natural hazards. Further, such operations may be undertaken more safely during certain months of the year than others. We cannot guarantee that we, or the entities we are affiliated with, will be able to conduct search and recovery operations only during favorable periods. In addition, even though sea conditions in a particular search location may be somewhat predictable, the possibility exists that unexpected conditions may occur and adversely affect our operations. It is also possible that natural hazards may prevent or significantly delay search and recovery operations.

### ***We may be unable to establish our rights to any objects we recover.***

Persons and entities other than Odyssey and entities we are affiliated with (both private and governmental) may claim title to the shipwrecks. Even if we are successful in locating and recovering shipwrecks, we cannot assure you that we will be able to establish our right to property recovered against governmental entities, prior owners, or other attempted salvors claiming an interest therein. In such an event, we could spend a great deal of money and receive no revenue for our work.

### ***The market for any objects we recover is uncertain.***

Even if valuable items can be located and recovered, it is difficult to predict the price that might be realized for such items. The value of recovered items will fluctuate with the precious metals market, which has been highly volatile in recent years. In addition, the entrance on the market of a large supply of similar items from shipwrecks located and recovered by others could depress the market for these items.

### ***We could experience delays in the disposition or sale of recovered objects.***

The methods and channels that may be used in the disposition or sale of recovered items are uncertain at present and may include several alternatives. Ready access to buyers for any artifacts or other valuable items recovered cannot be assured. Delays in the disposition of such items could adversely affect our cash flow.

### ***Objects we recover could be stolen from us.***

If we locate a shipwreck and assert a valid claim to items of value, there is a risk of theft of such items at sea, both before and after their recovery, by “pirates” or poachers and while in transit to a safe destination. Such thefts may not be adequately covered by insurance.

### ***We face competition from others.***

There are a number of competing entities engaged in various aspects of the shipwreck business, and in the future other competitors may emerge. One or more of these competing entities may locate and recover a shipwreck that we intend to locate and recover. In addition, these competing entities may be better capitalized and may have greater resources to devote to their pursuit of the shipwreck.

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### *We may be unable to get permission to conduct salvage operations.*

It is possible that we will not be successful in obtaining title to, or permission to excavate certain wrecks. In addition, permits that are sought for the projects may never be issued, and if issued, may not be legal or honored by the entities that issued them.

### *Our articles of incorporation authorize generic preferred stock.*

Our articles of incorporation authorize the issuance of up to 10,000,000 shares of preferred stock. Our board of directors has the right to establish the terms, preference, rights and restrictions of the preferred stock. Such preferred stock could be issued with terms, rights, preferences and restrictions that could discourage other persons from attempting to acquire control and thereby insulate incumbent management. In certain circumstances, the existence of corporate devices that would inhibit or discourage takeover attempts could have a negative effect on the market value of our common stock.

## **ITEM 2. DESCRIPTION OF PROPERTY**

We maintain our offices at 5215 W. Laurel Street, Tampa, Florida 33607. We purchased the 23,500 square foot two story office building for \$3,058,770 to serve as our corporate and operations headquarters. We currently lease approximately 25% of the space to a tenant. Prior to occupying our new headquarters, we leased approximately 4,500 square feet of office space in two adjacent buildings at 3604-3606 W. Swann Avenue, Tampa, Florida. Our monthly rent was approximately \$6,000 per month, and rent expense for the ten months ended December 31, 2004 was approximately \$50,500. As of December 2004 we no longer rent either of our prior facilities.

We also own certain vessels and equipment that are material to our operations. See “Item 1. Description of Business – Equipment.”

## **ITEM 3. LEGAL PROCEEDINGS**

On or about December 14, 2004 a complaint was filed against seven defendants including the Company in the Court of Common Pleas in the Ninth Judicial Circuit, County of Charleston, in the State of South Carolina. The complaint was filed by Republic & Eagle Associates, Inc. and Sea Miners, Inc. against John Morris, Greg Stemm, John Lawrence, John Balch, Daniel Bagley, Seahawk Deep Sea Technologies, Inc. (“Seahawk”) and the Company. The plaintiffs allegations include breach of fiduciary duty, civil conspiracy and breach of contract based primarily upon an alleged contract(s) between the plaintiffs and Seahawk dated May 16, 1995 dealing with the search for the S.S. Republic. The plaintiffs allege that their research which was provided to Seahawk led to the discovery of the S.S. Republic and they seek an unspecified amount of damages and public recognition of their contribution. On February 18, 2005, John Morris, Greg Stemm, Daniel Bagley, and the Company filed their Notice of Motion and Motion to Dismiss Defendants John Morris, Greg Stemm, Daniel Bagley and Odyssey Marine Exploration, Inc. (the “Motion”). In the Motion, the defendants allege that the complaint should be dismissed because, among other things, the South Carolina court does not have jurisdiction over them, the action was filed in an improper venue, plaintiffs lack the capacity to maintain the action, and the action should be barred based on the Doctrine of Forum Non Conveniens. The South Carolina court has not yet heard nor ruled on the Motion.

Management believes that the law suit is without merit and intends to vigorously defend the action.

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### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITIES HOLDERS

None.

## PART II

### ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

#### PRINCIPAL MARKET OR MARKETS

Our Common Stock was quoted on the OTC Bulletin Board under the symbol “OMEX” until November 18, 2003. On November 19, 2003, our stock was listed on the American Stock Exchange and is traded under the symbol “OMR.”

The following table sets forth the high and low sale prices for our securities during each quarter for the periods set forth below.

	Price	
	High	Low
<b>Quarter Ended</b>		
May 31, 2003	\$1.45	\$0.45
August 31, 2003	\$5.50	\$1.09
November 30, 2003	\$5.60	\$3.12
February 29, 2004	\$6.50	\$4.20
May 31, 2004	\$6.80	\$3.00
August 31, 2004	\$3.66	\$1.76
November 30, 2004	\$3.10	\$2.00
<b>Month Ended</b>		
December 31, 2004	\$2.75	\$2.02

#### APPROXIMATE NUMBER OF HOLDERS OF COMMON STOCK

The number of record holders of our \$.0001 par value Common Stock at January 21, 2005 was 318. This does not include shareholders that hold their stock in accounts in street name with broker/dealers.

#### DIVIDENDS

Holders of the Common Stock are entitled to receive such dividends as may be declared by our Board of Directors. No dividends have been declared with respect to our Common or Preferred Stock and none are anticipated in the foreseeable future.

#### RECENT SALES OF UNREGISTERED SECURITIES

During the one month period ending December 31, 2004, there were no sales of unregistered securities.

### ITEM 6. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis is intended to provide an investor with a narrative of our financial results and an evaluation of our financial condition and results of operations. The discussion should be read in conjunction with our consolidated financial statements and notes thereto. A description of our business is discussed in Item 1 of this report which contains an overview of our business as well as the status of our ongoing project operations.



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### Results of Operations

The dollar values discussed below, except as otherwise indicated, are approximations to the nearest \$100,000. For more detail refer to the Financial Statements in Item 7.

Due to a change in our fiscal year to December 31, our 2004 transition period consists of a ten-month period ended December 31, 2004, and is compared to a fiscal year ended February 29, 2004. In the future our reporting period will be a fiscal year ending December 31.

#### Ten months ended December 31, 2004 compared to the year ended February 29, 2004

##### Revenues

Revenues for the ten month period ended December 31, 2004 were \$17.6 million as compared to \$.1 million for the year ended February 29, 2004. Revenues for the period ended December 31, 2004 consisted primarily of artifact sales representing approximately 9,000 gold and silver coins. Revenues for the year ended February 29, 2004 consisted of search operations performed for a third party and merchandise sales. Sales of artifacts from the *SS Republic* began in May 2004. During the first nine months of the ten months ended December 31, 2004, sales channels for gold and silver coins were primarily through dealer networks. Odyssey began testing a direct sales center in December 2004. Based on the results of those tests, the direct sales center has now transitioned to an operational unit. Odyssey representatives are currently offering “shipwreck effect” coins and bottles from the *SS Republic*, as well as other *Republic*, Odyssey and shipwreck related merchandise. Graded gold coins will continue to be distributed exclusively through Odyssey’s dealer network.

##### Cost of Sales

Cost of Sales for the ten months ended December 31, 2004 of \$1.9 million consisted of shipwreck recovery costs, grading, conservation and packaging, and shipping costs associated with artifact sales. Cost of sales as a percentage of revenue for the ten months ended December 31, 2004 was 11%. The major factors that contributed to cost of sales as a percentage of revenue include capitalized ship recovery costs, number of artifacts recovered, and revenue per artifact sold. Artifact sales during the ten months ended December 31, 2004 consisted of both gold and silver coins. Cost of sales as a percentage of revenue will change depending on the sales mix because of the significantly different unit sales prices for gold and silver coins. As of December 2004, the capitalized cost of recovery per artifact, excluding grading, conservation, packaging and shipping costs, was approximately \$136 per unit. Approximately 65,000 artifacts have been recovered to-date from the *SS Republic* representing approximately 4,000 gold and 47,000 silver coins, and 14,000 other artifacts.

##### Operating Expenses

(Dollars in thousands)	Ten months Ended December 31	Fiscal Year Ended February 29 2004	Increase (Decrease)	
	2004	2004	Dollar Change	Percent Change
Operations & research	\$ 1,922	\$ 2,450	\$ (528)	(22)%
Marketing, general & administrative	4,731	2,464	2,267	92%
Depreciation	362	265	97	37%
	<u>\$ 7,015</u>	<u>\$ 5,179</u>	<u>\$ 1,836</u>	<u>35%</u>

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Operations and research expenses for the ten months ended December 31, 2004 was \$1.9 million as compared to \$2.5 million for the year ended February 29, 2004. Our recovery vessel was purchased in August 2003 when deployment operations began. Ship recovery costs were capitalized beginning in November 2003 associated with the discovery of artifacts on the SS *Republic* and continued through 2004 as recovery operations continued. Total operations and research costs before capitalization were \$6.0 million for the ten months ended December 31, 2004 compared to \$4.4 million for the year ended February 29, 2004. The increase of \$1.6 million before capitalization was primarily due to recovery operations for the vessel *Odyssey Explorer* during the period; additional archaeological, conservation, and research expenses; and search operations by the vessel *RV Odyssey*.

Marketing, general and administrative expenses for the ten months ended December 31, 2004 were \$4.7 million as compared to \$2.5 million for the year ended February 29, 2004. The increase of \$2.2 million resulted primarily from expansion of our corporate support functions due to execution of our business plan primarily associated with the recovery of the SS *Republic* artifacts. Of the \$2.2 million increase, \$1.5 million was the result of increased general and administrative expenses consisting primarily of personnel-related, insurance and corporate communication expenses, and \$.7 million was due to the expansion of our marketing and sales function including attraction development costs, personnel-related expenses and selling commissions for artifacts.

Depreciation increases were the result of acquisitions of additional property and equipment.

### Provision for Income Taxes (Benefit)

For the ten months ended December 31, 2004, we recorded a provision for income taxes of \$3.5 million compared to a benefit for income taxes of \$5.8 million for the year ended February 29, 2004. Federal and state income taxes for 2004 have been provided for at an estimated annual effective rate of 37.6%. Net operating loss carryforwards resulted in a \$2.8 million net deferred tax asset as of December 31, 2004.

### Liquidity and Capital Resources

(Dollars in thousands) Summary of Cash Flows:	Ten Months Ended December 31	Fiscal Year Ended February 29
	2004	2004
Net cash provided(used) by operating activities	\$ 2,761	\$ (8,041)
Net cash used by investing activities	(4,121)	(5,599)
Net cash provided by financing activities	3,059	14,206
Net increase in cash and cash equivalents	\$ 1,699	\$ 566
Beginning cash and cash equivalents	\$ 1,351	785
Ending cash and cash equivalents	\$ 3,050	\$ 1,351

At December 31, 2004, we had cash and cash equivalents of \$3.1 million, an increase of \$1.7 million from the February 29, 2004 balance of \$1.4 million. Working capital as of December 31, 2004 was \$8.4 million as indicated by current assets exceeding current liabilities. Of the \$1.7 million increase in cash for the ten months ended December 31, 2004, \$4.1 million was used for investing activities which was offset by \$3.1 million provided from financing activities and \$2.8 million from operating activities.

The increase in cash provided by operating activities for the ten months ended December 31, 2004 versus the prior fiscal year ended February 29, 2004, was primarily due to improvements in operating results offset, in part, by variations in operating assets and liabilities. Cash provided from operating activities of \$2.8 million for the year ended December 31, 2004 consisted of \$5.2 million of net income and non-cash expenses of \$3.9 million primarily representing deferred income taxes and depreciation. Cash used in operating activities of \$6.3 million represented net changes in balance sheet accounts primarily consisting of an increase in inventory costs and accounts receivable and an increase in accrued expense liabilities.

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Cash used in investing activities for the ten months ended December 31, 2004, of \$4.1 million consisted of \$2.2 million of capital expenditures for purchases of property and equipment primarily associated with our marine operations and corporate expansion efforts, \$.6 million for development of attractions, and \$1.3 million for the purchase of an existing office building and tenant improvements. A \$2.0 million mortgage payable was entered into to provide the balance of the funds required for the purchase of the building. Approximately 75% of the building is being utilized as our corporate headquarters and 25% is currently leased.

Cash provided by financing activities of \$3.1 million included \$1.5 million short term borrowing against our credit facility offset by a loan repayment of \$1.4 million, sales of marketable securities of \$2 million and proceeds from a combination of warrants and stock options exercised for the issuance of common stock of \$1 million.

We believe the value of our artifact inventory as of December 31, 2004, as shown in the financial statements, is significantly less than the net proceeds we would expect to receive from the sale of the artifacts. We have pledged a portion of the numismatically significant gold coins as collateral for a \$5 million secured credit facility through The Bank of Tampa. This credit facility will be used to cover any short-term cash requirements as necessary through June 24, 2005 when it expires. As of December 31, 2004, we had loans outstanding of \$73,700 against the credit facility. We are currently pursuing a renewal of our existing credit facility or obtaining a replacement. We have also committed to the fabrication of two attraction exhibits for \$3.2 million. The planned exhibits will showcase the history of shipwrecks featuring the *SS Republic*. Interactive elements and exhibits will present the science and technology the company utilizes to conduct deep ocean shipwreck searches and archaeological excavations. We anticipate the funding for the exhibits will come from bank financing or through revenue generated from the sale of recovered cargoes.

On March 10, 2005 we completed a private placement of 2,700,000 units which were sold to four accredited institutional investors at a price of \$2.50 per unit. Each unit consisted of one share of common stock and a warrant to purchase one share of common stock at an exercise price of \$3.50 per share during the two year period following the closing of the offering. The \$6,350,000 in net proceeds raised in the private placement will be used to acquire additional equipment and technology to expand the company's search and recovery capabilities, to fund upcoming search operations, and for general business purposes.

Based upon past performance and current expectations, we believe that our cash and cash equivalents, cash generated from operations, bank credit facility, and recent equity private placement will satisfy our working capital needs, capital expenditures, investment requirements, and other liquidity requirements associated with our existing operations through at least the next twelve months.

### **Off Balance Sheet Requirements**

We do not engage in off-balance sheet financing arrangements. In particular, we do not have any interest in so-called limited purpose entities, which include special purpose entities (SPEs) and structured finance entities.

### Indemnification Provisions

Under our bylaws and certain consulting and employment agreements, we have agreed to indemnify our officers and directors for certain events arising as a result of the officer's or director's serving in such capacity. The term of the indemnification agreement is as long as the officer or director remains in the employment of the company. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited. However, our director and officer liability insurance policy limits its exposure and enables us to recover a portion of any future amounts paid. As a result of our insurance policy coverage, we believe the estimated fair value of these indemnification agreements is minimal and no liabilities are recorded for these agreements as of December 31, 2004.

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### ITEM 7. FINANCIAL STATEMENTS

Please see pages F - 1 through F - 21.

### ITEM 8. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

### ITEM 8A. CONTROLS AND PROCEDURES

As of December 31, 2004, under the supervision and with the participation of the Company's Chief Executive Officer and the Chief Financial Officer, management has evaluated the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective as of December 31, 2004. There were no changes in internal control over financial reporting that occurred during the last month of the transition period year covered by this report that have materially affected, or are reasonably likely to affect, the Company's internal control over financial reporting.

### ITEM 8B. OTHER

None.

## PART III

### ITEM 9. DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS; COMPLIANCE WITH SECTION 16(A) OF THE EXCHANGE ACT

The following table sets forth the names, ages and positions of the officers and directors.

<u>NAME</u>	<u>AGE</u>	<u>POSITION</u>
John C. Morris	55	Chairman and CEO
Gregory P. Stemm	47	Vice-President - Research and Operations and Director
George Knutsson	66	Director
David J. Saul	64	Director
George E. Lackman	73	Director
George J. Becker, Jr.	68	Executive Vice President
Michael J. Holmes	55	Chief Financial Officer
David A. Morris	54	Secretary and Treasurer
Davis D. Howe	45	Chief Operating Officer

There is no family relationship between any of the Directors or the Executive Officers of the Company except John Morris and David Morris who are brothers.

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All directors will hold office until the next annual meeting of the Shareholders.

The following sets forth biographical information as to the business experience of each Officer and Director of the Company for at least the last five years.

**John C. Morris** has served as President, CEO and Chairman of the Board of Directors of the Company since May 1994. In these capacities, Mr. Morris has been responsible for strategic planning, financing, and general execution of our business plan. He has overseen the first deep water archaeological recovery of a Spanish shipwreck from the 1622 fleet using a remotely operated vehicle and has been instrumental in the planning and execution of the company's current search and recovery operations.

**Gregory P. Stemm** has served as Vice President, Research and Operations and as a member of the Board of Directors since May 1994. He is responsible for research and operations on all shipwreck projects. Greg has extensive experience in managing shipwreck exploration operations since entering the field in 1986, including deep ocean search and robotic archaeological excavation on a number of projects. A panelist at the 1998 Law of the Sea Institute, Stemm was appointed for four consecutive terms to the United States delegation to the United Nations Educational, Scientific and Cultural Organization (UNESCO) expert meeting to negotiate the "Draft Convention for the Protection of Underwater Cultural Heritage." He was selected as a Fellow of the Explorers Club, and was the founder and past-president of the Professional Shipwreck Explorers Association (ProSEA). Stemm served as a founding director (1986-93) and international president (1992-93) of YEO (Young Entrepreneurs Organization) and was also a founding member of the World Entrepreneurs Organization, where he served on the International Board of Directors (1997-98).

**George Knutsson** has served as a Director of the Company since June 2001. Since 1995, Mr. Knutsson has been the President and Chairman of American Boat Trailer Rental Company, Inc., which is the largest provider of boat trailer rentals in the Southeast US. In 1978, he founded Dollar Rental Car of Florida and served as CEO until 1990, when he sold the company. Mr. Knutsson also owned and operated Pirates Cove Marina in the Tampa Bay area from 1984 until he sold it in 1995. From 1995 to 1999, he was the co-founder and Chief Financial Officer of Pro-Tech Monitoring, which uses patented GPS/cellular technology in the monitoring and tracking of felons worldwide. He received his Bachelors degree from the University of Florida and a MBA from the University of South Florida.

**Dr. David J. Saul**, who is retired, has served as a member of the Company's Board of Directors since October 2001. Dr. Saul was Bermuda's Minister of Finance from 1989 to 1995, and Premier of Bermuda from 1995 to 1997. In addition to his political background, Dr. Saul held two senior posts with Fidelity Investments, from 1984 through 1995, as the President of Fidelity Bermuda and Executive Vice President of Fidelity International. He retired from the firm in 1999, but remains a Director of Fidelity's main international Board, and a Director of some 40 other Fidelity Companies around the world - including the U.K., Bermuda, Jersey, Tokyo, Hong Kong, Cayman Islands, Luxembourg and Taiwan. Dr. Saul's professional activities include two stints as a Director of the Bermuda Monetary Authority and he currently serves as a Director of Lombard Odier (Bermuda), a subsidiary of the Swiss Bank, and a Director of the London Steam Ship Owners' Mutual Insurance Association (Bermuda) Ltd. A keen oceanographer with a passion for shipwrecks and the sea, he is a founding Trustee of the Bermuda Underwater Exploration Institute, and a founding Director of the Professional Shipwreck Explorers Association.

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**George E. Lackman Jr.** has served as a member of the Company's Board of Directors since November 2002, and brings experience from his distinguished career in banking, business operations, shipbuilding, international business and public service to Odyssey Marine Exploration. Mr. Lackman was founding Chairman and President of Citrus Park Bank, which was sold to Florida National Bank in 1985. At Florida National, he served as head of Retail Banking, Business Banking and Commercial Banking for the Tampa area. After the merger of Florida National and First Union National Bank he started First Union's first Private Banking Program in the Tampa area. He retired from First Union as Vice President of Corporate Development. Mr. Lackman spent 25 years in the shipyard business, including service as Vice President of Tampa Ship Repair and Dry Dock Company, Tampa's largest shipyard. He was President of Nutri-Sol Chemical Company, Marine Insulation Company, Corban Industries and Acetogen Gas Company of Florida. Mr. Lackman's international experience spans service as President of an International Investment Group, Chairman of the Tampa Chamber of Commerce International Board and as President/Chairman of the Tampa Bay International Business Council. He also served as an Advisor to the Central American Banks. Mr. Lackman extensive public and community service includes service to and leadership of many health care organizations. He was especially active in groups working to reduce infant mortality and increase prenatal care. Two Florida Governors have called on Mr. Lackman to serve on various health care and community service groups.

**George Becker Jr.** joined Odyssey as Chief Operating Officer during April 2002. From 1992 until April 2002, Mr. Becker was the President of George J. Becker Jr. & Associates, consultants to companies in the leisure, themed attraction and hospitality industries. Mr. Becker is a senior executive with thirty years experience in major leisure industry profit center development, management, marketing, staffing and operations. For twenty-two years, Mr. Becker was involved in the development and management of the Sea World marine life parks in the United States and served at various times in several positions including as the former Executive Vice President of Sea World Inc., Chairman and Chief Executive Officer, Sea World of Texas, President and Chief Executive Officer of Sea World of California and President and Chief Executive Officer of Sea World of Florida. In 1997 Mr. Becker became President of Entercitement LLC. He led the creative concept and design of a proposed theme park in Indianapolis, Indiana. Park development was stopped in 1998 due to a lack of financing and Mr. Becker resigned in 1999 from Entercitement. Mr. Becker has been recognized as a tourism leader for his work in several regions of the country. A skilled new business developer and team builder, Mr. Becker is known for creating viable management teams, achieving excellent productivity and harmony between employees of widely divergent skills and personalities. Becker has been active in a number of national, regional and state visitor organizations. He served as Executive Director of the Florida Tourism Commission. In 1983, he was President of the Florida Chamber of Commerce and in 1984 he chaired Governor Bob Graham's Commission on Public Facility Financing.

