TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: ADMINISTRATIVE SERVICES

DATE: OCTOBER 20, 2008 CMR:419:08

REPORT TYPE: CONSENT

SUBJECT: Approval of First Amendment to the Option to Lease Agreement with the Environmental Volunteers for the Former Sea Scout Building Located at 2560 Embarcadero Road

RECOMMENDATION
Staff recommends that Council approve the attached First Amendment to the July 9, 2008 Option to Lease Agreement with the Environmental Volunteers for the property located at 2560 Embarcadero Road, known as the former Sea Scout Building.

BACKGROUND
The former Sea Scout building is a 2,209 square foot, wood frame structure designed by Birge and David Clark, and donated to the City by Lucie Stern on May 30, 1941. Located in the Palo Alto Baylands Nature Preserve, the building is currently in poor condition; and its floors have been subjected to flooding during biannual extreme high tides. Its rehabilitation requires extensive sub-floor construction and relocation to a higher elevation at or near its current location in the Baylands Preserve.

On May 6, 2002, Council adopted the Historic Resources Board’s (HRB) recommendation to designate the former Sea Scout building as a Category 1 structure to the City of Palo Alto’s Historic Inventory. On July 9, 2007, after a lengthy Request for Proposals (RFP) process, Council approved a two-year Option to Lease Agreement (Agreement) with Environmental Volunteers (EV), a non-profit organization promoting the understanding of and responsibility for the environment through hands-on science education. The Agreement provides for a two-year option term during which EV must satisfy certain conditions prior to exercising its option and entering into a 40-year lease to relocate, rehabilitate and reuse the site as its office headquarters for conducting its mission and providing other public benefits. Conditions of the Agreement include EV obtaining approval of its project plans from the City and other agencies having jurisdiction over the Baylands. On September 4, 2008, following review and approval of the
project by the HRB and the Architectural Review Board (ARB), the project received final approval from the Director of Planning and Community Environment.

On September 15, 2008, Council adopted a Park Improvement Ordinance for the rehabilitation and relocation of the Sea Scout Building in accordance with the approved EV project plans.

**DISCUSSION**

Since entering into the Agreement with the City, EV has diligently pursued its required approvals from the City and several other agencies having Baylands jurisdiction. All approvals appear to be complete, with the exception of the California State Lands Commission (State). EV notified the State in February 2008 of its intent to develop and operate the former Sea Scout Building, but received no response until September 2008. The State sent notification that, based on its alleged sovereign rights to the property, it wanted either the City or the EV to enter into a lease with the State as a condition of its approval.

The issue of who owns the Baylands has come up periodically over the years. The State claims ownership of former submerged lands in the Baylands which existed at the time of California’s incorporation into the United States in the 1850’s. The City disagrees with this claim based on its deeds for the Baylands property and the historic use of the property. A 1972 lease between the State and the County permitting continued County use of the yacht harbor and the airport acknowledges the dispute between the City and State and allows the County to proceed with its development plans. In 1989, the City and State entered into a 49-year lease agreement to avoid protracted litigation to resolve the ownership question and allow the City to construct the Byxbee Park improvements. In 1991, the City and State entered into a 49-year lease for construction of improvements in a portion of the Baylands in the vicinity of the former Sea Scout building. All three agreements reserve the right of both the City and State to assert their mutually adverse claims of ownership at some time in the future.

It is critical to the EV project that this jurisdictional dispute not impede prompt construction. As a nonprofit organization, EV is fundraising in order to undertake the project. Of its $3.2 million construction budget, EV has commitments for $2.2 million and requests of new donors in the works for an additional several hundred thousand dollars. Of the $2.2 million in commitments, over $300,000 of that are pledges that are time-bound and linked to the project beginning by a set date. If EV does not begin construction on time, it could potentially lose those pledges. In addition, EV’s construction schedule is constrained by the need to protect the clapper rail, an endangered species whose Baylands habitat cannot be disturbed during its breeding season which begins in February. If EV cannot begin construction very soon, the project may not be completed by February 2009 when construction must cease.

To avoid delaying the EV project while the City and State negotiate to resolve the issue, staff proposes the attached First Amendment to the Option to Lease with EV. The amendment will add a clause to the option agreement and future lease addressing the jurisdiction dispute by requiring the City to defend any ownership claims asserted by the State. In the event the State is successful in its title claim, the City will indemnify EV for any lost investment.

The proposed amendment will enable EV to sign the lease and proceed with its construction in a timely manner so as not to jeopardize the project. In the meantime, staff will negotiate with the
State to amend the existing lease to permit the EV project. Once this occurs, the defense and indemnity obligation to EV will terminate.

**RESOURCE IMPACT**
There will be no resource impacts of this amendment unless the City is unable to negotiate a lease with the State and the State is determined to be the owner of the property. If these two events occurred the City could be subject to an indemnity obligation equal to the depreciated value of the construction costs of the building. (approximately $1-2 million). This possibility is currently considered to be very remote.

**POLICY IMPLICATIONS**
This recommendation is consistent with existing City policy.

**ENVIRONMENTAL REVIEW**
An Initial Study/Draft Mitigated Declaration for the rehabilitation and relocation project was adopted by the Director of Planning and Community Environment on September 4, 2008.

PREPARED BY: ______________________________

MARTHA MILLER
Senior Financial Analyst

DEPARTMENT HEAD APPROVAL: ______________________________

LAO PEREZ
Director/Administrative Services

CITY MANAGER APPROVAL: ______________________________

JAMES KEENE
City Manager

**ATTACHMENTS**
Attachment A: Amendment to Option to Lease