ATTACHMENT A

FIRST AMENDMENT TO OPTION
TO LEASE AGREEMENT

This First Amendment is dated October __, 2008 for reference purposes only (the “First Amendment”) is made to that Option to Lease Agreement dated July 11, 2007 (the “Option to Lease”) by and between the City of Palo Alto, a California municipal corporation (“City”), and the Environmental Volunteers, a California non-profit corporation (“Optionee”), who agree that the Option to Lease is modified, changed and amended as follows:

1. Recitals: The parties have entered into this First Amendment with reference to the following facts and objectives:

   A. Optionee has been informed that the State of California, through the State Lands Commission (the “State”), asserts that it has a claim to ownership of the land which the City has agreed to lease to Optionee pursuant to the Option to Lease (the “Claim”).

   B. It is the position of the City that it is the owner in fee of such lands which are the subject of the State Claim.

   C. The State has made similar sovereignty claims with respect to other property located in the Baylands and the State has entered into lease agreements covering the disputed property without prejudice to claims by the City or State regarding ownership of such property. A copy of one such agreement is attached hereto as Exhibit 1.

   D. The existence of the State claim threatens to impair Optionee’s ability to finance and complete the Project. In addition, should the State Claim be asserted and found to be meritorious such that State is determined to be the owner in fee of the Property, Optionee’s lease would be adversely affected and possibly forfeited, resulting in loss of Optionee’s investment and the benefits of its right to lease the property pursuant to the Option to Lease.

   E. In order to induce Optionee to continue its efforts to satisfy the conditions to exercise, and to exercise, the option to lease pursuant to the Option to Lease and to protect Optionee from loss as a consequence of the State Claim, City is willing to provide the contractual protection to Optionee that is set forth in this First Amendment.

2. Indemnification: Section II entitled “Premises” of the Lease that is Exhibit I to the Option to Lease is hereby amended by the addition of the following, which shall be added to the form of Lease prior to its execution by City and Optionee, if the Option to Lease is exercised by Optionee:

   “CITY and TENANT acknowledge that the State of California through the State Lands Commission (the “State”) has asserted that the State, by reason if its sovereignty, is the owner of some right, title, or interest in the Property resulting from its legal character as tidelands or submerged lands (the “State Claim”). CITY denies the State Claim and asserts that CITY is the owner in fee of the entire Property, free and clear of any such State of California sovereign right, title, or interest. CITY agrees to indemnify, defend with counsel reasonably acceptable to Tenant, protect, and hold harmless TENANT from and against all claims, liabilities, actions, proceedings, damages, losses, and expenses (including, without limitation, reasonable attorneys’ and experts’ fees) resulting from the assertion of the State Claim and/or the ultimate determination by a court of competent jurisdiction that the State Claim is valid in any respect, and/or otherwise as a consequence of the State Claim. In determining amounts due pursuant to the foregoing indemnification, in the event the Lease is terminated, TENANT’S loss shall include the fair value of its full investment in the Project (including without limitation all costs incurred to obtain
permits, architectural fees, and construction costs), appropriately adjusted for the remainder of the term of this Lease that would otherwise have existed had the Lease not been prematurely terminated. The foregoing agreement to indemnify, defend, protect and hold harmless shall terminate and be of no further force or effect if and when CITY enters into a legal, valid, binding and enforceable new lease or lease amendment to an existing lease with the State (i) by which the State grants to CITY all rights and approvals needed by CITY from the State to lease or sublease the Premises to TENANT on the terms contained in the Lease, (ii) which is or has become unconditional except for the performance of obligations by CITY as lessee which CITY is capable of performing in the ordinary course of business (e.g., payment of rent), and (iii) which permits TENANT to exercise all of its rights and enjoy all of the benefits granted to it by the Lease at no additional cost and for the full term of the Lease subject to TENANT not being in default of its obligations under the Lease (a “Qualifying Master Lease”). CITY shall, for the benefit of TENANT, perform its obligations under any Qualifying Master Lease and not take any action or exercise any right to terminate any Qualifying Master Lease so long as the Lease is in effect and has not been terminated in accordance with its terms or by mutual agreement.