**Michael J. Holmes** joined Odyssey as Controller in March 2004, and became Chief Financial Officer on May 24, 2004, although Michael Barton continued to perform the function of the Chief Financial Officer through May 28, 2004. Mr. Holmes has served in a variety of subsidiary financial management positions with Anheuser-Busch Companies, Inc. to include Vice President Finance, Sea World Orlando; Vice President Finance, Busch Gardens Tampa Bay; Corporate Controller, Metal Container Corp in St Louis; VP Finance & CFO Exploration

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Cruise Lines in Seattle, Washington; and Director Internal Audit Services for Anheuser-Busch in St Louis. Mike received his undergraduate degree from the University of Missouri and his MBA from Crummer Graduate School of Business at Rollins College in Orlando. Mike has also served as an adjunct professor of Accounting at the Rosen School of Hospitality Management, University of Central Florida in Orlando. Mike has been very active in community leadership positions to include board member of the Orlando Regional Chamber of Commerce, the ETC of Central Florida (International Drive Transportation Group) and Junior Achievement of Tampa Bay. He is currently serving on the Crummer Graduate School of Business Alumni Board and is a graduate of Leadership Tampa.

**Davis D. Howe** joined Odyssey Marine Exploration as Chief Operating Officer in July 2004. Mr. Howe has assisted several public companies transition from the developmental and early revenue generating stages to successful operational companies maximizing revenues and earnings. He has held senior management positions at several major public companies including Nextel Communications, Aerial Communications (merged with VoiceStream and Omnipoint) and Intermedia. Mr. Howe has been instrumental in developing strong organizational structure for companies requiring cross-departmental improvement.

**David A. Morris** has served as Secretary and Treasurer of the Company since August 1997. In this capacity Mr. Morris coordinates administrative business activities including accounting, audit, financial and tax reporting and participates in overall corporate planning. Mr. Morris graduated with a Bachelor of Science degree in Mechanical Engineering from Michigan State University in 1974.

### COMMITTEES OF THE BOARD OF DIRECTORS

The Company has a Compensation Committee, an Audit Committee and a Governance Committee.

#### COMPENSATION COMMITTEE

The Compensation Committee presently consists of George Knutsson, David Saul and George E. Lackman, Jr. In the past the Compensation Committee reviewed the compensation arrangements for only the Company's Chief Executive Officer, but currently the Compensation Committee is reviewing the compensation arrangements for the five highest paid executive officers and making recommendations to the Board of Directors. The Committee utilizes outside consultants to assist in formulating its recommendations to the Board. During the fiscal year ended December 31, 2004, this Committee held two (2) meetings and has held one (1) meeting since then.

#### AUDIT COMMITTEE

The Audit Committee presently consists of George Knutsson, David Saul and George E. Lackman, Jr. The Audit Committee assists the Board of Directors in fulfilling its responsibilities to stockholders concerning the Company's financial reporting and internal controls and facilitates open communication between the Audit Committee, Board of Directors, Odyssey's independent registered public accounting firm and management. The Audit Committee is responsible for reviewing the audit process and evaluating and retaining the independent registered public accountants. The independent registered public accounting firm meets with the Audit Committee to review and discuss various matters pertaining to the audit, Odyssey's financial statements, the report of

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the independent registered public accounting firm on the results, scope and terms of their work, and their recommendations concerning the financial practices, controls, procedures and policies employed by Odyssey. The Audit Committee is charged with the treatment of complaints for the confidential, anonymous submission by employees of Odyssey of concerns regarding questionable accounting or auditing matters. The Board of Directors has adopted a written charter for the Audit Committee, a copy of which was attached to our proxy statement for the Annual Meeting of Shareholders held on February 25, 2005. During the transition period ended December 31, 2004, the Audit Committee held two meetings. The Audit Committee has since held an additional two (2) regular meetings and two (2) executive sessions with the auditors.

The Board has determined that Mr. Knutsson is an “audit committee financial expert” as defined in Item 401(h) of Regulation S-K, pursuant to the fact that, among other things, he was founder and Chief Financial Officer of Pro-Tech Monitoring and in that capacity has acquired the relevant experience and expertise and has the attributes set forth in the applicable rules in order to constitute him as an audit committee financial expert.

### GOVERNANCE COMMITTEE

The Governance Committee was established May 26, 2004 and presently consists of David Saul, George Knutsson and George Lackman. The purpose of the Governance Committee is to i) identify individuals qualified to become members of the Board of Directors; ii) recommend individuals to the Board as director nominees and recommend Directors to serve as members of Board committees; iii) develop and recommend to the Board a set of Corporate Governance guidelines; iv) manage the Board’s internal affairs, and v) be responsible for reassessing the overall effectiveness of the Board.

The Governance Committee has not established any minimum qualifications for persons to be considered for nomination, but will be guided by the following criteria, that the individual be of the highest character and integrity; be free of any conflict of interest that would violate any applicable law or regulation or interfere with proper performance of the responsibilities of a Director; possess substantial and significant experience that would be of particular importance to the Company in the performance of the duties of a Director; have sufficient time available to devote to the affairs of the Company; and have a desire to represent the balanced best interests of the shareholders as a whole. The Governance Committee held no meetings during the transition period ended December 31, 2004 and has held one meeting since December 31, 2004.

### CODE OF ETHICS

The Company has adopted a Code of Ethics that applies to, among others, its principal executive, financial and accounting officers, and other persons, if any, performing similar functions. Our Code of Ethics can be obtained from the Company, without charge, by written request to the Chief Financial Officer at the Company’s address and is posted on the Company’s Internet website ([www.shipwreck.net](http://www.shipwreck.net)).

### **COMPLIANCE WITH SECTION 16(A) OF THE EXCHANGE ACT**

Based solely on a review of Forms 3 and 4 and amendments thereto furnished to the Company during its most recent fiscal year, and Form 5 and amendments thereto furnished to the Company with respect to its most recent fiscal year and certain written representations, no persons who were either a



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Director, Officer or beneficial owner of more than 10% of the Company's Common Stock, failed to file on a timely basis reports required by Section 16(a) of the Exchange Act during the most recent fiscal year, except that a Form 4 reporting the sale of 10,000 shares of common stock by Greg Stemm was filed three days late.

### ITEM 10. EXECUTIVE COMPENSATION

The following table sets forth information regarding the executive compensation for the Company's President for the ten month transition period ended December 31, 2004, and the fiscal years ended February 29, 2004, and February 28, 2003, and each other executive officer who had total annual salary and bonus in excess of \$100,000 during such periods.

#### SUMMARY COMPENSATION TABLE

Name and Principal Position	Annual Compensation			Long-Term Compensation			
	Year(1)	Salary	Bonus	Awards		Payouts	
				Restricted Stock Awards	Securities Underlying Options/SARs(#)	LTIP Payout (\$)	All Other Compensation
John C. Morris, President	Dec 31 2004	\$208,333	\$225,000	-0-	-0-	-0-	-0-
				-0-	250,000	-0-	-0-
	Feb 29 2004	\$150,000	\$246,500	-0-	100,000	-0-	-0-
	Feb 28 2003	\$150,000	\$ 2,000				
Gregory P. Stemm Vice-President	Dec 31 2004	\$208,333	\$225,000	-0-	-0-	-0-	-0-
				-0-	250,000	-0-	-0-
	Feb 29 2004	\$150,000	\$246,500	-0-	100,000	-0-	-0-
	Feb 28 2003	\$150,000	\$ 2,000				
Michael J. Holmes CFO	Dec 31 2004	\$108,000	\$ 37,500	-0-	100,000	-0-	-0-
George Becker, Jr Executive V.P.	Dec 31 2004	\$100,000	\$ 70,000	-0-	-0-	-0-	-0-
			14,500	-0-	100,000	-0-	-0-
	Feb 29 2004	\$100,000	\$ 1,000	-0-	-0-	-0-	-0-
	Feb 28 2003	\$ 87,500	\$				
David A. Morris Secr/Treasurer	Dec 31 2004	\$100,000	\$116,000	-0-	-0-	-0-	-0-
				-0-	200,000	-0-	-0-
	Feb 29 2004	\$100,000	\$ 14,500	-0-	-0-	-0-	-0-
	Feb 28 2003	\$100,000	\$ 1,500				
Davis D. Howe COO	Dec 31 2004	\$ 71,058	\$ 37,500	-0-	100,000	-0-	-0-

(1) The amounts shown for December 31, 2004 are for the ten-month period then ended.

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### OPTIONS

The following table sets forth certain information concerning individual grants of stock options made during the ten-months ended December 31, 2004 to each Named Executive Officer of the company:

#### OPTION GRANTS IN LAST FISCAL YEAR (1) Individual Grants

Name	Number of Securities Underlying Options Granted(#)	% of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price (\$/Share)	Expiration Date
Michael J. Holmes	100,000	37.0%	\$ 5.00	3/14/2009
Davis D. Howe	100,000	37.0%	\$ 5.00	7/22/2009

- (1) Options generally have a 5-year term. The exercise price of the options granted exceeded the fair market value of our Common Stock on the date of grant. The options vest by 25% each six month anniversary of the grant date, and become 100% vested on the two year anniversary of the grant date.

#### AGGREGATE OPTION EXERCISES IN TEN-MONTHS ENDED DECEMBER 31, 2004, AND DECEMBER 31, 2004 OPTION VALUES

Name	Shares Acquired on Exercise (Number)	Value Realized	Securities Underlying Unexercised Options at December 31, 2004 Exercisable/Unexercisable	Value of Unexercised In-The-Money Options at December 31, 2004 Exercisable/Unexercisable
John C. Morris	-0-	\$ -0-	287,500 / 62,500	\$317,188 / \$39,063
Greg P. Stemm	-0-	-0-	287,500 / 62,500	317,188 / 39,063
Michael J Holmes	-0-	-0-	25,000 / 75,000	-0- / -0-
George J. Becker, Jr.	-0-	-0-	175,000 / 25,000	196,875 / 15,625
David A. Morris	-0-	-0-	150,000 / 50,000	93,750 / 31,250
Davis D. Howe	-0-	-0-	-0-/100,000	-0- / -0-

### EMPLOYMENT AGREEMENTS

John Morris, Greg Stemm, David Morris and George Becker, Jr. have employment agreements that have been extended under the same terms and conditions from an original termination date of February 28, 2005 until December 31, 2005 while the Compensation Committee is working out terms and proposals for new contracts for executive officers. For the year commencing on March 1, 2004, the Compensation Committee set the base salaries for John Morris and Greg Stemm at \$250,000 per year. The base salaries for David Morris and George Becker, Jr. were set at \$120,000. We anticipate that in addition to their base salary each of these individuals will receive stock options and certain other benefits as determined by the Board of Directors.

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### EMPLOYEE STOCK OPTION PLAN

During the Special Shareholder Meeting held September 8, 1997, the Shareholders approved an Employee Stock Option Plan (the "Plan"). The Plan authorized the issuance of options to purchase up to two million shares of the Company's Common Stock. On November 7, 2001, the shareholders approved an amendment to the Plan increasing the number of shares in the Plan to three million five hundred thousand shares.

The Plan allows the Board of Directors to grant non-qualified stock options from time to time to employees, officers and directors, and consultants of the Company. The board determines vesting provisions at the time options are granted. The option price for any option will be no less than the fair market value of the Common Stock on the date the option is granted.

During the ten-months ended December 31, 2004, we did not issue any new options to directors.

### DIRECTOR COMPENSATION

Effective January 14, 2005 our outside Directors are compensated for attending meetings according to the following structure:

- Each outside director will receive \$20,000 annual cash retainer. In addition outside directors shall receive \$1,000 per meeting attended on behalf of the Board of Directors including full Board meetings, Audit Committee, Compensation Committee and Governance Committee meetings.
- Meetings attended telephonically or in conjunction with a full Board Meeting shall earn a compensation of \$500 for attendance.
- Committee Chairmen receive an annual retainer of \$5,000 for the Audit committee, \$2,500 for the Compensation and Governance committees and an additional \$500 per meeting over which they preside.
- Outside directors shall also receive equity compensation as determined by the Board targeted to match the annual cash retainer.

On January 14, 2005, George Knutsson, George Lackman and David Saul were each granted 8,000 stock options with an exercise price of \$2.50 per share, vesting 50% on June 30, 2005 and 50% on December 31, 2005. The options expire January 14, 2010. This represents the equity compensation package for outside Directors for the year ending December 31, 2005.

### ITEM 11. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table set forth, as of March 9, 2005, the stock ownership of each person known by the Company to be the beneficial owner of five percent or more of the Company's Common Stock, each Officer and Director individually and all Officers and Directors of the Company as a Group.

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<u>Name of Beneficial Owner</u>	<u>Amount of Beneficial Ownership</u>	<u>Percentage of Class</u>
MacDougald Family Limited Partnership 260 First Avenue South, Suite 110 St. Petersburg, FL 33701	2,344,008(1)	5.7%
Gregory P. Stemm 5215 W. Laurel St. Tampa, FL 33607	2,078,741(2)	5.0%
Janus Capital Management LLC 151 Detroit Street Denver, CO 80206	2,052,520(3)	5.0%
John C. Morris 5215 W. Laurel St. Tampa, FL 33607	1,718,629(4)	4.1%
David A. Morris 5215 W. Laurel St. Tampa, FL 33607	536,940(5)	1.3%
David J. Saul 5215 W. Laurel St. Tampa, FL 33607	555,000(6)	1.3%
George Knutsson 5215 W. Laurel St. Tampa, FL 33607	174,000(7)	0.4%
George Becker 5215 W. Laurel St. Tampa, FL 33607	243,400(8)	0.6%
George Lackman 5215 W. Laurel St. Tampa, FL 33607	300,000(9)	0.7%
Michael J. Holmes 5215 W. Laurel St. Tampa, FL 33607	60,000(10)	0.1%
Davis D. Howe 5215 W. Laurel St. Tampa, FL 33607	35,000(11)	0.1%
All Officers and Directors as a group (9 persons)	5,701,710	13.2%

- (1) Includes 2,344,008 shares beneficially held by MacDougald Family Limited Partnership(MFLP). MacDougald Management, Inc.(MMI) is the general partner of MacDougald Family Limited Partnership. Limited Partners are James E. MacDougald, his wife Suzanne M. MacDougald, and two trusts created for the children and grandchildren of Mr. and Mrs. MacDougald.

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- (2) Includes 606,182 shares held by Greg and Laurie Stemm, 1,122,559 shares held by Adanic Capital, Ltd., a limited partnership for which Greg Stemm serves as general partner, and 350,000 shares underlying currently exercisable stock options.
- (3) Includes an aggregate of 2,052,520 shares owned by Bay Isle Financial LLC and Enhanced Investment Technologies, LLC, of which Janus Capital Management LLC serves as investment advisor and has indirect ownership control.
- (4) Includes 1,368,629 shares held by John Morris, and 350,000 shares underlying currently exercisable stock options.
- (5) Includes 312,626 shares held by David A. Morris, 24,314 shares held by Chad E. Morris his son who lives in the same household, and 200,000 shares underlying currently exercisable stock options.
- (6) Includes 280,000 shares held by David J. Saul and his wife Christine, and 175,000 shares underlying currently exercisable stock options, and 100,000 shares underlying a currently exercisable warrant held by David J. Saul.
- (7) Includes 99,000 shares and 75,000 shares underlying currently exercisable stock options held by George Knutsson.
- (8) Includes 43,400 shares and 200,000 shares underlying currently exercisable stock options held by George Becker.
- (9) Includes 100,000 shares, 100,000 shares underlying currently exercisable stock options, and 100,000 shares underlying a currently exercisable warrant held by Mr. Lackman.
- (10) Includes 10,000 shares and 50,000 shares underlying currently exercisable stock options held by Michael Holmes.
- (11) Includes 10,000 shares and 25,000 shares underlying currently exercisable stock options held by Davis Howe.

### EQUITY COMPENSATION PLAN INFORMATION

<u>Plan category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights</u>	<u>Weighted Average exercise price of outstanding options warrants and rights</u>	<u>Number of securities remaining available for future issuance</u>
Equity compensation plans approved by securityholders	2,416,500	\$ 3.74	206,500
Equity compensation plans not approved by securityholders	-0-	-0-	-0-
<b>Total</b>	<b>2,416,500</b>	<b>\$ 3.74</b>	<b>206,500</b>

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### ITEM 12. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

During the last two years certain officers, directors, and beneficial owners entered into transactions with the Company as follows:

On January 1, 2001, we renewed loan agreements with Gregory Stemm and John Morris authorizing each to borrow a maximum of \$120,000 from the Company at 8% annual interest compounded quarterly. On March 1, 2002, the loans were revised to allow borrowing up to \$150,000 under the same terms and up to \$20,000 for the exercise of stock options. These loans would have become due on December 31, 2004. On December 5, 2003 John Morris and Greg Stemm re-paid the balances in full of the principal amounts and all accumulated interest due on the loans.

On April 1, 2001, we entered into a loan extension agreement with Robert Stemm, Gregory Stemm's father, wherein Mr. Stemm extended the due date on his loan to the Company until March 31, 2003. The principal amount of \$56,144 bore interest at 10% per annum and was secured by an inventory of raw emeralds. This loan was convertible into shares of Common Stock at the rate of \$.50 per share. On March 31, 2003, we entered into a Debt Conversion Agreement wherein, Mr. Stemm was paid \$13,373 in cash and received 108,000 shares of our common stock for payment in full of the note and accrued interest. Payment of the note established March 31, 2005, as the expiration date of the warrants for the purchase of common stock previously issued to Mr. Stemm as an inducement to extend the loan due dates, and terminated the security interest in the inventory of raw emeralds that previously secured the note. Warrants held by Mr. Stemm as a result of his loan to the Company are as follows:

<u>Date issued</u>	<u>Number of shares</u>	<u>Exercise Price</u>	<u>Expiration Date</u>
4/1/1999	11,000	\$3.00/share	March 31, 2005
4/1/2000	21,500	\$2.00/share	March 31, 2005

On May 26, 1998, we signed an agreement with a subcontractor that entitled it to receive 5% of the post finance cost proceeds from any shipwrecks in a certain search area of the Mediterranean Sea. A shipwreck we have found, which we believe to be the HMS Sussex, is located within the specified search area and we will be responsible to share future revenues, if any, from this shipwreck. On December 9, 2002, a Georgia limited liability company acquired the 5% interest in the Cambridge Project from the subcontractor through a foreclosure sale. John Morris and Greg Stemm have member interests in the limited liability company. At the time of the foreclosure, the Company was offered the opportunity to acquire the foreclosure rights but declined due to its financial condition at the time.

During the transition period ended December 31, 2004 we hired Jim Saturley Construction to perform certain building renovations on our new corporate headquarters and they were paid a total of \$243,800. Jim Saturley Construction is owned by the stepson of John Morris. Management believes that the terms of this transaction were at least as favorable as those which could have been obtained from unrelated parties.

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### ITEM 13. EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>	<u>Location</u>
3.1	Articles of Incorporation, as amended	Incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-KSB for the year ended February 28, 2001
3.2	Bylaws	Incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-KSB for the year ended February 28, 2001
3.3	Designation of Series B Convertible Preferred Stock	Incorporated by reference to Exhibit 3.3 to the Company's Report on Form 8-K dated February 28, 2001
2.4	Amended Certificate of Designation of Series C Convertible Preferred Stock	Incorporated by reference to Exhibit 3.4 to the Company's Report on Form 8-K dated September 19, 2002
10.1	Employment Agreement dated May 22, 2002, with David A. Morris	Incorporated by reference to Exhibit 10.1 to the Company's Annual Report on Form 10-KSB For the year ended February 28, 2002
10.2	Employment Agreement dated May 22, 2002, with Greg Stemm	Incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-KSB For the year ended February 28, 2002
10.3	Employment Agreement dated May 22, 2002, with John C. Morris	Incorporated by reference to Exhibit 10.3 to the Company's Annual Report on Form 10-KSB For the year ended February 28, 2002
10.4	Employment Agreement dated May 22, 2002, with Michael V. Barton	Incorporated by reference to Exhibit 10.4 to the Company's Annual Report on Form 10-KSB For the year ended February 28, 2003
10.5	Employment Agreement dated May 22, 2002, with George Becker	Incorporated by reference to Exhibit 10.4 to the Company's Annual Report on Form 10-KSB For the year ended February 28, 2003

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10.6	Series B Convertible Preferred Stock Purchase Agreement	Incorporated by reference to Exhibit 10.6 to the Company's Report on Form 8-K dated February 28, 2001
10.7	1997 Stock Option Plan	Incorporated by reference to Exhibit 10.7 to the Company's Annual Report on Form 10-KSB for the year ended February 28, 2001
10.8	Commercial Lease with Corinthian Custom Homes, Inc. dated January 24, 2001	Incorporated by reference to Exhibit 10.8 to the Company's Annual Report on Form 10-KSB for the year ended February 28, 2001
10.9	Amended and Restated Registration Rights Agreement with MacDougald Family Limited Partnership	Incorporated by reference to Exhibit 10.9 to the Company's Annual Report on Form 10-KSB for the year ended February 28, 2002
10.10	First Amendment to Series B Stock Purchase Agreement	Incorporated by reference to Exhibit 10.10 to the Company's Annual Report on Form 10-KSB for the year ended February 28, 2002
10.11	Partnering Agreement Memorandum Concerning the Shipwreck of HMS Sussex, dated September 27, 2002	Incorporated by reference to Exhibit 10.11 to the Company's Quarterly Report on Form 10-QSB For the quarter ended August 31, 2002
10.12	Contract with RBK Architects For 8,000 square foot exhibit.	Filed herewith electronically
10.13	Contract with RBK Architects For 5,000 square foot exhibit.	Filed herewith electronically
21	Subsidiaries of the Small Business Issuer.	Filed herewith electronically
23	Consent of Independent Public Accountants	Filed herewith electronically
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith electronically
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	Filed herewith electronically
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350	Filed herewith electronically
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350	Filed herewith electronically

(b) Reports on Form 8-K. None.

### ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The following presents aggregate fees billed to the Company for the ten-months ended December 31, 2004 and the fiscal year ended February 29, 2004 by Ferlita, Walsh & Gonzalez, P.A., the Company's principal accountant. All fees described below were approved by the Audit Committee.

Audit Fees. Audit fees billed for the ten months ended December 31, 2004 were \$53,955. Audit fees billed for the fiscal year ended February 29, 2004



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were \$28,365. The fees were for professional services rendered for the audits of our consolidated financial statements, reviews of the financial statements included in our quarterly reports, consultations on matters that arose during our audit and reviews of SEC registration statements.

**Audit-Related Fees.** No audit related fees were billed in the ten month period ended December 31, 2004 or the fiscal year ended and February 29, 2004.

**Tax Fees.** No tax fees were billed in the ten month period ended December 31, 2004 or the fiscal year ended and February 29, 2004.

**All Other Fees.** No other fees were billed in the ten month period ended December 31, 2004 or the fiscal year ended and February 29, 2004.

**Pre-Approval Policies for Non-Audit Services.** The Audit Committee Charter requires pre-approval for any non-audit services performed by our independent accountants. No non-audit services have been performed by Ferlita, Walsh & Gonzalez, P.A. during the ten months ended December 31, 2004 or the fiscal year ended February 29, 2004.

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ODYSSEY MARINE EXPLORATION, INC.**

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### REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors  
Odyssey Marine Exploration, Inc.  
Tampa, Florida

We have audited the accompanying consolidated balance sheets of Odyssey Marine Exploration, Inc. and subsidiaries as of December 31, 2004 and the related consolidated statements of operations, stockholders' equity and comprehensive income, and cash flows for the periods ended December 31, 2004 and February 29, 2004. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An Audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Odyssey Marine Exploration, Inc. and subsidiaries as of December 31, 2004 and February 29, 2004, and the results of their operations and their cash flows for the years ended December 31, 2004 and February 29, 2004 in conformity with U.S. generally accepted accounting principles.

*/s/ Ferlita, Walsh & Gonzalez, P.A.*

FERLITA, WALSH & GONZALEZ, P.A.  
Certified Public Accountants  
Tampa, Florida  
February 16, 2005

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### ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES CONSOLIDATED BALANCE SHEET AS OF DECEMBER 31, 2004

ASSETS	
CURRENT ASSETS	
Cash and cash equivalents	\$ 3,050,721
Accounts receivable	2,104,914
Inventory	3,759,552
Prepaid expense	412,868
Deposits	221,355
Deferred tax asset	1,651,604
Other current assets	5,927
Total current assets	11,206,941
PROPERTY AND EQUIPMENT	
Equipment and office fixtures	6,612,764
Building and land	3,333,481
Accumulated depreciation	(1,328,202)
Total property and equipment	8,618,043
OTHER ASSETS	
Artifacts	396,879
Inventory (non current)	5,945,177
Deposits	7,330
Deferred tax asset	1,176,796
Attraction development	569,634
Total other assets	8,095,816
Total assets	\$27,920,800
LIABILITIES AND STOCKHOLDERS' EQUITY	
CURRENT LIABILITIES	
Accounts payable	\$ 591,138
Accrued expenses	2,024,882
Loan payable	73,700
Mortgage payable	100,000
Tenant deposits	19,098
Total current liabilities	2,808,818
LONG TERM LIABILITIES	
Mortgage payable	1,858,333
Deferred income from Revenue Participation Certificates	887,500
Total long term liabilities	2,745,833
Total liabilities	5,554,651
STOCKHOLDERS' EQUITY	
Preferred stock - \$.0001 par value; 9,300,000 shares authorized; none outstanding	—
Preferred stock series A convertible - \$.0001 par value; 510,000 shares authorized; none issued or outstanding	—
Common stock - \$.0001 par value; 100,000,000 shares authorized; 38,530,599 and 37,993,099 issued and outstanding	3,853
Additional paid-in capital	26,430,934
Unrealized gain on investments, net of tax	554
Accumulated deficit	(4,069,192)
Total stockholders' equity	22,366,149
Total liabilities and stockholders' equity	\$27,920,800

The accompanying notes are an integral part of these financial statements.

**Table of Contents****ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF OPERATIONS**

	<b>10 Month Period Ended December 31, 2004</b>	<b>Fiscal Year Ended February 29, 2004</b>
REVENUE	\$17,622,092	\$ 73,879
COST OF SALES	1,883,912	—
GROSS PROFIT	15,738,180	73,879
OPERATING EXPENSES		
Operations and research	1,922,156	2,449,760
Marketing, general & administrative	4,730,595	2,464,382
Depreciation	362,115	264,778
Total operating expenses	7,014,866	5,178,919
INCOME (LOSS) FROM OPERATIONS	8,723,314	(5,105,040)
OTHER INCOME OR (EXPENSE)		
Interest income	6,011	23,958
Interest expense	(57,842)	(109,227)
Loss on disposal of equipment	(20,000)	(31,927)
Other income	40,666	40,000
Revenue participation	—	(12,986)
Total other income or (expense)	(31,165)	(90,182)
INCOME (LOSS) BEFORE INCOME TAXES	8,692,149	(5,195,222)
Income tax (provision) benefit	(3,462,911)	5,762,103
NET INCOME	\$ 5,229,238	\$ 566,881
EARNINGS (LOSS) PER SHARE		
Basic	\$ 0.14	\$ 0.02
Diluted	\$ 0.13	\$ 0.02
Weighted average number of common shares outstanding		
Basic	38,400,329	32,952,161
Diluted	40,254,049	34,278,545

The accompanying notes are an integral part of these financial statements.

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**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY AND**  
**COMPREHENSIVE INCOME**

	Preferred Stock		Common Stock		Additional Paid-In Capital	Accumulated		Comprehensive Income
	Shares	Amount	Shares	Amount		Unrealized Loss in Investment	Accumulated (Deficit)	
February 28, 2003	1	\$ —	28,721,886	\$2,872	\$10,664,706	\$ —	\$(9,865,311)	\$ (2,592,756)
Common stock issued for conversion of Series C Preferred stock	(1)	—	400,000	40	(40)			
Common stock issued for cash			8,731,435	873	14,109,564			
Common stock issued for services			139,778	14	97,237			
Net change in unrealized gain on investments, net of related tax effect						2,988		2,988
Net income for the year ended February 29, 2004							\$ 566,881	\$ 566,881
Tax benefit related to exercise of employee stock options					276,372			
Balance at February 29, 2004	0	\$ —	37,993,099	\$3,799	\$25,147,839	\$ 2,988	\$(9,298,430)	\$ 569,869
Common stock issued for cash			537,500	54	1,030,259			
Net change in unrealized gain on investments, net of related tax effect						(2,434)		(2,434)
Net income for the year ended December 31, 2004							\$ 5,229,238	\$ 5,229,238
Tax benefit related to exercise of employee stock options					252,836			
Balance at December 31, 2004	0	\$ —	38,530,599	\$3,853	\$26,430,934	\$ 554	\$(4,069,192)	\$ 5,226,804

The accompanying notes are an integral part of these financial statements.

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### ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF CASH FLOWS

	10 Month Period Ended December 31, 2004	Fiscal Year Ended February 29, 2004
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net Income	\$ 5,229,238	\$ 566,881
Adjustments to reconcile net income to net cash used by operating activity:		
Effect of unrealized gain on investments	(2,434)	(1,877)
Tax benefit related to exercise of employee stock options	252,836	276,372
Common stock issued for:		
Services	—	74,150
Officer and director compensation	—	50,600
Interest payable	—	108,750
Depreciation	362,114	380,013
Loss on disposal of equipment	20,000	31,927
(Increase) decrease in:		
Accounts receivable	(2,092,438)	—
Inventory	(5,658,105)	(4,049,689)
Advances, prepaids, deposits	(82,646)	(475,295)
Deferred tax asset	3,208,198	(6,036,598)
Increase (decrease) in:		
Accounts payable	(402,388)	953,372
Customer deposits	19,098	—
Accrued expenses	1,907,675	80,875
<b>NET CASH PROVIDED (USED)IN OPERATING ACTIVITIES</b>	<b>2,761,148</b>	<b>(8,040,519)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of property and equipment	(2,217,418)	(3,607,691)
Purchase of U.S. Treasury bills	—	(1,991,555)
Attraction development	(569,634)	—
Purchase of building and land	(1,333,481)	—
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(4,120,533)</b>	<b>(5,599,246)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from:		
Related party loans receivable	—	292,627
Issuance of common stock	1,030,313	12,936,313
Issuance of loan payable	1,523,700	978,750
Sale of marketable securities	1,996,420	—
Repayment of note payable to related party	—	(2,144)
Repayment of loan payable	(1,450,000)	—
Repayment of mortgage payable	(41,667)	—
<b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>	<b>3,058,766</b>	<b>14,205,546</b>
<b>NET INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>1,699,381</b>	<b>565,781</b>
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR</b>	<b>1,351,340</b>	<b>785,559</b>
<b>CASH AND CASH EQUIVALENTS AT END OF YEAR</b>	<b>\$ 3,050,721</b>	<b>\$ 1,351,340</b>
<b>SUPPLEMENTARY INFORMATION:</b>		
Interest paid	\$ 53,051	\$ 11,229
Income taxes paid	\$ —	\$ —
<b>NON CASH TRANSACTIONS:</b>		
Depreciation reclassified as inventory	\$ 374,123	\$ —
Accounts receivable paid by services	\$ 40,000	\$ —
Building purchase paid by mortgage loan	\$ 2,000,000	\$ —



Loan principle converted to common stock

\$ — \$ 1,042,750

The accompanying notes are an integral part of these financial statements.

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE A - ORGANIZATION AND BUSINESS**

**ORGANIZATION**

Odyssey Marine Exploration, Inc. was incorporated March 5, 1986, as a Colorado corporation named Universal Capital Corporation, Inc. On August 8, 1997 Odyssey Marine Exploration, Inc. (the "Company"), completed the acquisition of 100% of the outstanding Common Stock of Remarc International, Inc., a Delaware corporation formed May 20, 1994, ("Remarc") in exchange for the Company's Common Stock in a reverse acquisition. On September 7, 1997, the Company changed its domicile to Nevada and its name was changed to Odyssey Marine Exploration, Inc.

For accounting purposes the acquisition has been treated as a re-capitalization of Remarc, with Remarc as the acquirer (reverse acquisition). The historical financial statements prior to August 8, 1997 are those of Remarc. Remarc International, Inc. then adopted February as its fiscal year end.

Subsequently, on February 25, 1999, Remarc International, Inc. and Odyssey Marine Exploration, Inc. were merged with Odyssey Marine Exploration, Inc. being the surviving corporation.

Odyssey Marine, Inc., a Florida corporation, was incorporated on November 2, 1998, as a wholly owned subsidiary of Odyssey Marine Exploration, Inc. for the purpose of administering the Company's payroll and health plan. This subsidiary became inactive as of January 1, 2005 as these functions have been reassigned to the parent Company.

On September 11, 2002, the Company formed a wholly owned Nevada corporation, Odyssey Marine Services, Inc., ("OMS") for the purpose of holding and leasing marine assets, chartering and leasing vessels and employing marine crew and technical personnel.

On September 11, 2002, the Company formed a wholly owned Nevada corporation, OVH, Inc., ("OVH") for the purpose of owning and chartering a research vessel.

On July 30, 2003, the Company formed a wholly owned Nevada corporation, Odyssey Retriever, Inc., ("ORI") for the purpose of owning and operating a vessel suitable for conducting archaeologically sensitive exploration and recovery of shipwrecks.

On May 26, 2004, the Company adopted December 31 as its new fiscal year effective December 31, 2004. Our year end report will be for a ten month transition period ending December 31, 2004.

**BUSINESS ACTIVITY**

Odyssey Marine Exploration, Inc., is engaged in the archaeologically sensitive exploration and recovery of deep-water shipwrecks throughout the world. The corporate headquarters are located in Tampa, Florida.

We own a 113 foot search vessel the R/V Odyssey equipped with side scan sonar, inspection class remote operated vehicle("ROV") and navigation equipment for conducting wide area searches for shipwrecks. We also own a

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE A - ORGANIZATION AND BUSINESS - continued**

251-foot recovery vessel the "Odyssey Explorer" equipped with a 7-ton, 205 horsepower work class ROV. During 2004 we conducted recovery operations of the steamship SS Republic which sank in 1865 and which we located during our July 2003 survey operations. We began to market cargoes and other products derived from the recovery operations and are developing exhibit attractions which we plan to open to the public during 2005. We are currently preparing to begin search and recovery operations on other shipwreck targets.

**NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

This summary of significant accounting policies of the Company is presented to assist in understanding our financial statements. The financial statements and notes are representations of the Company's management who are responsible for their integrity and objectivity and have prepared them in accordance with our customary accounting practices.

**Principles of Consolidation**

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Odyssey Marine, Inc., Odyssey Marine Services, Inc., OVH, Inc, and Odyssey Retriever, Inc. All significant inter-company transactions and balances have been eliminated.

**Reclassifications**

Certain operating expense amounts for the year ended February 29, 2004 have been reclassified to conform to the presentation of the December 31, 2004 amounts. The reclassifications have no effect on net income for the year ended February 29, 2004.

**Use of Estimates**

Management uses estimates and assumptions in preparing these financial statements in accordance with generally accepted accounting principles. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could vary from the estimates that were used.

**Revenue Recognition and Accounts Receivable**

Revenue from artifact sales is recognized at the point of sale when legal title transfers. For artifact sales, legal title transfers when product is shipped or is available for shipment to customers. Bad debts are recorded as identified. We have not experienced any bad debts and no allowance for bad debts has been recorded.

**Cash Equivalents**

Cash equivalents include cash on hand and cash in banks. We also consider all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

**Fair Value of Financial Instruments**

The carrying value of cash, accounts receivable, prepaid expense, investments,

ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

**NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - continued**

accounts payable, accrued expense, loan payable and mortgage payable approximate fair value. Considerable judgment is necessarily required in interpreting market data to develop the estimates of fair value, and, accordingly, the estimates are not necessarily indicative of the amounts that we could realize in a current market exchange.

**Inventory**

Our inventory consists primarily of artifacts from the SS Republic shipwreck. The Company has accounted for its inventory at the lower of costs or market.

**Long-Lived Assets**

Our policy is to recognize impairment losses relating to long-lived assets in accordance with Financial Accounting Standards Board No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" based on several factors, including, but not limited to, management's plans for future operations, recent operating results and projected cash flows. To date no such impairment has been indicated.

**Comprehensive Income**

United States Treasury bills owned by us during the year ending December, 31 2004, were deemed available-for-sale and carried at fair value. Unrealized gains and losses on these securities were excluded from earnings and reported, net of any income tax effect, as a separate component of stockholders' equity.

**Depreciation**

Property and equipment is stated at historical cost. Depreciation is provided using the straight-line method at rates based on the assets' estimated useful lives. Depreciation directly related to the recovery of the SS Republic cargo has been capitalized as inventory. During the ten month period ending December 31, 2004 total depreciation charged was \$649,572. Of this amount \$374,123 was capitalized as inventory.

**Earnings Per Share**

Basic earnings per share (EPS) is computed by dividing income available to common shareholders by the weighted-average number of common shares outstanding for the year. Diluted EPS reflects the potential dilution that would occur if dilutive securities and other contracts to issue Common Stock were exercised or converted into Common Stock or resulted in the issuance of Common Stock that then shared in our earnings.

At December 31, 2004 potential common shares, calculated using the treasury stock method, for the ten month period ended December 31, 2004, were included in the computation of diluted EPS as follows:

Weighted average shares outstanding	38,400,329
Potential common shares due to warrants and options	1,853,720
Weighted average common and potential common shares outstanding	<u>40,254,049</u>

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### ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

#### NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - continued

At February 29, 2004 potential common shares, calculated using the treasury stock method, for the year ended February 29, 2004, were included in the computation of diluted EPS as follows:

Weighted average shares outstanding	32,952,161
Potential common shares due to warrants and options	1,326,384
Weighted average common and potential common shares outstanding	<u>34,278,545</u>

For the periods above, all other exercisable stock options and stock warrants were excluded from the computation of diluted EPS because the options exercise prices were greater than the average market price of the common shares and would have had an anti-dilutive effect if included in the computation.

#### Stock-Based Compensation

We account for stock-based compensation using the intrinsic value method in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," and have adopted the disclosure provisions of Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure, an amendment of FASB Statement No. 123." Under APB No. 25, when the exercise price of our employee stock options equals or exceeds the market price of the underlying stock on the date of grant, no compensation expense is recognized. Accordingly, no compensation expense has been recognized in the consolidated financial statements in connection with employee stock option grants.

The following table illustrates the effect on net income and earnings per share had we applied the fair value recognition provisions of Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation," to stock-based employee compensation.

	10 Month Period Ended December 31, 2004	Fiscal Year Ended February 29, 2004
Net income(loss):		
As reported	\$5,229,238	\$ 566,881
Pro forma adjustment for compensation, net of tax	(703,952)	(252,823)
Pro forma	<u>\$4,525,286</u>	<u>\$ 314,058</u>
Basic income(loss) per share:		
As reported	\$ 0.14	\$ 0.02
Pro forma	\$ 0.12	\$ 0.01
Diluted income(loss) per share:		
As reported	\$ 0.13	\$ 0.02
Pro forma	\$ 0.11	\$ 0.01

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - continued**

The weighted average estimated fair value of stock options granted during the ten month period ended December 31, 2004 and the year ended February 29, 2004 were \$3.78 and \$1.21 respectively. These amounts were determined using the Black-Scholes option-pricing model, which values options based on the stock price at the grant date, the expected life of the option, the estimated volatility of the stock, the expected dividend payments, and the risk-free interest rate over the life of the option. The assumptions used in the Black-Scholes model were as follows for stock options granted in the ten month period ended December 31, 2004 and year ended February 29, 2004:

	10 Month Period Ended December 31, 2004	Fiscal Year Ended February 29, 2004
Risk-free interest rate	3.6%	3.0%
Expected volatility of common stock	469%	496%
Dividend Yield	0%	0%
Expected life of options	5 years	4-5 years

The Black-Scholes option valuation model was developed for estimating the fair value of traded options that have no vesting restrictions and are fully transferable. Because option valuation models require the use of subjective assumptions, changes in these assumptions can materially affect the fair value of the options. Our options do not have the characteristics of traded options, therefore, the option valuation models do not necessarily provide a reliable measure of the fair value of our options.

Equity instruments issued, if any, to non-employees in exchange for goods, fees and services are accounted for under the fair value-based method of SFAS No. 123.

**Income Taxes**

Income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax asset will not be realized.

**Revenue Participation Certificates**

Revenue was received during the period ended May 31, 2003 that is subject to revenue sharing with holders of the Cambridge Revenue Participation Certificates. The obligation has been classified as other expense.

**NOTE C - CONCENTRATION OF CREDIT RISK**

We maintain our cash in two financial institutions. The Federal Deposit Insurance Corporation insures up to \$100,000. At December 31, 2004 our uninsured cash balance was approximately \$383,000. We do business with dealers that are located throughout the United States.

**ODSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE D - CASH AND CASH EQUIVALENTS**

Cash and cash equivalents include cash on hand and United States Treasury Bills maturing in less than ninety days from the date of purchase. The United States Treasury Bills held as of December 31, 2004, mature for \$2,500,000 in total if held to maturity. These were purchased at a cost of \$2,497,491 with original maturity dates of less than 90 days and have been classified as available for sale securities. An unrealized gain on investment was recorded in the amount of \$554 due to the increase in the fair market value of the investments. The carrying values of cash and investments which have been included in cash and cash equivalents at December 31, 2004 are determined as follows:

	Investment	Maturity
	\$1,498,699	1/13/05
	\$ 998,792	1/27/05
	\$2,497,491	
Unrealized gain	\$ 554	
Cash equivalent	\$2,498,045	
Other cash	552,676	
Total cash	\$3,050,721	

**NOTE E - ACCOUNTS RECEIVABLE**

Accounts receivable consists of trade accounts receivable that become due in 30 days or less in the amount of \$2,055,267 that resulted from the sale of inventory and an additional receivable of \$49,647 from the disposal of equipment .

**NOTE F - INVENTORY**

During the current year we continued to recover cargo consisting of gold and silver coins, bottles and other items from the SS Republic. At December 31, 2004 portions of our inventory are classified as current or non-current due to our estimates of the timing of future sales as follows:

Class	Amount
Current Inventory	
Merchandise	\$ 43,684
SS Republic artifacts	3,274,941
Packaging	440,927
	3,759,552
Non-Current Inventory	
SS Republic artifacts	5,945,177
Total Inventory	\$9,704,729

The carrying amount of the SS Republic artifacts has been valued by capitalizing the costs of recovery and conservation of these items.

**NOTE G - PREPAID EXPENSE**

Prepaid expenses consist of \$304,276 of prepaid insurance premiums and \$108,592 of other prepaid operating costs. All prepaid expenses are amortized on a straight-line basis over the term of the underlying agreements.

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE H - PROPERTY AND EQUIPMENT**

At December 31, 2004 Property and Equipment consist of:

<u>Class</u>	<u>Amount</u>
Building and land	\$ 3,333,481
Computers and peripherals	317,714
Furniture and office equipment	197,075
Vessels and marine equipment	6,097,975
	<u>9,946,245</u>
Less: Accumulated depreciation	<u>(1,328,202)</u>
<b>Property and equipment, net</b>	<b>\$ 8,618,043</b>

**NOTE I - BUILDING AND LAND**

On July 23, 2004, we purchased a 23,500 square foot two story office building for \$3,058,770 to serve as our corporate and operations headquarters. With tenant improvements the facility is recorded on the books at a cost of \$3,333,481. We currently lease approximately 25% of the space to a tenant.

**NOTE J - DEPOSITS**

Deposits are held by various vendors for equipment, services, and in accordance with agreements in the normal course of business. At December 31, 2004 total deposits were \$228,685 of which \$221,355 were classified as current deposits.

**NOTE K – MORTGAGE PAYABLE**

On July 23, 2004, we entered into a mortgage loan for \$2,000,000 with the Bank of Tampa for the purchase of our corporate office building. The mortgage loan is due in 10 years and monthly payments are based on a 20 year amortization schedule. Interest, initially at 4.94%, will be adjustable semiannually based upon changes in the LIBOR (London Interbank Offered Rate) index. Interest expense was \$41,630 for the ten months ended December 31, 2004. Of the principal amount due on the mortgage \$100,000 is classified as current liability. Future principal payments for the next five years ending December 31 will be \$100,000 per year and the remainder thereafter.

**NOTE L – LOAN PAYABLE**

Revolving Credit Facility

On June 24, 2004, the Company entered into a \$5 million revolving credit facility from The Bank of Tampa (the “Bank”). The interest-only credit line carries a floating interest rate of the bank’s published prime rate and a term of one year. It is secured by a portion of the numismatically significant gold coins recovered by us from the SS Republic shipwreck. At December 31, 2004 the interest rate was 5.25% and the balance due on the Loan Payable was \$73,700. Interest expense was \$11,420 for the ten months ended December 31, 2004.



**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE M - ACCRUED EXPENSES**

Accrued expenses at December 31, 2004 consist of:

Class	Amount
Compensation and bonus	\$ 752,491
Commissions	188,091
Inventory	829,500
Other operating expenses	254,800
	\$2,024,882

**NOTE N - RELATED PARTY TRANSACTIONS**

**Related Party Interest in Revenue Participation Agreement**

On December 9, 2002, a Georgia limited liability company acquired rights from an unrelated third party through a foreclosure sale to receive 5% of post finance cost proceeds, if any, from shipwrecks that we may recover within a predefined search area of the Mediterranean Sea. The shipwreck we believe to be HMS Sussex is located within this search area. Two of our officers and directors have member interests in the limited liability company.

**Construction services performed by related party**

A construction company, owned by a relative of a company officer, performed building renovations on our corporate headquarters building amounting to \$243,800.

**NOTE O - SALE OF REVENUE PARTICIPATION CERTIFICATES**

We have sold through private placements of Revenue Participation Certificates (“RPCs”) the right to share in our future revenues derived from the Cambridge or Republic projects. Each \$50,000 convertible Cambridge RPC entitles the holder to receive a percentage of the gross revenue received by us from the “Cambridge Project”, which is defined as all cash proceeds payable to us as a result of the Cambridge Project, less any amounts paid to the British Government or their designee(s); provided, however, that all funds received by us to finance the project are excluded from gross revenue.

As of April 30, 1999, when the offering was closed, we had sold \$825,000 of a maximum of \$900,000 of the Cambridge RPCs. As a group, the holders are entitled to 100% of the first \$825,000 of gross revenue, 24.75% of gross revenue from \$4 - 35 million, and 12.375% of gross revenue above \$35 million generated by the Cambridge project.