3. Effect of First Amendment: Except as otherwise amended by this First Amendment, the Option to Lease shall continue in full force and effect in accordance with its terms.

CITY:

CITY OF PALO ALTO

By: ________________________________
City Manager

ATTEST:

By: ________________________________
City Clerk

OPTIONEE:

By: Allan Berkowitz
Its: Executive Director

By: Joyce Friedrichs
Its: Chair of the Board of Trustees

APPROVED AS TO FORM:

By: ________________________________
Sr. Asst. City Attorney

RECOMMENDED FOR APPROVAL:

By: ________________________________
Director, Planning and Community Environment

By: ________________________________
Director, Community Services
LEASE NO. PRC 7578.9

This Lease consists of this summary and the following attached and incorporated parts:

Section 1  Basic Provisions
Section 2  Special Provisions Amending or Supplementing Section 1 or 4
Section 3  Description of Lease Premises
Section 4  General Provisions

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the STATE LANDS COMMISSION (1807 13th Street, Sacramento, California 95814), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to:

CITY OF PALO ALTO
DEPARTMENT OF PUBLIC WORKS

hereinafter referred to as Lessee:

WHOSE MAILING ADDRESS IS: 250 Hamilton Avenue
Palo Alto, California 94303

those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.
LEASE TYPE: General Permit - Public Agency Use

LAND TYPE: Filled and unfilled land

LOCATION: Palo Alto, Santa Clara County

LAND USE OR PURPOSE: Palo Alto Harbor Improvements

TERM: Forty-nine (49) years; beginning April 1, 1992, ending March 31, 2041, unless sooner terminated as provided under this Lease.

CONSIDERATION: The public use and benefit with the State reserving the right at any time to set a monetary rental if the Commission finds such action to be in the State's best interest, as to any portion of the property ultimately confirmed into State ownership;

AUTHORIZED IMPROVEMENTS AND ACTIVITIES: construction of a sailing station facility, demolition of existing boat launch and backfilling and revegetation, restoration of 11.2 acres of marshlands, and public access improvements.

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2

1. The State alleges that the State, by reason of its sovereignty, is the owner of some right, title, or interest within the leased premises resulting from its legal character as tideland or submerged lands, in whole or in part. Lessee denies the State's allegations and asserts Lessee's ownership free and clear of any such State sovereign right, title, or interest. A final resolution of the title dispute will require time-consuming and costly studies of the evidence and may also require litigation. In avoidance of the time, expense, and uncertainties required to confirm the respective interests of either party, this permit is being issued to Lessee without clearing the title claims of the parties and, except for the rights granted to Lessee and the other terms and conditions of this permit, the issuance by State and the acceptance by Lessee, of the within permit, is without prejudice to any other claims, demands, causes of action, contentions, or assertions by either party at any time of their ownership of any right, title, or interest within the leased premises, or any portion thereof, whether the dispute is the subject or pending litigation, or otherwise. However, nothing contained herein shall prevent either
party from receiving the benefits of, or enforcing in any lawful manner, the other terms and conditions of this permit, and State shall take no action that will unreasonably interfere with the uses of the leased premises by Lessee pursuant to the terms and conditions of this permit.

2. Paragraph 2(a)(2), Section 4, entitled "General Provisions" is hereby amended to provide that the State's reserved right to set a monetary rental, if ever exercised, shall apply only to that portion of the property ultimately confirmed into State ownership either by agreement, or by a final judgement rendered by a court of competent jurisdiction.

3. Paragraphs 11(c), 12, and 5 of Section 4 are hereby amended to provide that any right of State contained in said paragraphs authorizing the State to: repossess the leased premises; remove persons, property, or improvements from leased premises; require Lessee to remove all improvements from leased premises; remove natural resources or grant leases to remove natural resources from the leased premises; if ever exercised, shall apply only to that portion of the leased premises ultimately confirmed into State ownership either by agreement, or by a final judgment rendered by a court of competent jurisdiction.