Distributions are to be made to each certificate holder within 15 days from the end of each quarterly reporting period in which we receive any cash proceeds from, or as a result of, the Cambridge Project. The Cambridge RPC units constitute restricted securities. In a private placement, which closed in September 2000, we sold “units” comprised of Republic Revenue Participation Certificates, and Common Stock. Each \$50,000 “unit” entitled the holder to 1% of the gross revenue generated by the Seattle project (formerly referred to as the Republic project), and 100,000 shares of Common Stock. Gross revenue is defined as all cash proceeds payable to us as a result of the Seattle project, excluding funds received by us to finance the project.

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE O - SALE OF REVENUE PARTICIPATION CERTIFICATES - continued**

When the offering was closed, in September 2000, a total of five \$50,000 units consisting of one Republic RPC and 100,000 shares of Common Stock had been sold, and the cost of each unit was allocated as \$37,500 for the stock and \$12,500 for the RPC. Therefore, a total of \$62,500 was reflected on the books as deferred income from the sale of Republic Revenue Participation Certificates.

As of December 31, 2004 we had sold, in total, \$887,500 of RPCs, which are reflected on the books as Deferred RPC Income to be amortized under the units of revenue method.

**NOTE P - PREFERRED STOCK**

We currently have 9,300,000 shares of Preferred Stock and 510,000 shares of Series A Convertible Preferred Stock that have been authorized and none outstanding. The Preferred Stock may be issued in series from time to time with such rights, designations, preferences and limitation as our Board of Directors may determine by resolution.

**Series C Preferred Stock**

On September 18, 2002, we established a series of Preferred Stock known as “Series C Convertible Preferred Stock”(“Series C Preferred Stock”), having a par value of \$.0001 per share and an authorization of one (1) share. One share of Series C Convertible Preferred Stock was issued for \$500,000 in cash.

On August 19, 2003 the share of Series C Convertible Preferred Stock was converted into 400,000 shares of our Common Stock and warrants to purchase 400,000 shares of our Common Stock at an exercise price of \$2.50 per share.

The converted share was then restored to the status of authorized but un-issued shares of Preferred Stock of the Corporation, without designation as to series, and may thereafter be issued.

**NOTE Q - COMMON STOCK OPTIONS AND WARRANTS**

We adopted the 1997 Stock Option Plan on September 8, 1997. Under the terms of the plan, non-statutory options to purchase Common Stock are granted to employees, consultants and non-employee directors at not less than 100% of the fair market value of the shares on the date of grant or the par value thereof whichever is greater. Options currently expire no later than 5 years from the date of grant and are fully vested in two years or less. The cumulative number of shares which may be subject to options issued and outstanding pursuant to the plan is limited to 3,500,000 shares. Additional information with respect to the plan’s stock option activity is as follows:

	Number of Shares	Weighted Average Exercise Price
Outstanding at February 28, 2003	1,140,000	\$ 0.80
Granted	1,745,000	\$ 2.34
Exercised	(423,500)	\$ 0.68
Cancelled	(22,500)	\$ 1.62
Outstanding at February 29, 2004	2,439,000	\$ 1.91
Granted	330,000	\$ 5.00
Exercised	(237,500)	\$ 1.18
Cancelled	(115,000)	\$ 3.64
Outstanding at December 31, 2004	2,416,500	\$ 3.79
Options exercisable at February 29 2004	1,024,000	\$ 1.21
Options exercisable at December 31, 2004	1,659,000	\$ 1.76

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**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE Q - COMMON STOCK OPTIONS AND WARRANTS - continued**

The following table summarizes information about stock options outstanding at December 31, 2004:

**Stock Options Outstanding**

<u>Range of Exercise Prices</u>	<u>Number of Shares Outstanding</u>	<u>Weighted Average Remaining Contractual Life in Years</u>	<u>Weighted Average Exercise Price</u>
\$0.50 - \$0.50	200,000	0.50	\$ 0.50
\$1.00 - \$2.50	1,676,500	2.60	\$ 1.68
\$2.60 - \$5.00	540,000	4.28	\$ 5.00
	<u>2,416,500</u>	<u>2.73</u>	<u>\$ 3.79</u>

We have issued warrants to one individual in connection with loans made to us and to one consultant for services. We have also issued warrants to ten individuals in connection with the conversion of loans into common stock, and to 52 individuals who purchased units in a private placement offering during August of 2003. Warrants exercisable at December 31, 2004 are as follows:

<u>Warrants</u>	<u>Price per Share</u>	<u>Expiration Date</u>
11,000	3.00	3/31/05
3,939,000	2.50	10/05/05
<u>3,950,000</u>		

**NOTE R - COMPREHENSIVE INCOME**

Comprehensive income for the years ended December 31, 2004 and February 29, 2004 was \$554 and \$4,865, respectively. The comprehensive income resulted entirely from the unrecognized gains on the value of marketable securities held by us at December 31, 2004.

**NOTE S - INCOME TAXES**

As of December 31, 2004, the Company had consolidated income tax net operating loss ("NOL") carryforwards for federal tax purposes of approximately \$19,000,000. The NOL will expire in various years ending through the year 2024.

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### ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

#### NOTE S - INCOME TAXES - continued

The components of the provision for income taxes (benefits) are attributable to continuing operations as follows:

	10 Month Period Ended December 31, 2004	Fiscal Year Ended February 29, 2004
<b>Current</b>		
Federal	\$ 0	\$ 0
State	0	0
	<u>\$ 0</u>	<u>\$ 0</u>
<b>Deferred</b>		
Federal	\$2,984,843	\$(5,228,090)
State	478,068	(534,013)
	<u>\$3,462,911</u>	<u>\$(5,762,103)</u>

Deferred income taxes reflect the net tax effects of the temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

Significant components of the Company's deferred tax assets and liabilities are as follows:

<b>Deferred tax assets:</b>	
Net operating loss carryforwards	\$7,273,856
Less: valuation allowance	(10,993)
	<u>\$7,262,863</u>
<b>Deferred tax liability:</b>	
Prepaid expenses	\$ 126,434
Excess of tax over book depreciation	753,522
Artifacts recovery costs	3,554,507
	<u>\$4,434,463</u>
Net deferred tax asset	\$2,828,400
Less: Current net deferred tax asset	1,651,604
	<u>\$1,176,796</u>

As reflected above, the Company has recorded a net deferred tax asset of \$2,828,400 at December 31, 2004. Management determined that a valuation allowance is necessary because of the uncertainty in the utilization of its capital loss carryforwards. No valuation allowance is provided for our net operating loss carryforwards since we believe we will be profitable from sales and will generate taxable income sufficient to utilize the loss carryforwards. The amount of the net deferred tax assets considered realizable, however, could change in the near future if estimates of future taxable income during the carry-forward period are changed.

The change in the valuation allowance is as follow:

December 31, 2004	\$10,993
February 29, 2004	\$ 0
	<u>\$10,993</u>

Income taxes for the ten month period ended December 31, 2004 and February 29, 2004 differ from the amounts computed by applying the effective federal



**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE S - INCOME TAXES - continued**

statutory rate of 34.0% to income before income taxes as a result of the following:

	<b>10 Month Period Ended December 31, 2004</b>	<b>Fiscal Year Ended February 29, 2004</b>
Federal income tax computed at US statutory rate	\$2,955,331	\$(1,818,328)
State income taxes net of federal benefits	314,826	(185,730)
Change in valuation allowance	10,993	(3,756,168)
Nontaxable income (net)	(6,552)	—
Effects of		
Change in rate estimate	101,535	—
Change in NOL estimate	87,031	—
Other	(253)	(1,877)
<b>Income tax provision (benefit)</b>	<b>\$3,462,911</b>	<b>\$(5,762,103)</b>

During the ten month period ending December 31, 2004 and the year ended February 29, 2004 the Company recognized certain tax benefits related to stock option plans in the amount of \$252,836 and \$0 respectively. Such benefits were recorded as an increase in the deferred tax asset and an increase in additional paid-in capital.

**NOTE T - MAJOR CUSTOMERS**

During the year ended December 31, 2004 we had four customers who accounted for 12.5%, 14.4%, 13.9%, and 23.0% of our total sales.

**NOTE U - COMMITMENTS AND CONTINGENCIES**

**Rights to Future Revenues, If Any**

We have sold the rights to share in future revenues, if any, with respect to the Seattle (formerly Republic) and Cambridge projects and have recorded \$887,000 as Deferred Income From Revenue Participation Certificates (See NOTE O). We are contingently liable to share in the future revenue of these projects only if revenue is derived from these specific projects.

To date the only income derived from these projects resulted in a one time revenue distribution payment of \$12,986 to the holders of the Cambridge RPC's.

In addition, on May 26, 1998, we signed an agreement with a subcontractor that entitled it to receive 5% of the post finance cost proceeds from any shipwrecks in a predefined search area of the Mediterranean Sea. A shipwreck we have found, which we believe to be the HMS Sussex, is located within the specified search area and we will be responsible to share future revenues, if any, from this shipwreck. On December 9, 2002, a Georgia limited liability company acquired the 5% interest from the subcontractor through a foreclosure sale. (See NOTE N)

**Partnering Agreement**

On September 27, 2002, we entered into an agreement (the "Agreement") with

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE U - COMMITMENTS AND CONTINGENCIES - continued**

the Government of the United Kingdom of Great Britain and Northern Ireland (the “British Government”). The Agreement allows us to conduct an archaeologically sensitive exploration of the shipwreck believed to be HMS Sussex and to recover artifacts and cargoes from the wreck site.

The Agreement provides for us to submit a Project Plan (the “Plan”) to the British Government concerning the equipment, personnel and methodologies we intend to use in the exploration of the shipwreck, and the conservation and documentation of any artifacts and cargo that may be recovered. We submitted our Plan to the government on November 11, 2002, and received approval on May 22, 2003.

We have paid a 5,000 pounds (approximately \$7,845) refundable license fee and are required to make an expense deposit, prior to the commencement of recovery operations, of 250,000 pounds (approximately \$478,000 at December 31, 2004) for the British Government’s expenses in connection with the project. The deposit is not refundable if the project is not successful. At such time as we represent to the British Government that we have recovered \$3.5 million worth of cargo and/or artifacts, all funds advanced for the British Government’s expenses will be returned to us. We are also required to make a \$100,000 deposit to ensure that funds are available for the conservation and documentation of any artifacts recovered. The Agreement provides a mechanism for raising or lowering the deposit amount depending upon the quantity and condition of the artifacts that need to be conserved, documented and curated. The conservation and expense deposits will be paid to the British Government prior to commencing operations(See NOTE V).

The following sharing arrangements have been agreed upon with respect to the aggregate amount of the appraised values and/or selling prices of the artifacts, net of agreed selling expenses:

<u>Range</u>	<u>British Government</u>	<u>Odyssey</u>
\$0 - \$45 million	20%	80%
\$45 million to \$500 million	50%	50%
Above \$500 million	60%	40%

In addition to the percentages specified above, we will also pay the British Government 10% of any net income we derive from intellectual property rights associated with the project.

We also received the exclusive worldwide right to use the name “HMS Sussex” in connection with sales and marketing of merchandise (exclusive of artifacts) related to the wreck, and the British Government will receive 3% of the gross sales of such merchandise.

The Agreement is for a period of 20 years, and may only be terminated if the shipwreck is not the HMS Sussex or if we are in serious breach of our obligations under the Agreement.

**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE U - COMMITMENTS AND CONTINGENCIES - continued**

**Other commitments and contingencies**

During October 2004 we committed to purchase coin boxes for February 2005 delivery in the amount of \$358,450. A deposit of \$89,613 was paid at the time of order and the balance will be due upon delivery.

During November 2004 we entered into an agreement for \$315,000 for the design of a shipwreck attraction and exhibits. Also, we have committed for the fabrication of two shipwreck attraction exhibits for \$3.2 million which are expected to open in mid 2005.

The company maybe subject to a variety of claims and suits that arise from time to time in the ordinary course of business. Management currently believes that these claims and suits will not have a material adverse impact on its financial position or its results of operations.

**NOTE V - SUBSEQUENT EVENTS (UNAUDITED)**

On February 21, 2005 we entered into a Time Charter Party for the charter of a vessel to commence operations on a shipwreck search project. The commitment is for a cost of approximately \$520,000 during the second and third quarters of the year. Additionally approximately \$350,000 has been committed for the purchase of additional marine equipment related to the project.

On March 9, 2005 we closed a private placement offering to four institutional investors under which the company issued 2,700,000 shares of common stock and 3,170,000 warrants for the purchase of common stock at \$3.50 per share with an expiration of March 9, 2007. Net proceeds of the offering were \$6,350,000.

On March 13, 2005 the conservation (\$100,000) and expense (\$478,224) deposits required to start the Sussex project were paid to the British Government. (See NOTE U).

**NOTE W - RECENTLY ISSUED ACCOUNTING STANDARDS**

Below is a listing of the most recent accounting standards and their effect on the Company.

In December 2004, the Financial Accounting Standards Board (FASB) issued a revision to SFAS No. 123, SFAS 123R Share-Based Payment. SFAS No. 123R requires all companies to measure compensation costs for all share-based payments, including stock options, at fair value and expense such payments over the service period. SFAS No. 123R specifies that companies must use an option-pricing model to estimate fair value, although it does not specifically require the use of a particular model. The new standard is effective for interim or annual periods beginning after June 15, 2005, and, therefore, will be effective for the Company beginning with the third quarter of 2005. Under the provisions of FAS 123R, companies can select from three transition methods for the implementation of this standard. The modified prospective method would require all new awards that are granted after the effective date to use the provisions of FAS 123R. Under this method, for vested awards that are outstanding on the effective date of FAS 123R, a company would not have to record any additional compensation expense. For unvested awards that are outstanding on the effective date of FAS 123R and were previously included as



**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES  
NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE W - RECENTLY ISSUED ACCOUNTING STANDARDS - continued**

part of pro forma net income and earnings per share under the provisions of FAS 123 would be charged to expense over the remaining vesting period, without any changes in measurement. The second alternative is a variation of the modified prospective method, which would allow companies to restate earlier interim periods in the year that FAS 123R is adopted using the applicable FAS 123 pro forma amounts. Under the third alternative, the modified retrospective method, companies would apply the modified prospective method and also restate their prior financial statements to include the amounts that were previously recognized in their pro forma disclosures under the original provisions of FAS 123. Currently, the Company discloses the estimated effect on net income of these share-based payments in the footnotes to the financial statements and the estimated fair value of the share-based payments has historically been determined using the Black-Scholes pricing model. The Company has not determined which option-pricing model or transition method to use upon implementation of this standard and has not yet completed its evaluation of the impact of SFAS No. 123R.

## Table of Contents

### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned thereunder duly authorized.

ODYSSEY MARINE EXPLORATION, INC.

Dated: March 23, 2005

By: /s/ John C. Morris

John C. Morris, President

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ John C. Morris</u> John C. Morris	President and Chairman	March 23, 2005
<u>/s/ Gregory P. Stemm</u> Gregory P. Stemm	Vice President and Director	March 23, 2005
<u>/s/ Michael J. Holmes</u> Michael J. Holmes	Chief Financial Officer	March 23, 2005
<u>/s/ David A. Morris</u> David A. Morris	Secretary and Treasurer (Principal Accounting Officer)	March 23, 2005
<u>/s/ George Knutsson</u> George Knutsson	Director	March 23, 2005
<u>/s/ David J. Saul</u> David J. Saul	Director	March 23, 2005
<u>/s/ George E. Lackman</u> George E. Lackman, Jr.	Director	March 23, 2005

**Exhibit 10.12**

### CONTRACT ADMINISTRATION SUMMARY

#### DESCRIPTION:

AIA Document A191 – 1996, Part 1 & Part 2 Standard Form of Agreement Between Owner and Design/Builder.

Design/Build Contract between RBK Architects & Odyssey Marine Exploration, Inc. for the Development and Construction of a **8,000 square foot traveling exhibition**. Includes: Bidding, Pricing, Structures, Casework, Electronics, Graphics, Exhibit Assembly/Testing & Exhibit Crating.

EXECUTION DATE : January 31, 2005

VALUE: \$1,887,000.00 Maximum on Cost Plus Basis Plus 11% Fee (Savings to be divided between Owner & Design Builder with \$50,000 max on Design Builders portion.

#### ADDENDUMS:

Number 1, Dated 1-24-05

#### REVIEWED BY:

Guy Zajonc  
Mike Holmes  
AON  
George Becker  
Michelle Maxner

DISTRIBUTION:

RBK Architects (Executed Original) 1-27-05  
Guy Zajonc (Executed Original) 1-28-05  
George Becker (Executed Copy) 1-28-05  
Mike Holmes (Executed Copy) 1-28-05  
Michelle Maxner (Executed Copy) 1-28-05

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**Addendum # 1 (Page 1 of 2)**

The undersigned hereby adopt the following addendum to the AIA document A191 Agreement, **for the 8,000 square foot Traveling Exhibit**, by and between the parties dated the Twenty Fourth day of January, 2005.

Part 1 of the Terms and Conditions of the Agreement are changed as follows:

**§ 5 PAYMENTS**

§ 5.2 Delete the word 'monthly '

**§ 9 BASIS OF COMPENSATION**

§ 9.1.3 Subsequent Payments shall be as follows:

On a semi-monthly basis, the Design/Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the schedule of values, (Attachment 'A'). Such application shall be notarized and supported by such data substantiating the Design/Builder's right to payment as the Owner may require. Supporting data is defined as Purchase Orders, Contracts, Subcontracts, Invoices from Vendors and Suppliers, Receipts, Lien Releases and other detailed documentation that clearly identifies cost and scope of work.

**§ 10.1 OTHER CONDITIONS AND SERVICES**

§ 10.1.2 [Add] The work in this agreement shall be performed pursuant to the Design, Contract Administration and Architect Services agreement made between the parties, dated \_\_\_\_\_, AIA Document 141 – 1997, Part 1 & 2.

Part 2 of the Terms and Conditions of the Agreement are changed as follows:

**ARTICLE 2 OWNER**

§ 2.6.1 Owner shall have the right to, at its own expense, request an audit of all Applications for Payment made pursuant to this contract upon 30 written notice to Design/Builder. If the audit should reveal discrepancy in Design/Builders favor of more than 10%, cost of the audit shall be paid by the Design/Builder.

**§ 7.3 PROPERTY INSURANCE**

§ 7.3.1 Unless otherwise provided under this Part 2, the Design/Builder shall purchase and maintain property insurance upon the Work for the full insurable value thereof on a replacement cost basis and provide proof of said insurance, naming Owner as a loss payee, to the Owner. Such property insurance shall be maintained until such time as Owner takes delivery of the work and provides a written release to the Design/Builder for the insurance obligation contained herein.

**Addendum # 1 (Page 2 of 2)**

§ 7.3.3 [Delete Original Language]

[Add] Design/Builder shall maintain general liability insurance for minimum amount of \$1,000,000 for, and as it applies, to the 'work' herein during the time this contract. Owner shall be listed as additional insured.

**§ 14 OTHER CONDITIONS AND SERVICES**

§ 14.4 Deleted

OWNER

DESIGN/BUILDER

\_\_\_\_\_  
/s/ JOHN C MORRIS

\_\_\_\_\_  
/s/ CHRISTOPHER J. BELL

(signature)

(signature)

Odyssey Marine Exploration, Inc.

RBK Architects

By **John C Morris, CEO**

By **Christopher J. Bell, AIA, President**

Date: 1/31/2005

Date: \_\_\_\_\_



*Standard Form of Agreement Between Owner and Design/Builder*

*Part 1 Agreement*

**TABLE OF ARTICLES**

**PART 1 AGREEMENT**

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**AGREEMENT** made as of the 31<sup>st</sup> day of January in the year of Two Thousand Five  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name and address)*

Odyssey Marine Exploration  
5215 West Laurel Street  
Suite 210  
Tampa, Florida 33607  
Telephone Number: 813.314.5220  
Fax Number: 813.314.5225

and the Design/Builder:  
*(Name and address)*

RBK Architects - \_\_\_\_ Studio Exhibit Design  
1771 East Ninth Avenue  
Tampa, Florida 33605  
Telephone Number: 813.247.5223  
Fax Number: 813.224.9158

For the following Project:  
*(Include Project name, location and a summary description.)*

Odyssey Marine Exploration  
8000 SF Traveling Exhibit

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Before executing this Part 1 Agreement, the parties should reach substantial agreement on the Part 2 Agreement.

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The architectural services described in Article 1 will be provided by the following person or entity who is lawfully licensed to practice architecture:

<b>Name and address</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
Exhibits – RBK Architects, Inc.	AAC 00500	same

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

<b>Name, address and discipline</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
n/a		

The Owner and the Design/Builder agree as set forth below.

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User Notes:



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## **TERMS AND CONDITIONS – PART 1 AGREEMENT**

### **ARTICLE 1 DESIGN/BUILDER**

#### **§ 1.1 SERVICES – provided in AIA Document B141**

§ 1.1.1 Preliminary design, budget, and schedule comprise the services required to accomplish the preparation and submission of the Design/Builder's Proposal as well as the preparation and submission of any modifications to the Proposal prior to execution of the Part 2 Agreement.

#### **§ 1.2 RESPONSIBILITIES**

§ 1.2.1 Design services required by this Part 1 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 1.2.6 Nothing contained in this Part 1 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

#### **§ 1.3 BASIC SERVICES**

§ 1.3.1 The Design/Builder shall provide a preliminary evaluation of the Owner's program and project budget requirements, each in terms of the other.

§ 1.3.2 The Design/Builder shall visit the site, become familiar with the local conditions, and correlate observable conditions with the requirements of the Owner's program, schedule, and budget.

§ 1.3.3 The Design/Builder shall review laws applicable to design and construction of the Project, correlate such laws with the Owner's program requirements, and advise the Owner if any program requirement may cause a violation of such laws. Necessary changes to the Owner's program shall be accomplished by appropriate written modification or disclosed as described in Section 1.3.5.

§ 1.3.4 The Design/Builder shall review with the Owner alternative approaches to design and construction of the Project.

§ 1.3.5 The Design/Builder shall submit to the Owner a Proposal, including the completed Preliminary Design Documents, a statement of the proposed contract sum, and a proposed schedule for completion of the Project. Preliminary Design Documents shall consist of preliminary design drawings, outline specifications or other documents sufficient to establish the size, quality and character of the entire Project, its architectural, structural, mechanical and electrical systems, and the materials and such other elements of the Project as may be appropriate. Deviations from the Owner's program shall be disclosed in the Proposal. If the Proposal is accepted by the Owner, the parties shall then execute the Part 2 Agreement. A modification to the Proposal before execution of the Part 2 Agreement shall be recorded in writing as an addendum and shall be identified in the Contract Documents of the Part 2 Agreement.

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## **§ 1.4 ADDITIONAL SERVICES**

**§ 1.4.1** The Additional Services described under this Section 1.4 shall be provided by the Design/Builder and paid for by the Owner if authorized or confirmed in writing by the Owner.

**§ 1.4.2** Making revisions in the Preliminary Design Documents, budget or other documents when such revisions are:

- .1** inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2** required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3** due to changes required as a result of the Owner's failure to render decisions in a timely manner,

**§ 1.4.3** Providing more extensive programmatic criteria than that furnished by the Owner as described in Section 2.1. When authorized, the Design/Builder shall provide professional services to assist the Owner in the preparation of the program. Programming services may consist of:

- .1** consulting with the Owner and other persons or entities not designated in this Part 1 Agreement to define the program requirements of the Project and to review the understanding of such requirements with the Owner;
- .2** documentation of the applicable requirements necessary for the various Project functions or operations;
- .3** providing a review and analysis of the functional and organizational relationships, requirements, and objectives for the Project;
- .4** setting forth a written program of requirements for the Owner's approval which summarizes the Owner's objectives, schedule, constraints, and criteria.

**§ 1.4.4** Providing financial feasibility or other special studies.

**§ 1.4.5** Providing planning surveys, site evaluations or comparative studies of prospective sites.

**§ 1.4.6** Providing special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**§ 1.4.7** Providing services relative to future facilities, systems and equipment.

**§ 1.4.8** Providing services at the Owner's specific request to perform detailed investigations of existing conditions or facilities or to make measured drawings thereof.

**§ 1.4.9** Providing services at the Owner's specific request to verify the accuracy of drawings or other information furnished by the Owner.

**§ 1.4.10** Coordinating services in connection with the work of separate persons or entities retained by the Owner, subsequent to the execution of this Part 1 Agreement.

**§ 1.4.11** Providing analyses of owning and operating costs.

**§ 1.4.12** Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

**§ 1.4.13** Providing services for planning tenant or rental spaces.

**§ 1.4.14** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

## **ARTICLE 2 OWNER**

### **§ 2.1 RESPONSIBILITIES**

**§ 2.1.1** The Owner shall provide full information in a timely manner regarding requirements for the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria.

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§ 2.12 The Owner shall establish and update an overall budget For the Project, including reasonable contingencies. This budget shall not constitute the contract sum.

§ 2.1.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design/Builder in order to avoid unreasonable delay in the orderly and sequential progress of the Design/Builder's services. The Owner may obtain independent review of the documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Design/Builder's services.

§ 2.1.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.1.5 The Owner shall furnish the services of geotechnical engineers when such services are stipulated in this Part 1 Agreement, or deemed reasonably necessary by the Design/Builder. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 2.1.6 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.1.7 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.1.8 The Owner shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ 2.1.9 Those services, information, surveys, and reports required by Sections 2.1.4 through 2.1.8 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.1.10 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof except as otherwise stipulated in this Part 1 Agreement.

§ 2.1.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

### **ARTICLE 3 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

§ 3.1 All Project Documents produced by the Architect, including electronic files, shall be the sole and exclusive property of the Owner including any copyright. The Owner hereby grants to the Architect a non-exclusive license to use the documents, in perpetuity, and to grant sub-licenses to others, provided such use is not for the design and development of shipwreck attraction exhibits. Both parties agree, to the fullest extent of the law, to indemnify and hold the other party harmless, including their respective directors, officers, employees and sub-consultants from and against any and all claims of damage or

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liability, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the documents by the other party or any entity that acquires or obtains the documents from or through the other party

§ 3.2 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 3.1.

*(Paragraphs deleted)*

#### **ARTICLE 4 TIME**

§ 4.1 Upon the request of the Owner, the Design/Builder shall prepare a schedule for the performance of the Basic and Additional Services which shall not exceed the time limits contained in Section 10.1 and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 4.2 If the Design/Builder is delayed in the performance of services under this Part 1 Agreement through no fault of the Design/Builder, any applicable schedule shall be equitably adjusted.

#### **ARTICLE 5 PAYMENTS**

§ 5.1 The initial payment provided in Article 9 shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as provided in Section 9.1.2.

§ 5.2 Subsequent payments for Basic Services, Additional Services, and Reimbursable Expenses provided for in this Part 1 Agreement shall be made on the basis set forth in Article 9. SEE ADDENDUM # 1

§ 5.3 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.4 Payments due the Design/Builder under this Part 1 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Section 9.5, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

#### **ARTICLE 6 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION**

§ 6.1 Claims, disputes or other matters in question between the parties to this Part 1 Agreement arising out of or relating to this Part 1 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

§ 6.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

§ 6.3 Demand for arbitration shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 6.4 An arbitration pursuant to this Section may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 1 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 1 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this

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User Notes:

Part 1 Agreement signed by the Owner, the Design/Builder and all other persons or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 1 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 6.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### **ARTICLE 7 MISCELLANEOUS PROVISIONS**

§ 7.1 Unless otherwise provided, this Part 1 Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 The Owner and the Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 1 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 1 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 1 Agreement without the written consent of the other.

§ 7.3 Unless otherwise provided, neither the design for nor the cost of remediation of hazardous materials shall be the responsibility of the Design/Builder.

§ 7.4 This Part 1 Agreement represents the entire and integrated agreement between the Owner and the Design/Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Part 1 Agreement may be amended only by written instrument signed by both the Owner and the Design/Builder.

§ 7.5 Prior to the termination of the services of the Architect or any other design professional designated in this Part 1 Agreement, the Design/Builder shall identify to the Owner in writing another architect or design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

#### **ARTICLE 8 TERMINATION OF THE AGREEMENT**

§ 8.1 This Part 1 Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail to perform substantially in accordance with its terms through no fault of the party initiating the termination.

§ 8.2 This Part 1 Agreement may be terminated by the Owner without cause upon at least seven (7) days' written notice to the Design/Builder.

§ 8.3 In the event of termination not the fault of the Design/Builder, the Design/Builder shall be compensated for services performed to the termination date, prorated, together with Reimbursable Expenses then due.

#### **ARTICLE 9 BASIS OF COMPENSATION**

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 1 Agreement as described below.

##### **§ 9.1 COMPENSATION FOR BASIC SERVICES**

§ 9.1.1 FOR BASIC SERVICES, compensation shall be as follows:

One Million, Eight Hundred Eighty-seven Thousand and No/100's Dollars (\$1,887,000.00) maximum on a cost plus basis including an 11% fee.

Savings to be divided between the Owner and Design Builder, with a maximum on the Design Builder's portion of \$50,000.00.

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User Notes:

The project is divided into the following phases:

Bidding/Pricing  
Electronics  
Graphics  
Exhibit Assembly & Testing  
Exhibit Crating Design & Crating

§ 9.1.2 AN INITIAL PAYMENT of Zero Dollar and Zero Cents (\$ 0.00 ) shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as follows:

§ 9.1.3 SUBSEQUENT PAYMENTS shall be as follows:

SEE ADDENDUM # 1

## § 9.2 COMPENSATION FOR ADDITIONAL SERVICES

§ 9.2.1 FOR ADDITIONAL SERVICES, compensation shall be as follows:

To be negotiated and added by written change order

## § 9.3 REIMBURSABLE EXPENSES

§ 9.3.1 Reimbursable Expenses are in addition to Compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project as follows:

§ 9.3.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of One and one-tenth in (1.10) times the amounts expended.

§ 9.4 DIRECT PERSONNEL EXPENSE is defined as the direct salaries of personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

## § 9.5 INTEREST PAYMENTS

§ 9.5.1 The rate of interest for past due payments shall be as follows:

Four percent (4.00%) per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)*

§ 9.6 IF THE SCOPE of the Project is changed materially, the amount of compensation shall be equitably adjusted.

§ 9.7 The compensation set forth in this Part I Agreement shall be equitably adjusted if through no fault of the Design/Builder the service have not been completed within Thirty-six (36) months of the date of this Part I Agreement.

## ARTICLE 10 OTHER CONDITIONS AND SERVICES

§ 10.1 The Basic Services to be performed shall be commenced on and subject to authorized adjustments and to delays not caused by the Design/Builder, shall be completed in ( ) calendar days. The Design/Builder's Basic Services consist of those described in Section 1.3 as part of Basic Services, and include normal professional engineering and preliminary design services, unless otherwise indicated. See attached schedule.

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§ 10.2 Services beyond those described in Section 1.4 are as follows: SEE ADDENDUM # 1

Basic Services consist of those described in Section 1.3 as part of Basic Services, and include normal professional engineering and preliminary design services, unless otherwise indicated. See attached schedule.

§ 10.2 Services beyond those described in Section 1.4 are as follows:

*(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)*

§ 10.3 The Owner's preliminary program, budget and other documents, if any, are enumerated as follows:

Title

Date

This Agreement entered into as of the day and year first written above.

OWNER

DESIGN/BUILDER

\_\_\_\_\_  
*(Signature)*

Odyssey Marine Exploration

By **John C. Morris, CEO**

*(Printed name and title)*

\_\_\_\_\_  
*/s/ CHRISTOPHER J. BELL*

*(Signature)*

**Christopher J. Bell, AIA, President**

\_\_\_\_\_  
*(Printed name and title)*

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*Standard Form of Agreement Between Owner and Design/Builder*  
*Part 2 Agreement*

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**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

**AGREEMENT** made as of the 31st day of January in the year of Two Thousand Five  
(*In words, indicate day, month and year.*)

**BETWEEN** the Owner:  
(*Name and address*)

Odyssey Marine Exploration  
5215 West Laurel Street  
Suite 210  
Tampa, Florida 33607  
Telephone Number: 813.314.5220  
Fax Number: 813.314.5225

and the Design/Builder  
(*Name and address*)

RBK Architects - 080 Studio Exhibit Design  
1771 East Ninth Avenue  
Tampa, Florida 33605  
Telephone Number: 813.247.5223  
Fax Number: 813.224.9158

For the following Project:  
(*Include Project name, location and a summary description.*)

Odyssey Marine Exploration



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The architectural services described in Article 3 will be provided by the following person or entity who is lawfully licensed to practice architecture:

<b>Name and address</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
Exhibits – RBK Architects, Inc.	AAC 00500	same

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

<b>Name, address and discipline</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
N/A		

The Owner and the Design/Builder agree as set forth below.

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## **TERMS AND CONDITIONS – PART 2 AGREEMENT**

### **ARTICLE 1 GENERAL PROVISIONS**

#### **§ 1.1 BASIC DEFINITIONS**

§ 1.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement, the Design/Builder's Proposal and written addenda to the Proposal identified in Article 14, the Construction Documents approved by the Owner in accordance with Section 3.2.3 and Modifications issued after execution of this Part 2 Agreement. A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Section 8.3.

§ 1.1.2 The term "Work" means the construction and services provided by the Design/Builder to fulfill the Design/Builder's obligations.

#### **§ 1.2 EXECUTION, CORRELATION AND INTENT**

§ 1.2.1 It is the intent of the Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.2 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.3 Nothing contained in this Part 2 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

#### **§ 1.3 OWNERSHIP AND USE OF DOCUMENTS**

§ 1.3.1 All Project Documents produced by the Architect, including electronic files, shall be the sole and exclusive property of the Owner including any copyright. The Owner hereby grants to the Architect a non-exclusive license to use the documents, in perpetuity, and to grant sub-licenses to others, provided such use is not for the design and development of shipwreck attraction exhibits. Both parties agree, to the fullest extent of the law, to indemnify and hold the other party harmless, including their respective directors, officers, employees and sub-consultants from and against any and all claims of damage or liability, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the documents by the other party or any entity that acquires or obtains the documents from or through the other party.

§ 1.3.2 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 1.3.1.

*(Paragraphs deleted)*

### **ARTICLE 2 OWNER**

§ 2.1 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ 2.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Design/Builder agree in writing.

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§ 2.3 The Owner shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the Design/Builder's Proposal.

§ 2.4 The Owner shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by the Design/Builder to properly carry out the design services required by this Part 2 Agreement.

§ 2.5 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.6 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment

§ 2.7 Those services, information, surveys and reports required by Sections 2.4 through 2.6 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.8 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise stipulated in this Part 2 Agreement.

§ 2.9 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design/Builder's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.

§ 2.10 The Owner shall, at the request of the Design/Builder, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

§ 2.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

## **ARTICLE 3 DESIGN/BUILDER**

### **§ 3.1 SERVICES AND RESPONSIBILITIES**

§ 3.1.1 Design services required by this Part 2 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 3.1.2 The agreements between the Design/Builder and the persons or entities identified in this Part 2 Agreement, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 3.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 2 Agreement.

### **§ 3.2 BASIC SERVICES**

§ 3.2.1 The Design/Builder's Basic Services are described below and in Article 14.

§ 3.2.2 The Design/Builder shall designate a representative authorized to act on the Design/Builder's behalf with respect to the Project.

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§ 3.2.3 The Design/Builder shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the intent of the Design/Builder's Proposal;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ 3.2.4 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.5 Unless otherwise provided in the Contract Documents, the Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.2.6 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.

§ 3.2.7 The Design/Builder shall keep the Owner informed of the progress and quality of the Work.

§ 3.2.8 The Design/Builder shall be responsible for correcting Work which does not conform to the Contract Documents.

§ 3.2.9 The Design/Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 9.

§ 3.2.10 The Design/Builder shall pay all sales, consumer, use and similar taxes which had been legally enacted at the time the Design/Builder's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder's Proposal was first submitted to the Owner.

§ 3.2.11 The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ 3.2.12 The Design/Builder shall pay royalties and license fees for patented designs, processes or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ 3.2.13 The Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. At the completion of the Work, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.

§ 3.2.14 The Design/Builder shall notify the Owner when the Design/Builder believes that the Work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the Design/Builder shall complete items listed.

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therein. Disputes between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

§ 3.2.15 The Design/Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.

### § 3.3 ADDITIONAL SERVICES

§ 3.3.1 The services described in this Section 3.3 are not included in Basic Services unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Part 2 Agreement, in addition to the compensation for Basic Services. The services described in this Section 3.3 shall be provided only if authorized or confirmed in writing by the Owner.

§ 3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.

§ 3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.4 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Design/Builder is a party thereto.

§ 3.3.5 Providing coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 3.3.6 Preparing a set of reproducible record documents or electronic data showing significant changes in the Work made during construction.

§ 3.3.7 Providing assistance in the utilization of equipment or systems such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

### ARTICLE 4 TIME

§ 4.1 Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

§ 4.2 Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 14.

§ 4.3 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 4.4 Based on the Design/Builder's Proposal, a construction schedule shall be provided consistent with Section 4.2 above.

§ 4.5 If the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Design/Builder's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Owner and Design/Builder agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

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## **ARTICLE 5 PAYMENTS**

### **§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 The Design/Builder shall deliver to the Owner itemized Applications for Payment in such detail as indicated in Article 14.

§ 5.1.2 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.1.3 The Application for Payment shall constitute a representation by the Design/Builder to the Owner that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents, and the Design/Builder is entitled to payment in the amount requested.

§ 5.1.4 Upon receipt of payment from the Owner, the Design/Builder shall promptly pay the Architect, other design professionals and each contractor the amount to which each is entitled in accordance with the terms of their respective contracts.

§ 5.1.5 The Owner shall have no obligation under this Part 2 Agreement to pay or to be responsible in any way for payment to the Architect, another design professional or a contractor performing portions of the Work.

§ 5.1.6 Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

§ 5.1.7 The Design/Builder warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

§ 5.1.8 At the time of Substantial Completion, the Owner shall pay the Design/Builder the retainage, if any, less the reasonable cost to correct or complete incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

### **§ 5.2 FINAL PAYMENTS**

§ 5.2.1 Neither final payment nor amounts retained, if any, shall become due until the Design/Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner, the Design/Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design/Builder shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

§ 5.2.2 When the Work has been completed and the contract fully performed, the Design/Builder shall submit a final application for payment to the Owner, who shall make final payment within 30 days of receipt.

§ 5.2.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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§ 5.2.4 Acceptance of final payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of final Application for Payment.

### § 5.3 INTEREST PAYMENTS

§ 5.3.1 Payments due the Design/Builder under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

## ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY

§ 6.1 The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement.

§ 6.2 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal relocation or replacement in the course of construction.

§ 6.3 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

§ 6.4 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by the Design/Builder, a contractor of the Design/Builder or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

## ARTICLE 7 INSURANCE AND BONDS

### § 7.1 DESIGN/BUILDER'S LIABILITY INSURANCE

§ 7.1.1 The Design/Builder shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Design/Builder from claims set forth below which may arise out of or result from operations under this Part 2 Agreement by the Design/Builder or by a contractor of the Design/Builder, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design/Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the Design/Builder's employees;
- .4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Design/Builder or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Design/Builder's obligations under Section 11.5.

§ 7.1.2 The insurance required by Section 7.1.1 shall be written for not less than limits of liability specified in this Part 2 Agreement or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

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**§ 7.1.3** Certificates of Insurance acceptable to the Owner shall be delivered to the Owner immediately after execution of this Part 2 Agreement. These Certificates and the insurance policies required by this Section 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by the Design/Builder with reasonable promptness in accordance with the Design/Builder's information and belief.

## **§ 7.2 OWNER'S LIABILITY INSURANCE**

**§7.2.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Part 2 Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

## **§ 7.3 PROPERTY INSURANCE**

**§7.3.1** SEE ADDENDUM # 1

**§ 7.3.2** Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Design/Builder's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

**§ 7.3.3** SEE ADDENDUM # 1

**§ 7.3.4** Unless otherwise provided, the Owner shall purchase and maintain such boiler and machinery insurance required by this Part 2 Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, the Design/Builder, the Design/Builder's contractors and subcontractors in the Work, and the Design/Builder's Architect and other design professionals. The Owner and the Design/Builder shall be named insureds.

**§ 7.3.5** A loss insured under the Owner's property insurance shall be adjusted by the Owner as Fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 7.3.10. The Design/Builder shall pay contractors their shares of insurance proceeds received by the Design/Builder, and by appropriate agreement, written where legally required for validity, shall require contractors to make payments to their subcontractors in similar manner.

**§ 7.3.6** Before an exposure to loss may occur, the Owner shall file with the Design/Builder a copy of each policy that includes insurance coverages required by this Section 7.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Design/Builder.

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§ 7.3.7 If the Design/Builder requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, obtain such insurance, and the cost thereof shall be charged to the Design/Builder by appropriate Change Order.

§ 7.3.8 The Owner and the Design/Builder waive all rights against each other and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 7.3 or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. The Owner or Design/ Builder, as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 7.3. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 7.3.9 If required in writing by a party in interest, the Owner as trustee shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Article 10. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by appropriate Change Order.

§ 7.3.10 The Owner as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in Article 10. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 7.3.11 Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design/ Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

#### **§ 7.4 LOSS OF USE OF INSURANCE**

§ 7.4.1 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design/Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

### **ARTICLE 8 CHANGES IN THE WORK**

#### **§ 8.1 CHANGES**

§ 8.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

§ 8.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder; a Construction Change Directive may be issued by the Owner without the agreement of the Design/Builder; an order for a minor change in the Work may be issued by the Design/Builder alone.

§ 8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or the Design/ Builder, the applicable unit prices shall be equitably adjusted.

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## **§8.2 CHANGE ORDERS**

§ 8.2.1 A Change Order is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 8.2.2 If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

## **§ 8.3 CONSTRUCTION CHANGE DIRECTIVES**

§ 8.3.1 A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

§ 8.3.2 Except as otherwise agreed by the Owner and the Design/Builder, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment exclusive of hand tools, whether rented from the Design/Builder or others;
- .4 costs of premiums for all bonds and insurance permit fees, and sales, use or similar taxes;
- .5 additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect, engineers and other professionals.

§ 8.3.3 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

§ 8.3.4 When the Owner and the Design/Builder agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

## **§ 8.4 MINOR CHANGES IN THE WORK**

§ 8.4.1 The Design/Builder shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. The Design/Builder shall promptly inform the Owner, in writing, of minor changes in the Construction Documents and construction.

## **§ 8.5 CONCEALED CONDITIONS**

§ 8.5.1 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Contract Sum shall be equitably adjusted for such concealed or unknown

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conditions by Change Order upon claim by either party made within 21 days after the claimant becomes aware of the conditions.

## **§ 8.6 REGULATORY CHANGES**

**§ 8.6.1** The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revisions of codes, laws or regulations subsequent to the submission of the Design/Builder's Proposal.

## **ARTICLE 9 CORRECTION OF WORK**

**§ 9.1** The Design/Builder shall promptly correct Work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear costs of correcting such rejected Work, including additional testing and inspections.

**§ 9.2** If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/ Builder a written acceptance of such condition.

**§ 9.3** Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Section 9.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

**§ 9.4** If the Design/Builder fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

**§ 9.5** If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/ Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

## **ARTICLE 10 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION**

**§ 10.1** Claims, disputes or other matters in question between the parties to this Part 2 Agreement arising out of or relating to this Part 2 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

**§ 10.2** In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

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§ 10.3 Demand for arbitration shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 10.4 An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 2 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 2 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this Part 2 Agreement signed by the Owner, the Design/Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 2 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 10.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

§ 11.1 Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the place where the Project is located.

### **§ 11.2 SUBCONTRACTS**

§ 11.2.1 The Design/Builder, as soon as practicable after execution of this Part 2 Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as contractors for the Project

### **§ 11.3 WORK BY OWNER OR OWNER'S CONTRACTORS**

§ 11.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall assert such claims as provided in Section 11.4.

§ 11.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by the Contract Documents.

§ 11.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

### **§11.4 CLAIMS FOR DAMAGES**

§ 11.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing.

### **§ 11.5 INDEMNIFICATION**

§ 11.5.1 To the fullest extent permitted by law, the Design/Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but

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only to the extent caused in whole or in part by negligent acts or omissions of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 11.5.

**§ 11.5.2** In claims against any person or entity indemnified under this Section 11.5 by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Section 11.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **§ 11.6 SUCCESSORS AND ASSIGNS**

**§ 11.6.1** The Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 2 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 2 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 2 Agreement without the written consent of the other. The Owner may assign this Part 2 Agreement to any institutional lender providing construction financing, and the Design/Builder agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Part 2 Agreement, unless otherwise agreed by the other party.

#### **§ 11.7 TERMINATION OF PROFESSIONAL DESIGN SERVICES**

**§ 11.7.1** Prior to termination of the services of the Architect or any other design professional designated in this Part 2 Agreement, the Design/Builder shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

#### **§ 11.8 EXTENT OF AGREEMENT**

**§ 11.8.1** This Part 2 Agreement represents the entire agreement between the Owner and the Design/Builder and supersedes prior negotiations, representations or agreements, either written or oral. This Part 2 Agreement may be amended only by written instrument and signed by both the Owner and the Design/Builder.

### **ARTICLE 12 TERMINATION OF THE AGREEMENT**

#### **§ 12.1 TERMINATION BY THE OWNER**

**§ 12.1.1** This Part 2 Agreement may be terminated by the Owner upon 14 days' written notice to the Design/Builder in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Design/Builder for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

**§ 12.1.2** If the Design/Builder defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Part 2 Agreement, the Owner may give written notice that the Owner intends to terminate this Part 2 Agreement. If the Design/Builder fails to correct the defaults, failure or neglect within seven (7) days after being given notice, the Owner may then give a second written notice and, after an additional seven (7) days, the Owner may without prejudice to any other remedy terminate the employment of the Design/Builder and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design/Builder and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the Owner, such excess shall be paid to the Design/Builder. If the expense of completing the Work and all damages incurred by the Owner exceeds the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of this Part 2 Agreement.

#### **§ 12.2 TERMINATION BY THE DESIGN/BUILDER**

**§ 12.2.1** If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/Builder's intention to terminate this Part 2 Agreement. If the Design/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Design/Builder may give a second written notice and, seven (7) days after receipt of such second written notice by the Owner, may terminate this Part 2 Agreement and recover

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from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

### **ARTICLE 13 BASIS OF COMPENSATION**

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 2 Agreement as described below.