The second sentence of Paragraph 13, said paragraph entitled "Quitclaim", in Section 4, is amended to read: "Should Lessee, upon request by Lessor, fail or refuse to deliver the release as aforesaid, a written notice by Lessor reciting the failure or refusal of the Lessee to execute and deliver said release as herein provided, shall from the date of recordation of such notice, be conclusive evidence against Lessee and all persons claiming under Lessee of the termination of this lease." (The wording "and any claims and rights of Lessee in the Lease Premises" is deleted.)

4. The State acknowledges that the dredged materials to be taken from Harbor Point, approximately 198,000 cubic yards, in connection with the land restoration project, were placed at Harbor Point incidental to dredging activities at the former Palo Alto Yacht Harbor, and that a maximum of 198,000 yards will be removed from Harbor Point and used as foundation cover for landfill operations at Byxbee Park, a public use facility.

5. The State and the City of Palo Alto acknowledge that Byxbee Park is located in an area of disputed land titles, and that a nonprejudicial permit was heretofore entered into between the parties, confirming in part that such land titles therein remain unresolved, as stipulated in that certain permit identified as PRC 7348.9.

6. The State and the City of Palo Alto agree that upon resolution of the land title uncertainties within the lands covered in said permit PRC 7348.9, that the dredged materials to be deposited at Byxbee Park shall become a part of the real property over which they are deposited, and shall be owned in fee simple by the lawful owner of the underlying lands at that location.
7. Prior to the commencement of work, the City of Palo Alto agrees to submit, for review and approval by the Staff of the State Lands Commission, the plan by Wetlands Research Associates for the restoration of 11.2 acres as marshlands referenced in the City's Negative Declaration (SCH #91013031) at page 16.
SECTION 4

GENERAL PROVISIONS

1. GENERAL
These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

2. CONSIDERATION
(a) Categories
(1) Rental
Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

(2) Non-Monetary Consideration
If the consideration to Lessor for this lease is the public use, benefit, health or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

(b) Modification
Lessor may modify the method, amount or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

(c) Penalty and Interest
Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

3. BOUNDARIES
This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

4. LAND USE
(a) General
Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this lease or within ninety (90) days of the date set for construction to commence as set forth in this lease, whichever is later.

and within sixty (60) days after completing them, Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

(b) Continuous Use
Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance
Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

(d) Additions, Alterations and Removal
(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

(e) Conservation
Lessee shall practice conservation of water and other natural resources and shall prevent pollution and harm to the environment.

(f) Toxics
Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

(g) Enjoyment
Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises whenever their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises as provided under this Lease.

(h) Discrimination
Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.
(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the lease term and subsequently until all of the lease premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this lease.

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this lease and shall not sublet the lease premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any part of the lease premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian lands and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the lease premises, Lessee shall do all of the following:

(1) give prior written notice to Lessor.

(2) provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the lease premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable.

(3) provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

(4) provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the lease premises; and

(5) provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this lease by an assignee approved by Lessor, the Lessee may be released from all liability under this lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the lease premises; except as to any hazardous wastes, substances or materials as defined under federal state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the lease premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this lease within sixty (60) days after filing of the petition or appointment of the trustee, or the lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the lease premises. No assumption or assignment of this lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this lease will be cured; and (3) that all provisions of this lease will be satisfactorily performed in the future.
14. HOLDING-OVER
Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty five percent (25%).

15. ADDITIONAL PROVISIONS
(a) Waiver
(1) No term, covenant, or condition of this Lease and no default or breach of any such term, covenant or condition shall be deemed to have been waived, by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition of any other default or breach of any term, covenant or condition of this Lease.

(b) Time
Time is of the essence of this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice
All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent
Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes
This Lease may be terminated and its term, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties.

(f) Successors
The terms, covenants and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation
If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions
The captions of this Lease are not controlling as shall have no effect upon its construction or interpretation.

(i) Severability
If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants or conditions.
STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE P.R.C. NO. 75789

This Lease shall only become effective when approved by the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Premises upon the terms and conditions contained herein or a reservation of the Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE: CITY OF PALO ALTO

STATE OF CALIFORNIA
STATE LANDS Commission

By: [Signature]
Title: CHIEF, DIVISION OF LAND MANAGEMENT

Date: NOV 21 1991

ACKNOWLEDGEMENT

This Lease was authorized by the California State Lands Commission on (month day year)