#### **§ 13.1 COMPENSATION**

§ 13.1.1 For the Design/Builder's performance of the Work, as described in Section 3.2 and including any other services listed in Article 14 as part of Basic Services, the Owner shall pay the Design/Builder in current funds the Contract Sum as follows:

One Million, Eight Hundred Eighty-seven Thousand and no/100's Dollars (\$1,887,000.00) maximum on a cost plus basis including an 11% fee. Savings to be divided between the Owner and Design Builder, with a maximum on the Design Builder's portion of \$50,000.00.

§ 13.1.2 For Additional Services, as described in Section 3.3 and including any other services listed in Article 14 as Additional Services, compensation shall be as follows:

To be negotiated and added by written change order

#### **§ 13.2 REIMBURSABLE EXPENSES**

§ 13.2.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

§ 13.2.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of One and one-tenth ( 1.10 ) times the amounts expended.

#### **§ 13.3 INTEREST PAYMENT**

§ 13.3.1 The rate of interest for past due payments shall be as follows:

Four percent (4.00% ) per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)*

### **ARTICLE 14 OTHER CONDITIONS AND SERVICES**

§ 14.1 The Basic Services to be performed shall be commenced on and, subject to authorized adjustments and to delays not caused by the Design/Builder, Substantial Completion shall be achieved in the Contract Time of ( ) calendar days,

§ 14.2 The Basic Services beyond those described in Article 3 are as follows:

§ 14.3 Additional Services beyond those described in Article 3 are as follows:

§ 14.4 SEE ADDENDUM # 1

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§ 14.5 The Design/Builder's Proposal includes the following documents:

(List the documents by specific title and date; include any required performance and payment bonds.)

<b>Title</b>	<b>Date</b>
This Agreement entered into as of the day and year first written above.	
OWNER	DESIGN/BUILDER

/s/ JOHN C. MORRIS

/s/ CHRISTOPHER J. BELL

(Signature)

(Signature)

Odyssey Marine Exploration, Inc.

Christopher J. Bell, AIA, President

by John C. Morris, CEO

(Printed name and title)

(Printed name and title)

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(2921492163)



ATTACHMENT A

Odyssey Marine Museum & Exhibit     Preliminary      
 RBK Architects, Inc.

**Traveling Exhibit Projects 8,000 sf**

**Traveling Exhibit Projects 5,000 sf**

		<b>Equipment</b>			
T1b	Frame & Panels	Ray Butterfield \$8000 Coller	\$	7,918.00	
T1a	Water Wall		\$	20,000.00	
T1c					
<b>T1</b>	<b>Entry/Control</b>		<b>\$</b>	<b>27,918.00</b>	<b>Entry/Control</b>
T2A	Entry Tunnel Backbone	PO TO BE ISSUED	\$	13,000.00	
T2B	Tunnel movie screen	DELIVERED po 3	\$	4,160.65	
T2C	Tunnel interior plexiglass	DELIVERED	\$	2,652.18	
	Materials	\$ 2,452.18			
	Culting	\$ 200.00			
T2D	Curtain Surround	UPDATE PRICING	\$	5,800.00	
T2E	Sound system			See Show Control	
T2F	Projection equipment	Order Projectors - Hitachi CP-X1200		See Show Control	
T2G	Mirror		\$	15,000.00	
T2H	Mesh for immersion roof	RBK paid McNichols	\$	2,618.18	
<b>T2</b>	<b>Immersion/Preshow</b>		<b>\$</b>	<b>43,231.01</b>	<b>Immersion/Preshow</b>
					<b>\$ —</b>
T3A	Movie Projectors 3	3 - NEC GT5000	See Show Control	T3A	Movie Projectors 3 3 - NEC GT5000 See Show Control
T3B	Projector Frame 2		See Show Control	T3B	Projector Frame 2 See Show Control
T3C	Show Control		\$ 140,843.00	T3C	Show Control \$ 65,696.00
T3D	Audio Amp & Speakers		See Show Control	T3D	Audio Amp & Speakers See Show Control
T3E	17" Monitors - 24		\$ 21,600.00	T3E	17" Monitors - 1_ \$ 14,400.00
T3N	Black Out Curtains	B - Issue a purchase order 10000	\$ 10,000.00	T3N	Black Out Curtains B - Issue a purchase order 10000 \$ 10,000.00
T3O	Aluminum Frames - 26		\$ 5,200.00	T3O	Aluminum Frames - 26 \$ 5,200.00
T3P	Canvas Images - 30	\$ 11,040.00	\$ 8,000.00	T3P	Canvas Images - 30 \$ 11,040.00 \$ 8,000.00
T3Q	Automatic Doors Operator - 2		\$ 10,000.00	T3Q	Automatic Doors Operator - 2 \$ 10,000.00
T3R	Door Frames 2		\$ 10,000.00	T3R	Door Frames 2 \$ 10,000.00
T3S	Doors - 2 pairs		\$ 2,500.00	T3S	Doors - 2 pairs \$ 2,500.00
T3T	Light Trusses	PO 12 & 13	\$ 11,352.00	T3T	Light Trusses \$ 11,352.00
T3U	Movie Screens		\$ 15,000.00	T3U	Movie Screens \$ 15,000.00
T3V	Aquariums		\$ 4,500.00	T3V	Aquariums \$ 4,500.00
	Lighting		\$ 10,000.00		Lighting \$ 10,000.00
<b>T3</b>	<b>Theater Environment</b>		<b>\$ 248,995.00</b>	<b>Theater Environment</b>	<b>\$ 168,648.00</b>
Time period 1	\$ 12,170.00	\$ 14,000.00	0	Time period 1	\$ 14,000.00
Casework	\$ 5,000.00				
Computer	\$ 870.00				
Computer Stand	\$ 600.00				
Pointing Device	\$ 600.00				
Sonic Speaker	\$ 900.00				
40" Monitor	\$ 4,200.00				
Time period 2	\$ 14,000.00	\$ 14,000.00	0	Time period 2	\$ 14,000.00
Time period 3	\$ 14,000.00				
Time period 4	\$ 14,000.00				
Cannon					
Amphora					
Oars					
Cannon Balls					
Work the walking beam	\$ 50,000.00	\$ 50,000.00	0	Work the walking beam	\$ 50,000.00
<b>T4</b>	<b>History of Shipwrecks</b>		<b>\$ 106,000.00</b>	<b>History of Shipwrecks</b>	<b>\$ 78,000.00</b>
Ship Timeline Monitor	\$ 7,000.00	\$ 7,000.00	0	Ship Timeline Monitor	\$ 7,000.00
Interactive Ship Model Monitor	\$ 7,000.00	\$ 7,000.00	0	Interactive Ship Model Monitor	\$ 7,000.00

Ship Cargo Coal Monitor	\$ 7,000.00	0	Ship Cargo Coal Monitor	\$ 7,000.00
Coal Case	\$ 2,000.00	0	Coal Case	\$ 2,000.00
Republic Ship Model Monitor	\$ 7,000.00	0	Republic Ship Model Monitor	\$ 7,000.00
Artifact Case 1 Passenger	\$ 2,000.00	0	Artifact Case 1 Passenger	\$ 2,000.00
Artifact Case 2 Passenger	\$ 2,000.00	0	Artifact Case 2 Passenger	\$ 2,000.00
Artifact Case 3	\$ 2,000.00	0	Artifact Case 3	\$ 2,000.00
Passenger stories Monitor	\$ 7,000.00	0	Passenger stories Monitor	\$ 7,000.00
Interactive Storm Experience	\$ 40,000.00	0	Interactive Storm Experience	\$ 40,000.00
Floor Map	\$ 10,000.00	0	Floor Map	\$ 10,000.00
Narrator	\$ 10,000.00	0	Narrator	\$ 10,000.00
Republic Model	\$ 11,500.00	0	Republic Model	\$ 11,500.00
Character Mannequin	\$ 4,000.00	0	Character Mannequin	\$ 4,000.00
Character Mannequin	\$ 4,000.00		Character Mannequin	\$ 4,000.00
Photo Fascia	\$ 8,000.00		Photo Fascia	\$ 8,000.00
Fells Point Graphic	\$ 2,000.00		Fells Point Graphic	\$ 2,000.00
Nichols Graphic	\$ 2,000.00		Nichols Graphic	\$ 2,000.00
Pipe Grid & Lighting	\$ 3,000.00		Pipe Grid & Lighting	\$ 3,000.00
Lights	\$ 5,000.00		Lights	\$ 5,000.00
Speakers	\$ 3,000.00		Speakers	\$ 3,000.00
Enclosure	\$ 10,000.00		Show control computer	\$ 0.00
			Enclosure	\$ 10,000.00
<b>T5 Republic</b>	<b>\$155,500.00</b>		<b>Republic</b>	<b>\$ 155,500.00</b>
History of weather technology	\$ 12,000.00			
History of Navigation	\$ 12,000.00			
Wind Tunnel Two	\$ 50,000.00	0	Wind Tunnel One	\$ 25,000.00
Order Fan				
Interactive Globe Current Trade Routes	\$ 81,644.00	0	Interactive Globe Current Trade Routes	\$ 81,644.00
Current Science of weather	\$ 12,000.00			
Current Science of Navigation	\$ 12,000.00			
Wave Wall	\$ 20,000.00	0	Wave Wall	\$ 20,000.00
Build a boat	\$ 10,000.00	<b>T40</b>	Build a boat	\$ 10,000.00
<b>T6 Weather</b>	<b>\$209,644.00</b>		<b>Weather</b>	<b>\$ 136,644.00</b>
Sussex 1	\$ 12,000.00	0	Sussex 1	\$ 12,000.00
Sussex 2	\$ 12,000.00			
Tortuga 1	\$ 12,000.00	0	Tortuga 1	\$ 12,000.00
Tortuga 2	\$ 12,000.00			
Rights to the ship	\$ 12,000.00			
Tortuga Artifacts	\$ 12,000.00			
History of the Tortuga wreck	\$ 12,000.00			
			<b>Sussex &amp; Tortugas</b>	<b>\$ 24,000.00</b>
Odyssey Time Line	\$ 3,000.00	0	Odyssey Time Line	\$ 3,000.00
<b>Timeline of Odyssey Marine</b>	<b>\$ 3,000.00</b>		<b>Timeline of Odyssey Marine</b>	<b>\$ 3,000.00</b>
Research Module (540)			Research Module (540)	
Find the shipwreck game	\$24,700.00	\$ 25,000.00	<b>T50</b> Find the shipwreck game	\$ 25,000.00
40" Monitors	9000			
17" Monitors	1600			
Computers	1200			
Graphics	2000			
Sonic Speaker	\$ 900.00			
Casework	10000			
Search Module (530)			Search Module (530)	
Sonar Table	\$ 50,000.00	<b>T51</b>	Sonar Table	\$ 50,000.00
Recovery Module (560)			Recovery Module (560)	
Zeus model	\$ 30,000.00	<b>T52</b>	Zeus model	\$ 30,000.00
Pholomosaic Fly over	\$ 30,000.00			
Robotic Arms		<b>T53</b>	Robotic Arms	
Creative Essence	\$ 57,000.00		Creative Essence	\$ 57,000.00
Railing	\$ 10,000.00		Railing	\$ 10,000.00
Documentation Module			Documentation Module	
Fly a ROV		<b>T54</b>	Fly a ROV	
Creative Essence	\$ 52,500.00		Creative Essence	\$ 52,500.00

Tank Theming		\$ 10,000.00		Tank Theming		\$ 10,000.00
Interactive Pholomosaic Photomosaic		\$ 60,000.00	<b>T55</b>	Interactive Pholomosaic Pholomosaic		\$ 60,000.00
Conservation Module (570) Put the pot back together		\$ 10,000.00	<b>T56</b>	Conservation Module (570) Put the pot back together		\$ 10,000.00
Marine Arch Module (580) CSI Game		\$ 20,000.00	<b>T57</b>	Marine Arch Module (580) CSI Game		\$ 20,000.00
<b>Science of the Shipwreck</b>		<b>\$ 354,500.00</b>		<b>Science of the Shipwreck</b>		<b>\$ 324,500.00</b>
Bottle Walt Case				Bottle Walt Case		
Aluminum Frame	2 @ 1000	\$ 2,000.00		Aluminum Frame	2 @ 1000	\$ 2,000.00
Plexi Box	2 @ 2000	\$ 4,000.00		Plexi Box	2 @ 2000	\$ 4,000.00
Aluminum Wall Panels	30 @ 250	\$ 7,500.00		Aluminum Wall Panels	30 @ 250	\$ 7,500.00
Plastic Sheathing	30 @ 100	\$ 3,000.00		Plastic Sheathing	30 @ 100	\$ 3,000.00
Light Truss	PO 12 & 13	\$ 8,706.00		Light Truss		\$ 8,706.00
Wall Graphics	30 @ 200	\$ 6,000.00		Wall Graphics	30 @ 200	\$ 6,000.00
Ceiling Molding		\$ 3,000.00		Ceiling Molding		\$ 3,000.00
Display Case w/ Track Ball	12 @ 2000	\$ 24,000.00		Display Case w/ Track Ball	12 @ 2000	\$ 24,000.00
Free Standing Display Case	2 @ 500	\$ 1,000.00		Free Standing Display Case	2 @ 500	\$ 1,000.00
Gold Display Case		\$ 15,000.00		Gold Display Case		\$ 15,000.00
40" Monitors	13 @ 4500	\$ 58,500.00		40" Monitors	13 @ 4500	\$ 58,500.00
Computers	12 @ 500	\$ 6,000.00		Computers	12 @ 500	\$ 6,000.00
Lighting		\$ 5,000.00		Lighting		\$ 5,000.00
Speaker	12 @ 900	\$ 10,800.00		Speaker	12 @ 900	\$ 10,800.00
<b>Treasures of the Deep Artifacts (700)</b>		<b>\$ 154,506.00</b>		<b>Treasures of the Deep Artifacts (700)</b>		<b>\$ 154,506.00</b>
Construct Store		\$ 100,000.00	0	Construct Store		\$ 70,000.00
<b>Retail Storage</b>		<b>\$ 100,000.00</b>		<b>Retail Storage</b>		<b>\$ 70,000.00</b>
Flooring		\$ 120,000.00		Flooring		\$ 75,000.00
<b>Other</b>		<b>\$ 120,000.00</b>		<b>Other</b>		<b>\$ 75,000.00</b>
Total		\$1,607,294.01		Total		\$1,187,798.00
Budget Limit		\$1,700,000.00		Budget Limit		\$1,200,000.00
Contingency		\$ 92,705.99		Contingency		\$ 12,202.00
Fee @ 11%		\$ 187,000.00		Fee @ 11%		\$ 132,000.00
Total		\$1,887,000.00		Total		\$1,332,000.00

Page 3

Exhibit 10.13

### CONTRACT ADMINISTRATION SUMMARY

**DESCRIPTION:**

AIA Document A191 – 1996, Part 1 & Part 2 Standard Form of Agreement Between Owner and Design/Builder.

Design/Build Contract between RBK Architects & Odyssey Marine Exploration, Inc. for the Development and Construction of a **5,000 square foot traveling exhibition**. Includes: Bidding, Pricing, Structures, Casework, Electronics, Graphics, Exhibit Assembly/Testing & Exhibit Crating.

**EXECUTION DATE:** January 31, 2005

**VALUE:** \$1,332,000.00 Maximum on Cost Plus Basis Plus 11% Fee (Savings to be divided between Owner & Design Builder with \$50,000 max on Design Builders portion.)

**ADDENDUMS:**

Number 1, Dated 1-24-05

**REVIEWED BY:**

Guy Zajonc  
Mike Holmes  
AON  
George Becker  
Michelle Maxner

**DISTRIBUTION:**

RBK Architects (Executed Original) 1-27-05

Guy Zajonc (Executed Original) 1-28-05  
George Becker (Executed Copy) 1-28-05  
Mike Holmes (Executed Copy) 1-28-05  
Michelle Maxner (Executed Copy) 1-28-05

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**Addendum # 1 (Page 1 of 2)**

The undersigned hereby adopt the following addendum to the AIA document A191 Agreement, **for the 5,000 square foot Traveling Exhibit**, by and between the parties dated the Twenty Fourth day of January, 2005.

Part 1 of the Terms and Conditions of the Agreement are changed as follows:

**§ 5 PAYMENTS**

§ 5.2 Delete the word 'monthly'

**§ 9 BASIS OF COMPENSATION**

§ 9.1.3 Subsequent Payments shall be as follows:

On a semi-monthly basis, the Design/Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the schedule of values, (Attachment 'A'). Such application shall be notarized and supported by such data substantiating the Design/Builder's right to payment as the Owner may require. Supporting data is defined as Purchase Orders, Contracts, Subcontracts, Invoices from Vendors and Suppliers, Receipts, Lien Releases and other detailed documentation that clearly identifies cost and scope of work.

**§ 10.1 OTHER CONDITIONS AND SERVICES**

§ 10.1.2 [Add] The work in this agreement shall be performed pursuant to the Design, Contract Administration and Architect Services agreement made between the parties, dated \_\_\_\_\_, AIA Document 141 – 1997, Part 1 & 2.

Part 2 of the Terms and Conditions of the Agreement are changed as follows:

**ARTICLE 2 OWNER**

§ 2.6.1 Owner shall have the right to, at its own expense, request an audit of all Applications for Payment made pursuant to this contract upon 30 written notice to Design/Builder. If the audit should reveal discrepancy in Design/Builders favor of more than 10%, cost of the audit shall be paid by the Design/Builder.

**§ 7.3 PROPERTY INSURANCE**

§ 7.3.1 Unless otherwise provided under this Part 2, the Design/Builder shall purchase and maintain property insurance upon the Work for the full insurable value thereof on a replacement cost basis and provide proof of said insurance, naming Owner as a loss payee, to the Owner. Such property insurance shall be maintained until such time as Owner takes delivery of the work and provides a written release to the Design/Builder for the insurance obligation contained herein.

**Addendum # 1 (Page 2 of 2)**

§ 7.3.3 [Delete Original Language]

[Add] Design/Builder shall maintain general liability insurance for minimum amount of \$1,000,000 for, and as it applies, to the 'work' herein during the time this contract. Owner shall be listed as additional insured.

**§ 14 OTHER CONDITIONS AND SERVICES**

§ 14.4 Deleted

OWNER

DESIGN/BUILDER

/s/ JOHN C. MORRIS

/s/ CHRISTOPHER J. BELL

(signature)

(signature)

Odyssey Marine Exploration, Inc.

RBK Architects

By **John C Morris, CEO**

By **Christopher J. Bell, AIA, President**

Date: 1/31/2005

Date: \_\_\_\_\_



*Standard Form of Agreement Between Owner and Design/Builder*

*Part 1 Agreement*

**TABLE OF ARTICLES**

**PART 1 AGREEMENT**

<b>1. DESIGN/BUILDER</b>	<b>3</b>
<b>2. OWNER</b>	<b>4</b>
<b>3. OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA</b>	<b>5</b>
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<b>5. PAYMENTS</b>	<b>6</b>
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<b>7. MISCELLANEOUS PROVISIONS</b>	<b>7</b>
<b>8. TERMINATION OF THE AGREEMENT</b>	<b>7</b>
<b>9. BASIS OF COMPENSATION</b>	<b>7</b>
<b>10. OTHER CONDITIONS AND SERVICES</b>	<b>8</b>

**AGREEMENT** made as of the 31<sup>st</sup> day of January in the year of Two Thousand Five  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name and address)*

Odyssey Marine Exploration  
5215 West Laurel Street  
Suite 210  
Tampa, Florida 33607  
Telephone Number: 813.314.5220  
Fax Number 813.314.5225

and the Design/Builder:  
*(Name and address)*

RBK Architects - o8o Studio Exhibit Design  
1771 East Ninth Avenue  
Tampa, Florida 33605  
Telephone Number: 813.247.5223  
Fax Number: 813.224.9158

For the following Project:  
*(Include Project name, location and a summary description.)*

Odyssey Marine Exploration  
5000 SF Traveling Exhibit

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Before executing this Part 1 Agreement, the parties should reach substantial agreement on the Part 2 Agreement.





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The architectural services described in Article 1 will be provided by the following person or entity who is lawfully licensed to practice architecture:

<b>Name and address</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
Exhibits – RBK Architects, Inc.	AAC 00500	same

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

<b>Name, address and discipline</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
n/a		

The Owner and the Design/Builder agree as set forth below.

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## **TERMS AND CONDITIONS – PART 1 AGREEMENT**

### **ARTICLE 1 DESIGN/BUILDER**

#### **§ 1.1 SERVICES – provided in AIA Document B141**

§ 1.1.1 Preliminary design, budget, and schedule comprise the services required to accomplish the preparation and submission of the Design/Builder's Proposal as well as the preparation and submission of any modifications to the Proposal prior to execution of the Part 2 Agreement.

#### **§ 1.2 RESPONSIBILITIES**

§ 1.2.1 Design services required by this Part 1 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 1.2.6 Nothing contained in this Part 1 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

#### **§ 1.3 BASIC SERVICES**

§ 1.3.1 The Design/Builder shall provide a preliminary evaluation of the Owner's program and project budget requirements, each in terms of the other.

§ 1.3.2 The Design/Builder shall visit the site, become familiar with the local conditions, and correlate observable conditions with the requirements of the Owner's program, schedule, and budget.

§ 1.3.3 The Design/Builder shall review laws applicable to design and construction of the Project, correlate such laws with the Owner's program requirements, and advise the Owner if any program requirement may cause a violation of such laws. Necessary changes to the Owner's program shall be accomplished by appropriate written modification or disclosed as described in Section 1.3.5.

§ 1.3.4 The Design/Builder shall review with the Owner alternative approaches to design and construction of the Project.

§ 1.3.5 The Design/Builder shall submit to the Owner a Proposal, including the completed Preliminary Design Documents, a statement of the proposed contract sum, and a proposed schedule for completion of the Project. Preliminary Design Documents shall consist of preliminary design drawings, outline specifications or other documents sufficient to establish the size, quality and character of the entire Project, its architectural, structural, mechanical and electrical systems, and the materials and such other elements of the Project as may be appropriate. Deviations from the Owner's program shall be disclosed in the Proposal. If the Proposal is accepted by the Owner, the parties shall then execute the Part 2 Agreement. A modification to the Proposal before execution of the Part 2 Agreement shall be recorded in writing as an addendum and shall be identified in the Contract Documents of the Part 2 Agreement.

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## **§ 1.4 ADDITIONAL SERVICES**

**§ 1.4.1** The Additional Services described under this Section 1.4 shall be provided by the Design/Builder and paid for by the Owner if authorized or confirmed in writing by the Owner.

**§ 1.4.2** Making revisions in the Preliminary Design Documents, budget or other documents when such revisions are:

- .1** inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2** required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3** due to changes required as a result of the Owner's failure to render decisions in a timely manner,

**§ 1.4.3** Providing more extensive programmatic criteria than that furnished by the Owner as described in Section 2.1. When authorized, the Design/Builder shall provide professional services to assist the Owner in the preparation of the program. Programming services may consist of:

- .1** consulting with the Owner and other persons or entities not designated in this Part 1 Agreement to define the program requirements of the Project and to review the understanding of such requirements with the Owner;
- .2** documentation of the applicable requirements necessary for the various Project functions or operations;
- .3** providing a review and analysis of the functional and organizational relationships, requirements, and objectives for the Project;
- .4** setting forth a written program of requirements for the Owner's approval which summarizes the Owner's objectives, schedule, constraints, and criteria.

**§ 1.4.4** Providing financial feasibility or other special studies.

**§ 1.4.5** Providing planning surveys, site evaluations or comparative studies of prospective sites.

**§ 1.4.6** Providing special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**§ 1.4.7** Providing services relative to future facilities, systems and equipment.

**§ 1.4.8** Providing services at the Owner's specific request to perform detailed investigations of existing conditions or facilities or to make measured drawings thereof.

**§ 1.4.9** Providing services at the Owner's specific request to verify the accuracy of drawings or other information furnished by the Owner.

**§ 1.4.10** Coordinating services in connection with the work of separate persons or entities retained by the Owner, subsequent to the execution of this Part 1 Agreement.

**§ 1.4.11** Providing analyses of owning and operating costs.

**§ 1.4.12** Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

**§ 1.4.13** Providing services for planning tenant or rental spaces.

**§ 1.4.14** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

## **ARTICLE 2 OWNER**

### **§ 2.1 RESPONSIBILITIES**

**§ 2.1.1** The Owner shall provide full information in a timely manner regarding requirements for the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria.

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§ 2.1.2 The Owner shall establish and update an overall budget for the Project, including reasonable contingencies. This budget shall not constitute the contract sum.

§ 2.1.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design/Builder in order to avoid unreasonable delay in the orderly and sequential progress of the Design/Builder's services. The Owner may obtain independent review of the documents by a separate architect, engineer, contractor, or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Design/Builder's services.

§ 2.1.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.1.5 The Owner shall furnish the services of geotechnical engineers when such services are stipulated in this Part 1 Agreement, or deemed reasonably necessary by the Design/Builder. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 2.1.6 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.1.7 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.1.8 The Owner shall promptly obtain easements, zoning variances and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ 2.1.9 Those services, information, surveys, and reports required by Sections 2.1.4 through 2.1.8 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.1.10 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof except as otherwise stipulated in this Part 1 Agreement.

§ 2.1.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

### **ARTICLE 3 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

§ 3.1 All Project Documents produced by the Architect, including electronic files, shall be the sole and exclusive property of the Owner including any copyright. The Owner hereby grants to the Architect a non-exclusive license to use the documents, in perpetuity, and to grant sub-licenses to others, provided such use is not for the design and development of shipwreck attraction exhibits. Both parties agree, to the fullest extent of the law, to indemnify and hold the other party harmless, including their respective directors, officers, employees and sub-consultants from and against any and all claims of damage or

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liability, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the documents by the other party or any entity that acquires or obtains the documents from or through the other party

§ 3.2 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 3.1.

#### **ARTICLE 4 TIME**

§ 4.1 Upon the request of the Owner, the Design/Builder shall prepare a schedule for the performance of the Basic and Additional Services which shall not exceed the time limits contained in Section 10.1 and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 4.2 If the Design/Builder is delayed in the performance of services under this Part 1 Agreement through no fault of the Design/Builder, any applicable schedule shall be equitably adjusted.

#### **ARTICLE 5 PAYMENTS**

§ 5.1 The initial payment provided in Article 9 shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as provided in Section 9.1.2.

§ 5.2 Subsequent payments for Basic Services, Additional Services, and Reimbursable Expenses provided for in this Part 1 Agreement shall be made on the basis set forth in Article 9. SEE ADDENDUM #1.

§ 5.3 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.4 Payments due the Design/Builder under this Part 1 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Section 9.5, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

#### **ARTICLE 6 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION**

§ 6.1 Claims, disputes or other matters in question between the parties to this Part 1 Agreement arising out of or relating to this Part 1 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

§ 6.2 In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose or limitations.

§ 6.3 Demand for arbitration shall be filed in writing with the other party to this Part 1 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 6.4 An arbitration pursuant to this Section may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 1 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part I Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this Part 1 Agreement signed by the Owner, the Design/Builder and all other persons or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any

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claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 1 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 6.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 7 MISCELLANEOUS PROVISIONS**

§ 7.1 Unless otherwise provided, this Part 1 Agreement shall be governed by the law of the place where the Project is located.

§ 7.2 The Owner and the Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 1 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 1 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 1 Agreement without the written consent of the other.

§ 7.3 Unless otherwise provided, neither the design for nor the cost of remediation of hazardous materials shall be the responsibility of the Design/Builder.

§ 7.4 This Part 1 Agreement represents the entire and integrated agreement between the Owner and the Design/Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Part 1 Agreement may be amended only by written instrument signed by both the Owner and the Design/Builder.

§ 7.5 Prior to the termination of the services of the Architect or any other design professional designated in this Part 1 Agreement, the Design/Builder shall identify to the Owner in writing another architect or design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

## **ARTICLE 8 TERMINATION OF THE AGREEMENT**

§ 8.1 This Part 1 Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail to perform substantially in accordance with its terms through no fault of the party initiating the termination.

§ 8.2 This Part 1 Agreement may be terminated by the Owner without cause upon at least seven (7) days' written notice to the Design/Builder.

§ 8.3 In the event of termination not the fault of the Design/Builder, the Design/Builder shall be compensated for services performed to the termination date, prorated, together with Reimbursable Expenses then due.

## **ARTICLE 9 BASIS OF COMPENSATION**

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 1 Agreement as described below.

### **§ 9.1 COMPENSATION FOR BASIC SERVICES**

§ 9.1.1 FOR BASIC SERVICES, compensation shall be as follows:

One Million, Three Hundred Thirty-two Thousand and No/100's Dollars (\$1,332,000.00) maximum on a cost plus basis including an 11% fee. A preliminary, estimated schedule of values is attached.

Savings to be divided between the Owner and Design Builder, with a maximum on the Design Builder's portion of \$50,000.00.

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The project is divided into the following phases:

- Bidding/Pricing
- Structures
- Casework
- Electronics
- Graphics
- Exhibit Assembly & Testing
- Exhibit Crating Design & Crating

§ 9.1.2 AN INITIAL PAYMENT of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Part 1 Agreement and credited to the Owner's account as follows:

§ 9.1.3 SUBSEQUENT PAYMENTS shall be as follows:

SEE ADDENDUM #1

## § 9.2 COMPENSATION FOR ADDITIONAL SERVICES

§ 9.2.1 FOR ADDITIONAL SERVICES, compensation shall be as follows:

To be negotiated and added by written change order

## § 9.3 REIMBURSABLE EXPENSES

§ 9.3.1 Reimbursable Expenses are in addition to Compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

§ 9.3.2 FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of One and one-tenth (1.10) times the amounts expended.

§ 9.4 DIRECT PERSONNEL EXPENSE is defined as the direct salaries of personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

## § 9.5 INTEREST PAYMENTS

§ 9.5.1 The rate of interest for past due payments shall be as follows:

Four percent (4.00%) per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)*

§ 9.6 IF THE SCOPE of the Project is changed materially, the amount of compensation shall be equitably adjusted.

§ 9.7 The compensation set forth in this Part 1 Agreement shall be equitably adjusted if through no fault of the Design/Builder the services have not been completed within Thirty-six (36) months of the date of this Part 1 Agreement.

## ARTICLE 10 OTHER CONDITIONS AND SERVICES

§ 10.1 The Basic Services to be performed shall be commenced on \_\_\_\_\_ and, subject to authorized adjustments and to delays not caused by the Design/Builder, shall be completed in ( \_\_\_\_\_ ) calendar days. The Design/Builder's Basic Services consist of those described in Section 1.3 as part of Basic Services, and include normal professional engineering and preliminary design services, unless otherwise indicated. See attached schedule.

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*Standard Form of Agreement Between Owner and Design/Builder*

*Part 2 Agreement*

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**AGREEMENT** made as of the 31st day of January in the year of Two Thousand Five  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name and address)*

Odyssey Marine Exploration  
5215 West Laurel Street  
Suite 210  
Tampa, Florida 33607  
Telephone Number: 813.314.5220  
Fax Number: 813.314.5225

and the Design/Builder:  
*(Name and address)*

RBK Architects - o8o Studio Exhibit Design  
1771 East Ninth Avenue  
Tampa, Florida 33605  
Telephone Number: 813.247.5223  
Fax Number: 813.224.9158

For the following Project:  
*(Include Project name, location and a summary description.)*

Odyssey Marine Exploration  
5000 SF Traveling Exhibit

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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The architectural services described in Article 3 will be provided by the following person or entity who is lawfully licensed to practice architecture:

<b>Name and address</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
Exhibits – RBK Architects, Inc.	AAC 00500	same

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

<b>Name, address and discipline</b>	<b>Registration Number</b>	<b>Relationship to Design/Builder</b>
N/A		

The Owner and the Design/Builder agree as set forth below.

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## **TERMS AND CONDITIONS – PART 2 AGREEMENT**

### **ARTICLE 1 GENERAL PROVISIONS**

#### **§ 1.1 BASIC DEFINITIONS**

§ 1.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement, the Design/Builder's Proposal and written addenda to the Proposal identified in Article 14, the Construction Documents approved by the Owner in accordance with Section 3.2.3 and Modifications issued after execution of this Part 2 Agreement A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Section 8.3.

§ 1.1.2 The term "Work" means the construction and services provided by the Design/Builder to fulfill the Design/Builder's obligations.

#### **§ 1.2 EXECUTION, CORRELATION AND INTENT**

§ 1.2.1 It is the intent of the Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required only to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to produce the intended results. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.2 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.3 Nothing contained in this Part 2 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

#### **§ 1.3 OWNERSHIP AND USE OF DOCUMENTS**

§ 1.3.1 All Project Documents produced by the Architect, including electronic files, shall be the sole and exclusive property of the Owner including any copyright. The Owner hereby grants to the Architect a nonexclusive license to use the documents, in perpetuity, and to grant sub-licenses to others, provided such use is not for the design and development of shipwreck attraction exhibits. Both parties agree, to the fullest extent of the law, to indemnify and hold the other party harmless, including their respective directors, officers, employees and sub-consultants from and against any and all claims of damage or liability, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the documents by the other party or any entity that acquires or obtains the documents from or through the other party

§ 1.3.2 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 1.3.1.

*(Paragraphs deleted)*

### **ARTICLE 2 OWNER**

§ 2.1 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ 2.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Design/Builder agree in writing.

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§ 2.3 The Owner shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the Design/Builder's Proposal.

§ 2.4 The Owner shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by the Design/Builder to properly carry out the design services required by this Part 2 Agreement.

§ 2.5 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

§ 2.6 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.7 Those services, information, surveys and reports required by Sections 2.4 through 2.6 which are within the Owner's control shall be furnished at the Owner's expense, and the Design/Builder shall be entitled to rely upon the accuracy and completeness thereof, except to the extent the Owner advises the Design/Builder to the contrary in writing.

§ 2.8 If the Owner requires the Design/Builder to maintain any special insurance coverage, policy, amendment, or rider, the Owner shall pay the additional cost thereof, except as otherwise stipulated in this Part 2 Agreement.

§ 2.9 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design/Builder's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.

§ 2.10 The Owner shall, at the request of the Design/Builder, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

§ 2.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

## **ARTICLE 3 DESIGN/BUILDER**

### **§ 3.1 SERVICES AND RESPONSIBILITIES**

§ 3.1.1 Design services required by this Part 2 Agreement shall be performed by qualified architects and other design professionals. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder.

§ 3.1.2 The agreements between the Design/Builder and the persons or entities identified in this Part 2 Agreement, and any subsequent modifications, shall be in writing. These agreements, including Financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 3.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 2 Agreement.

### **§ 3.2 BASIC SERVICES**

§ 3.2.1 The Design/Builder's Basic Services are described below and in Article 14.

§ 3.2.2 The Design/Builder shall designate a representative authorized to act on the Design/Builder's behalf with respect to the Project.

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**§ 3.2.3** The Design/Builder shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the intent of the Design/Builder's Proposal;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

**§ 3.2.4** The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**§ 3.2.5** Unless otherwise provided in the Contract Documents, the Design/Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.2.6** The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.

**§ 3.2.7** The Design/Builder shall keep the Owner informed of the progress and quality of the Work.

**§ 3.2.8** The Design/Builder shall be responsible for correcting Work which does not conform to the Contract Documents.

**§ 3.2.9** The Design/Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the construction will be free from faults and defects, and that the construction will conform with the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 9.

**§ 3.2.10** The Design/Builder shall pay all sales, consumer, use and similar taxes which had been legally enacted at the time the Design/Builder's Proposal was first submitted to the Owner, and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are either customarily secured after execution of a contract for construction or are legally required at the time the Design/Builder's Proposal was first submitted to the Owner.

**§ 3.2.11** The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

**§ 3.2.12** The Design/Builder shall pay royalties and license fees for patented designs, processes or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Design/Builder has reason to believe the use of a required design, process or product is an infringement of a patent, the Design/Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

**§ 3.2.13** The Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. At the completion of the Work, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.

**§ 3.2.14** The Design/Builder shall notify the Owner when the Design/Builder believes that the Work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the Design/Builder shall complete items listed

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therein. Disputes between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

§ 3.2.15 The Design/Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment,

### § 3.3 ADDITIONAL SERVICES

§ 3.3.1 The services described in this Section 3.3 are not included in Basic Services unless so identified in Article 14, and they shall be paid for by the Owner as provided in this Part 2 Agreement, in addition to the compensation for Basic Services. The services described in this Section 3.3 shall be provided only if authorized or confirmed in writing by the Owner.

§ 3.3.2 Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.

§ 3.3.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.4 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Design/Builder is a party thereto.

§ 3.3.5 Providing coordination of construction performed by the Owner's own forces or separate contractors employed by the Owner, and coordination of services required in connection with construction performed and equipment supplied by the Owner,

§ 3.3.6 Preparing a set of reproducible record documents or electronic data showing significant changes in the Work made during construction.

§ 3.3.7 Providing assistance in the utilization of equipment or systems such as preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

### ARTICLE 4 TIME

§ 4.1 Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

§ 4.2 Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a notice to proceed unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 14.

§ 4.3 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 4.4 Based on the Design/Builder's Proposal, a construction schedule shall be provided consistent with Section 4.2 above.

§ 4.5 If the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Design/Builder's control, or by delay authorized by the Owner pending arbitration, or by other causes which the Owner and Design/Builder agree may justify delay, then the Contract Time shall be reasonably extended by Change Order.

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## **ARTICLE 5 PAYMENTS**

### **§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 The Design/Builder shall deliver to the Owner itemized Applications for Payment in such detail as indicated in Article 14.

§ 5.1.2 Within ten (10) days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder.

§ 5.1.3 The Application for Payment shall constitute a representation by the Design/Builder to the Owner that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents, and the Design/Builder is entitled to payment in the amount requested.

§ 5.1.4 Upon receipt of payment from the Owner, the Design/Builder shall promptly pay the Architect, other design professionals and each contractor the amount to which each is entitled in accordance with the terms of their respective contracts.

§ 5.1.5 The Owner shall have no obligation under this Part 2 Agreement to pay or to be responsible in any way for payment to the Architect, another design professional or a contractor performing portions of the Work.

§ 5.1.6 Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

§ 5.1.7 The Design/Builder warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

§ 5.1.8 At the time of Substantial Completion, the Owner shall pay the Design/Builder the retainage, if any, less the reasonable cost to correct or complete incorrect or incomplete Work. Final payment of such withheld sum shall be made upon correction or completion of such Work.

### **§ 5.2 FINAL PAYMENTS**

§ 5.2.1 Neither final payment nor amounts retained, if any, shall become due until the Design/Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a contractor or other person or entity entitled to assert a lien against the Owner's property refuses to furnish a release or waiver required by the Owner, the Design/ Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design/Builder shall indemnify the Owner for all loss and cost, including reasonable attorneys' fees incurred as a result of such lien.

§ 5.2.2 When the Work has been completed and the contract fully performed, the Design/Builder shall submit a final application for payment to the Owner, who shall make final payment within 30 days of receipt

§ 5.2.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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§ 5.2.4 Acceptance of final payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of final Application for Payment.

### § 5.3 INTEREST PAYMENTS

§ 5.3.1 Payments due the Design/Builder under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13, or in the absence of a specified rate, at the legal rate prevailing where the Project is located.

## ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY

§ 6.1 The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement.

§ 6.2 The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's contractors; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal relocation or replacement in the course of construction.

§ 6.3 The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss.

§ 6.4 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site caused in whole or in part by the Design/Builder, a contractor of the Design/Builder or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

## ARTICLE 7 INSURANCE AND BONDS

### § 7.1 DESIGN/BUILDER'S LIABILITY INSURANCE

§ 7.1.1 The Design/Builder shall purchase from and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Design/Builder from claims set forth below which may arise out of or result from operations under this Part 2 Agreement by the Design/Builder or by a contractor of the Design/Builder, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design/Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the Design/Builder's employees;
- .4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Design/Builder or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .7 claims involving contractual liability insurance applicable to the Design/Builder's obligations under Section 11.5.

§ 7.1.2 The insurance required by Section 7.1.1 shall be written for not less than limits of liability specified in this Part 2 Agreement or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

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**§ 7.1.3** Certificates of Insurance acceptable to the Owner shall be delivered to the Owner immediately after execution of this Part 2 Agreement. These Certificates and the insurance policies required by this Section 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by the Design/Builder with reasonable promptness in accordance with the Design/Builder's information and belief.

**§ 7.2 OWNER'S LIABILITY INSURANCE**

**§ 7.2.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Part 2 Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

**§ 7.3 PROPERTY INSURANCE**

**§ 7.3.1** SEE ADDENDUM # 1

**§ 7.3.2** Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Design/Builder's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

**§ 7.3.3** SEE ADDENDUM

**§ 7.3.4** Unless otherwise provided, the Owner shall purchase and maintain such boiler and machinery insurance required by this Part 2 Agreement or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, the Design/Builder, the Design/Builder's contractors and subcontractors in the Work, and the Design/Builder's Architect and other design professionals. The Owner and the Design/Builder shall be named insureds.

**§ 7.3.5** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 7.3.10. The Design/Builder shall pay contractors their shares of insurance proceeds received by the Design/Builder, and by appropriate agreement, written where legally required for validity, shall require contractors to make payments to their subcontractors in similar manner.

**§ 7.3.6** Before an exposure to loss may occur, the Owner shall file with the Design/Builder a copy of each policy that includes insurance coverages required by this Section 7.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Design/Builder.

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§ 7.3.7 If the Design/Builder requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, obtain such insurance, and the cost thereof shall be charged to the Design/Builder by appropriate Change Order.

§ 7.3.8 The Owner and the Design/Builder waive all rights against each other and the Architect and other design professionals, contractors, subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section 7.3 or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as trustee. The Owner or Design/Builder, as appropriate, shall require from contractors and subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated in this Section 7.3. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 7.3.9 If required in writing by a party in interest, the Owner as trustee shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Article 10. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by appropriate Change Order.

§ 7.3.10 The Owner as trustee shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing, within five (5) days after occurrence of loss to the Owner's exercise of this power; if such objection be made, the parties shall enter into dispute resolution under procedures provided in Article 10. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 7.3.11 Partial occupancy or use prior to Substantial Completion shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design/Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual written consent, take any action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of coverage.

#### **§ 7.4 LOSS OF USE OF INSURANCE**

§ 7.4.1 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design/Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

### **ARTICLE 8 CHANGES IN THE WORK**

#### **§ 8.1 CHANGES**

§ 8.1.1 Changes in the Work may be accomplished after execution of this Part 2 Agreement, without invalidating this Part 2 Agreement, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in the Contract Documents.

§ 8.1.2 A Change Order shall be based upon agreement between the Owner and the Design/Builder; a Construction Change Directive may be issued by the Owner without the agreement of the Design/Builder; an order for a minor change in the Work may be issued by the Design/Builder alone.

§ 8.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design/Builder shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 8.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or the Design/Builder, the applicable unit prices shall be equitably adjusted.

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## **§ 8.2 CHANGE ORDERS**

**§ 8.2.1** A Change Order is a written instrument prepared by the Design/Builder and signed by the Owner and the Design/Builder, stating their agreement upon all of the following:

- .1** a change in the Work;
- .2** the amount of the adjustment, if any, in the Contract Sum; and
- .3** the extent of the adjustment, if any, in the Contract Time.

**§ 8.2.2** If the Owner requests a proposal for a change in the Work from the Design/Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design/Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Contract Documents.

## **§ 8.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 8.3.1** A Construction Change Directive is a written order prepared and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

**§ 8.3.2** Except as otherwise agreed by the Owner and the Design/Builder, the adjustment to the Contract Sum shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including the expenditures for design services and revisions to the Contract Documents. In case of an increase in the Contract Sum, the cost shall include a reasonable allowance for overhead and profit. In such case, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, costs for these purposes shall be limited to the following:

- .1** costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2** costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3** rental costs of machinery and equipment exclusive of hand tools, whether rented from the Design/Builder or others;
- .4** costs of premiums for all bonds and insurance permit fees, and sales, use or similar taxes;
- .5** additional costs of supervision and field office personnel directly attributable to the change; and fees paid to the Architect, engineers and other professionals.

**§ 8.3.3** Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change which results in a net decrease in the Contract Sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

**§ 8.3.4** When the Owner and the Design/Builder agree upon the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

## **§ 8.4 MINOR CHANGES IN THE WORK**

**§ 8.4.1** The Design/Builder shall have authority to make minor changes in the Construction Documents and construction consistent with the intent of the Contract Documents when such minor changes do not involve adjustment in the Contract Sum or extension of the Contract Time. The Design/Builder shall promptly inform the Owner, in writing, of minor changes in the Construction Documents and construction.

## **§ 8.5 CONCEALED CONDITIONS**

**§ 8.5.1** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Contract Sum shall be equitably adjusted for such concealed or unknown

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conditions by Change Order upon claim by either party made within 21 days after the claimant becomes aware of the conditions.

## **§ 8.6 REGULATORY CHANGES**

**§ 8.6.1** The Design/Builder shall be compensated for changes in the construction necessitated by the enactment or revisions of codes, laws or regulations subsequent to the submission of the Design/Builder's Proposal.

## **ARTICLE 9 CORRECTION OF WORK**

**§ 9.1** The Design/Builder shall promptly correct Work rejected by the Owner or known by the Design/Builder to be defective or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Design/Builder shall bear costs of correcting such rejected Work, including additional testing and inspections.

**§ 9.2** If, within one (1) year after the date of Substantial Completion of the Work or, after the date for commencement of warranties established in a written agreement between the Owner and the Design/Builder, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design/Builder shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Design/Builder a written acceptance of such condition.

**§ 9.3** Nothing contained in this Article 9 shall be construed to establish a period of limitation with respect to other obligations which the Design/Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Section 9.2 relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

**§ 9.4** If the Design/Builder fails to correct nonconforming Work as required or fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Design/Builder or other persons or entities.

**§ 9.5** If the Design/Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Design/Builder and, seven (7) days following receipt by the Design/Builder of that second written notice and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design/ Builder, the costs of correcting such deficiencies. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the Design/Builder shall pay the difference to the Owner. Such action by the Owner shall be subject to dispute resolution procedures as provided in Article 10.

## **ARTICLE 10 DISPUTE RESOLUTION – MEDIATION AND ARBITRATION**

**§ 10.1** Claims, disputes or other matters in question between the parties to this Part 2 Agreement arising out of or relating to this Part 2 Agreement or breach thereof shall be subject to and decided by mediation or arbitration. Such mediation or arbitration shall be conducted in accordance with the Construction Industry Mediation or Arbitration Rules of the American Arbitration Association currently in effect.

**§ 10.2** In addition to and prior to arbitration, the parties shall endeavor to settle disputes by mediation. Demand for mediation shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

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§ 10.3 Demand for arbitration shall be filed in writing with the other party to this Part 2 Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of repose or limitations.

§ 10.4 An arbitration pursuant to this Article may be joined with an arbitration involving common issues of law or fact between the Design/Builder and any person or entity with whom the Design/Builder has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Part 2 Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Part 2 Agreement or not a party to an agreement with the Design/Builder, except by written consent containing a specific reference to this Part 2 Agreement signed by the Owner, the Design/Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Part 2 Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 10.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

§ 11.1 Unless otherwise provided, this Part 2 Agreement shall be governed by the law of the place where the Project is located.

### **§ 11.2 SUBCONTRACTS**

§ 11.2.1 The Design/Builder, as soon as practicable after execution of this Part 2 Agreement, shall furnish to the Owner in writing the names of the persons or entities the Design/Builder will engage as contractors for the Project

### **§ 11.3 WORK BY OWNER OR OWNER'S CONTRACTORS**

§ 11.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of insurance and waiver of subrogation identical to the provisions of this Part 2 Agreement. If the Design/Builder claims that delay or additional cost is involved because of such action by the Owner, the Design/Builder shall assert such claims as provided in Section 11.4.

§ 11.3.2 The Design/Builder shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design/Builder's construction and operations with theirs as required by the Contract Documents.

§ 11.3.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

### **§ 11.4 CLAIMS FOR DAMAGES**

§ 11.4.1 If either party to this Part 2 Agreement suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a claim of additional cost or time related to this claim is to be asserted, it shall be filed in writing.

### **§ 11.5 INDEMNIFICATION**

§ 11.5.1 To the fullest extent permitted by law, the Design/Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but

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only to the Extent caused in whole or in part by negligent acts or omissions of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 11.5.

**§ 115.2** In claims against any person or entity indemnified under this Section 11.5 by an employee of the Design/Builder, anyone directly or indirectly employed by the Design/Builder or anyone for whose acts the Design/Builder may be liable, the indemnification obligation under this Section 11.5 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **§ 11.6 SUCCESSORS AND ASSIGNS**

**§ 11.6.1** The Owner and Design/Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Part 2 Agreement and to the partners, successors and assigns of such other party with respect to all covenants of this Part 2 Agreement. Neither the Owner nor the Design/Builder shall assign this Part 2 Agreement without the written consent of the other. The Owner may assign this Part 2 Agreement to any institutional lender providing construction financing, and the Design/Builder agrees to execute all consents reasonably required to facilitate such an assignment. If either party makes such an assignment, that party shall nevertheless remain legally responsible for all obligations under this Part 2 Agreement, unless otherwise agreed by the other party.

#### **§ 11.7 TERMINATION OF PROFESSIONAL DESIGN SERVICES**

**§ 11.7.1** Prior to termination of the services of the Architect or any other design professional designated in this Part 2 Agreement, the Design/Builder shall identify to the Owner in writing another architect or other design professional with respect to whom the Owner has no reasonable objection, who will provide the services originally to have been provided by the Architect or other design professional whose services are being terminated.

#### **§ 11.8 EXTENT OF AGREEMENT**

**§ 11.8.1** This Part 2 Agreement represents the entire agreement between the Owner and the Design/Builder and supersedes prior negotiations, representations or agreements, either written or oral. This Part 2 Agreement may be amended only by written instrument and signed by both the Owner and the Design/Builder.

### **ARTICLE 12 TERMINATION OF THE AGREEMENT**

#### **§ 12.1 TERMINATION BY THE OWNER**

**§ 12.1.1** This Part 2 Agreement may be terminated by the Owner upon 14 days' written notice to the Design/Builder in the event that the Project is abandoned. If such termination occurs, the Owner shall pay the Design/Builder for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

**§ 12.1.2** If the Design/Builder defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Part 2 Agreement, the Owner may give written notice that the Owner intends to terminate this Part 2 Agreement. If the Design/Builder fails to correct the defaults, failure or neglect within seven (7) days after being given notice, the Owner may then give a second written notice and, after an additional seven (7) days, the Owner may without prejudice to any other remedy terminate the employment of the Design/Builder and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design/Builder and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the Contract Sum exceeds the expense of finishing the Work and all damages incurred by the Owner, such excess shall be paid to the Design/Builder. If the expense of completing the Work and all damages incurred by the Owner exceeds the unpaid balance, the Design/Builder shall pay the difference to the Owner. This obligation for payment shall survive termination of this Part 2 Agreement.

#### **§ 12.2 TERMINATION BY THE DESIGN/BUILDER**

**§ 12.2.1** If the Owner fails to make payment when due, the Design/Builder may give written notice of the Design/ Builder's intention to terminate this Part 2 Agreement. If the Design/Builder fails to receive payment within seven (7) days after receipt of such notice by the Owner, the Design/Builder may give a second written notice and, seven (7) days after receipt of such second written notice by the Owner, may terminate this Part 2 Agreement and recover

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from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and applicable damages.

### **ARTICLE 13 BASIS OF COMPENSATION**

The Owner shall compensate the Design/Builder in accordance with Article 5, Payments, and the other provisions of this Part 2 Agreement as described below.

#### **§ 13.1 COMPENSATION**

**§ 13.1.1** For the Design/Builder's performance of the Work, as described in Section 3.2 and including any other services listed in Article 14 as part of Basic Services, the Owner shall pay the Design/Builder in current funds the Contract Sum as follows:

One Million, Three Hundred Thirty-two Thousand and no/100's Dollars (\$1,332,000.00) maximum on a cost plus basis including an 11% fee. Savings to be divided between the Owner and Design Builder, with a maximum on the Design Builder's portion of 550,000.00.

**§ 13.1.2** For Additional Services, as described in Section 3.3 and including any other services listed in Article 14 as Additional Services, compensation shall be as follows:

To be negotiated and added by written change order

#### **§ 13.2 REIMBURSABLE EXPENSES**

**§ 13.2.1** Reimbursable Expenses are in addition to the compensation for Basic and Additional Services, and include actual expenditures made by the Design/Builder and the Design/Builder's employees and contractors in the interest of the Project, as follows:

**§13.2.2** FOR REIMBURSABLE EXPENSES, compensation shall be a multiple of One and one-tenth ( 1.10 ) times the amounts expended.

#### **§ 13.3 INTEREST PAYMENT**

**§ 13.3.1** The rate of interest for past due payments shall be as follows:

Four percent (4,00%) per annum

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design/ Builder's principal places of business, at the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements, such as written disclosures or waivers.)*

### **ARTICLE 14 OTHER CONDITIONS AND SERVICES**

**§ 14.1** The Basic Services to be performed shall be commenced on \_\_\_\_\_ and, subject to authorized adjustments and to delays not caused by the Design/Builder, Substantial Completion shall be achieved in the Contract Time of ( \_\_\_\_\_ ) calendar days.

**§ 14.2** The Basic Services beyond those described in Article 3 are as follows:

**§ 14.3** Additional Services beyond those described in Article 3 are as follows:

**§ 14. 4** SEE ADDENDUM #1

**§ 14.5** The Design/Builder's Proposal includes the following documents:

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User Notes:





**ATTACHMENT A**

RBK Architects, Inc.

<b>Traveling Exhibit Projects 8,000 sf</b>				<b>Traveling Exhibit Projects 5,000 sf</b>			
				<b>Equipment</b>			
T1b	Frame & Panels	Ray Butterfield \$8000 C_ller	\$ 7,918.00				
T1a	Waler Wall		\$ 20,000.00				
T1c							
<b>T1</b>	<b>Entry/Control</b>		<b>\$ 27,918.00</b>	<b>Entry/Control</b>			
T2A	Entry Tunnel Backbone	PO TO BE ISSUED	\$ 13,000.00				
T2B	Tunnel movie screen	DELIVERED po 3	\$ 4,160.65				
T2C	Tunnel Interior plexiglass	DELIVERED	\$ 2,652.18				
	Materials	\$ 2,452.18					
	Cutting	\$ 200.00					
T2D	Curtain Surround	UPDATE PRICING	\$ 5,800.00				
T2E	Sound system		See Show Control				
T2F	Projection equipment	Order Projectors - Hitachi CP-X1200	See Show Control				
T2G	Mirror		\$ 15,000.00				
T2H	Mesh for Immersion r_	RBK paid McNichols	\$ 2,618.18				
<b>T2</b>	<b>Immersion/Preshow</b>		<b>\$ 43,231.01</b>	<b>Immersion/Proshow</b>			<b>\$ —</b>
T3A	Movie Projectors 3	3 - NEC GT5000	See Show Control	T3A	Movie Projectors 3	3 - NEC GT5000	See Show Control
T3B	Projector Frame 2		See Show Control	T3B	Projector Frame 2		See Show Control
T3C	Show Control		\$ 140,843.00	T3C	Show Control		\$ 65,695.00
T3D	Audio Amp & Speakers		See Show Control	T3D	Audio Amp & Speakers		See Show Control
T3E	17" Monitors - 24		\$ 21,600.00	T3E	17" Monitors - 16		\$ 14,400.00
T3N	Black Out Curtains	B - Issue a purchase order 10000	\$ 10,000.00	T3N	Black Out Curtains	B - Issue a purchase order 10000	\$ 10,000.00
T3O	Aluminum Frames - 26		\$ 5,200.00	T3O	Aluminum Frames - 26		\$ 5,200.00
T3P	Canvas Images - 30	\$ 11,040.00	\$ 8,000.00	T3P	Canvas images - 30	\$ 11,040.00	\$ 8,000.00
T3Q	Automatic Doors Operator - 2		\$ 10,000.00	T3Q	Automatic Doors Operator - 2		\$ 10,000.00
T3R	Door Frames 2		\$ 10,000.00	T3R	Door Frames 2		\$ 10,000.00
T3S	Doors - 2 pairs		\$ 2,500.00	T3S	Doors - 2 pairs		\$ 2,500.00
T_T	Light Trusses	PO 12 & 13	\$ 11,352.00	T_T	Light Trusses		\$ 11,352.00
T3U	Movie Screens		\$ 15,000.00	T3U	Movie Screens		\$ 15,000.00
T3V	Aquariums		\$ 4,500.00	T3V	Aquariums		\$ 4,500.00
	Lighting		\$ 10,000.00		Lighting		\$ 10,000.00
<b>T3</b>	<b>Theatre Environment</b>		<b>\$ 248,995.00</b>	<b>Theater Environment</b>			<b>\$ 166,648.00</b>
	Time period 1	\$ 12,170.00	\$ 14,000.00	0	Time period 1		\$ 14,000.00
	Casework	\$ 5,000.00					
	Computer	\$ 870.00					
	Computer Stand	\$ 600.00					
	Pointing Device	\$ 600.00					
	Sonic Speaker	\$ 900.00					
	40" Monitor	\$ 4,200					
	Time period 2		\$ 14,000.00	0	Time period 2		\$ 14,000.00
	Time period 3		\$ 14,000.00				
	Time period 4		\$ 14,000.00				
	Cannon						
	Amphora						
	Oars						
	Cannon Balls						
	Work the walking beam		\$ 50,000.00	0	Work the walking beam		\$ 50,000.00
<b>T4</b>	<b>History of Shipwr_cks</b>		<b>\$ 108,000.00</b>	<b>History of Shipwr_cks</b>			<b>\$ 78,000.00</b>
	Ship Timeline Monitor		\$ 7,000.00	0	Ship Timeline Monitor		\$ 7,000.00
	Interactive Ship				Interactive Ship		



Ship Cargo Coal Monitor	\$ 7,000.00	0	Ship Cargo Coal Monitor	\$ 7,000.00
Coal Case	\$ 2,000.00	0	Coal Case	\$ 2,000.00
Republic Ship Model Monitor	\$ 7,000.00	0	Republic Ship Model Monitor	\$ 7,000.00
Artifact Case 1 Passenger	\$ 2,000.00	0	Artifact Case 1 Passenger	\$ 2,000.00
Artifact Case 2 Passenger	\$ 2,000.00	0	Artifact Case 2 Passenger	\$ 2,000.00
Artifact Case 3	\$ 2,000.00	0	Artifact Case 3	\$ 2,000.00
Passenger stories Monitor	\$ 7,000.00	0	Passenger stories Monitor	\$ 7,000.00
Interactive Storm Experience	\$ 40,000.00	0	Interactive Storm Experience	\$ 40,000.00
Floor Map	\$ 10,000.00	0	Floor Map	\$ 10,000.00
Narrator	\$ 10,000.00	0	Narrator	\$ 10,000.00
Republic Model	\$ 11,500.00	0	Republic Model	\$ 11,500.00
Character Mannequin	\$ 4,000.00	0	Character Mannequin	\$ 4,000.00
Character Mannequin	\$ 4,000.00		Character Mannequin	\$ 4,000.00
Photo Fascia	\$ 8,000.00		Photo Fascia	\$ 8,000.00
Fells Point Graphic	\$ 2,000.00		Fells Point Graphic	\$ 2,000.00
Nichols Graphic	\$ 2,000.00		Nichols Graphic	\$ 2,000.00
Pipe Grid & Lighting	\$ 3,000.00		Pipe Grid & Lighting	\$ 3,000.00
Lights	\$ 5,000.00		Lights	\$ 5,000.00
Speakers	\$ 3,000.00		Speakers	\$ 3,000.00
			Show control computer	\$ 0.00
Enclosure	\$ 10,000.00		Enclosure	\$ 10,000.00
<b>T5 Republic</b>	<b>\$155,500.00</b>		<b>Republic</b>	<b>\$155,500.00</b>
History of weather technology	\$ 12,000.00			
History of Navigation	\$ 12,000.00			
Wind Tunnel Two	\$ 50,000.00	0	Wind Tunnel One	\$ 25,000.00
Order Fan				
Interactive Globe Current Trade Routes	\$ 81,644.00	0	Interactive Globe Current Trade Routes	\$ 81,644.00
Current Science of weather	\$ 12,000.00			
Current Science of Navigation	\$ 12,000.00			
Wave Wall	\$ 20,000.00	0	Wave Wall	\$ 20,000.00
Build a boat	\$ 10,000.00	<b>T40</b>	Build a boat	\$ 10,000.00
<b>T6 Weather</b>	<b>\$209,644.00</b>		<b>Weather</b>	<b>\$136,644.00</b>
Sussex 1	\$ 12,000.00	0	Sussex 1	\$ 12,000.00
Sussex 2	\$ 12,000.00			
Tortuga 1	\$ 12,000.00	0	Tortuga 1	\$ 12,000.00
Tortuga 2	\$ 12,000.00			
Rights to the ship	\$ 12,000.00			
Tortuga Artifacts	\$ 12,000.00			
History of the Tortuga wreck	\$ 12,000.00			
			<b>Sussex &amp; Tortugas</b>	<b>\$ 24,000.00</b>
Odyssey Time Line	\$ 3,000.00	0	Odyssey Time Line	\$ 3,000.00
<b>Timeline of Odyssey Marine</b>	<b>\$ 3,000.00</b>		<b>Timeline of Odyssey Marine</b>	<b>\$ 3,000.00</b>
Research Module (540)			Research Module (540)	
Find the shipwreck game	\$24,700.00	\$ 25,000.00	<b>T50</b> Find the shipwreck game	\$ 25,000.00
40" Monitors	9000			
17" Monitors	1600			
Computers	1200			
Graphics	2000			
Sonic Speaker	\$ 900.00			
Casework	10000			
Search Module (530)			Search Module (530)	
Sonar Table	\$ 50,000.00	<b>T51</b>	Sonar Table	\$ 50,000.00
Recovery Module (560)			Recovery Module (560)	
Zeus Model	\$ 30,000.00	<b>T52</b>	Zeus model	\$ 30,000.00
Photomosaic Fly Over	\$ 30,000.00			
Robotic Arms		<b>T53</b>	Robotic Arms	
Creative Essence	\$ 57,000.00		Creative Essence	\$ 57,000.00
Railing	\$ 10,000.00		Railing	\$ 10,000.00
Documentation Module			Documentation Module	
Fly a ROV		<b>T54</b>	Fly a ROV	
Creative Essence	\$ 52,500.00		Creative Essence	\$ 52,500.00

Tank Theming	\$ 10,000.00	Tank Theming	\$ 10,000.00
Interactive Photomosaic Photomosaic	\$ 60,000.00	Interactive Photomosaic Photomosaic	\$ 60,000.00
Conservation Module (570) Put the pot back together	\$ 10,000.00	Conservation Module (570) Put the pot back together	\$ 10,000.00
Marine Arch Module (580) CSI Game	\$ 20,000.00	Marine Arch Module (580) CSI Game	\$ 20,000.00
<b>Science of the Shipwreck</b>	<b>\$ 354,500.00</b>	<b>Science of the Shipwreck</b>	<b>\$ 324,500.00</b>
Bottle Wall Case Aluminum Frame	2 @ 1000 \$ 2,000.00	Bottle Wall Case Aluminum Frame	2 @ 1000 \$ 2,000.00
Flexi Box	2 @ 2000 \$ 4,000.00	Flexi Box	2 @ 2000 \$ 4,000.00
Aluminum Wall Panels	30 @ 250 \$ 7,500.00	Aluminum Wall Panels	30 @ 250 \$ 7,500.00
Plastic Sheathing	30 @ 100 \$ 3,000.00	Plastic Sheathing	30 @ 100 \$ 3,000.00
Light Truss	PO 12 & 13 \$ 8,706.00	Light Truss	\$ 8,706.00
Wall Graphics	30 @ 200 \$ 6,000.00	Wall Graphics	30 @ 200 \$ 6,000.00
Ceiling Molding	\$ 3,000.00	Ceiling Molding	\$ 3,000.00
Display Case w/ Track Ball	12 @ 2000 \$ 24,000.00	Display Case w/ Track Ball	12 @ 2000 \$ 24,000.00
Free Standing Display Case	2 @ 500 \$ 1,000.00	Free Standing Display Case	2 @ 500 \$ 1,000.00
Gold Display Case	\$ 15,000.00	Gold Display Case	\$ 15,000.00
40" Monitors	13 @ 4500 \$ 58,500.00	40" Monitors	13 @ 4500 \$ 58,500.00
Computers	12 @ 500 \$ 6,000.00	Computers	12 @ 500 \$ 6,000.00
Lighting	\$ 5,000.00	Lighting	\$ 5,000.00
Speaker	12 @ 900 \$ 10,800.00	Speaker	12 @ 900 \$ 10,800.00
<b>Treasures of the Deep Artifacts (700)</b>	<b>\$ 154,506.00</b>	<b>Treasures of the Deep Artifacts (700)</b>	<b>\$ 154,506.00</b>
Construct Store	\$ 100,000.00	0 Construct Store	\$ 70,000.00
<b>Retail Storage</b>	<b>\$ 100,000.00</b>	<b>Retail Storage</b>	<b>\$ 70,000.00</b>
Flooring	\$ 120,000.00	Flooring	\$ 75,000.00
<b>Other</b>	<b>\$ 120,000.00</b>	<b>Other</b>	<b>\$ 75,000.00</b>
Total	\$1,607,294.01	Total	\$1,187,798.00
Budget Limit	\$1,700,000.00	Budget Limit	\$1,200,000.00
Contingency	\$ 92,705.99	Contingency	\$ 12,202.00
Fee @ 11%	\$ 187,000.00	Fee @ 11%	\$ 132,000.00
Total	\$1,887,000.00	Total	\$1,332,000.00

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**EXHIBIT 21**

**SUBSIDIARIES OF THE REGISTRANT**

<u>NAME OF SUBSIDIARY</u>	<u>STATE OF INCORPORATION</u>
Odyssey Marine, Inc.	Florida
Odyssey Marine Services, Inc.	Nevada
OVH, Inc.	Nevada
Odyssey Retriever, Inc.	Nevada

**EXHIBIT 23**

**CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS**

We hereby consent to the incorporation of our report dated February 16, 2005, appearing in the Annual Report on page F-2 of Form 10-KSB of Odyssey Marine Exploration, Inc. and Subsidiaries for the year ended December 31, 2004, in the Company's Registration Statements on Form S-8, SEC File No. 333-50325 and 333-76038 regarding the 1997 Stock Option Plan and SEC File No. 333-50343 regarding the Consulting Agreement; and in the Company's Registration Statement on Form S-3, SEC File No. 333-42824.

/s/ Ferlita, Walsh & Gonzalez, P.A.  
 Ferlita, Walsh & Gonzalez, P.A.  
 3302 Azeele Street  
 Tampa, Florida 33609

March 23, 2005

**EXHIBIT 31.1**

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, John C. Morris, certify that:

1. I have reviewed this annual report of Odyssey Marine Exploration, Inc.:

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the small business issuer and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and

5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

Date: March 23, 2005

/s/ John C. Morris

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John C. Morris  
Chief Executive Officer

**EXHIBIT 31.2**

CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael J. Holmes, certify that:

1. I have reviewed this annual report of Odyssey Marine Exploration, Inc.:

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the small business issuer as of, and for, the periods presented in this report;

4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the small business issuer and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the small business issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the small business issuer's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) Disclosed in this report any change in the small business issuer's internal control over financial reporting that occurred during the small business issuer's most recent fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has

materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and

5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the small business issuer's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the small business issuer's internal control over financial reporting.

Date: March 23, 2005

/s/ Michael J. Holmes

Michael J. Holmes  
Chief Financial Officer

**EXHIBIT 32.1**

CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
ODYSSEY MARINE EXPLORATION, INC.  
PURSUANT TO 18 U.S.C. SECTION 1350

I hereby certify that, to the best of my knowledge, the Annual Report on Form 10-KSB of Odyssey Marine Exploration, Inc. for the period ending December 31, 2004:

(1) complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material aspects, the financial condition and results of operations of Odyssey Marine Exploration, Inc.

/s/ John C. Morris

John C. Morris  
Chief Executive Officer  
March 23, 2005

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Odyssey Marine Exploration, Inc. and will be retained by Odyssey Marine Exploration, Inc. and furnished to the Securities and Exchange Commission upon request.

**EXHIBIT 32.2**

CERTIFICATION OF CHIEF FINANCIAL OFFICER  
ODYSSEY MARINE EXPLORATION, INC.  
PURSUANT TO 18 U.S.C. SECTION 1350

I hereby certify that, to the best of my knowledge, the Annual Report on Form 10-KSB of Odyssey Marine Exploration, Inc. for the period ending December 31, 2004:

(1) complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material aspects, the financial condition and results of operations of Odyssey Marine Exploration, Inc.

/s/ Michael J. Holmes

Michael J. Holmes  
Chief Financial Officer  
March 23, 2005

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Odyssey Marine Exploration, Inc. and will be retained by Odyssey Marine Exploration, Inc. and furnished to the Securities and Exchange Commission upon request.

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**End of Filing**

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