



City of Palo Alto

City Council Staff Report

(ID # 6372)

Report Type: Action Items

Meeting Date: 1/19/2016

Summary Title: Approval of an RFP for the Sale of Transfer Development Rights for the Sea Scout Building

Title: Approval of Request for Proposal (RFP) for Sale of 2,500 Square Feet of Transferrable Development Rights for the Sea Scout Building (Without Parking Exemption) and Direction to Amend the Lease Between the City and Environmental Volunteers to Reflect Updated Obligations Regarding Restroom Construction

From: City Manager

Lead Department: Administrative Services

RECOMMENDATION

Staff requests that the Council approve the following recommendations:

1. Approve the Request for Proposal (RFP) for the sale of 2,500 square feet of Transferrable Development Rights (TDR) from the Sea Scout Building (without inclusion of parking exemptions) at the minimum starting price of \$225 per square foot.
2. Authorize the City Manager to execute and complete the sale of the subject TDR that do not contain "Parking Exemption Rights" to the highest qualified bidder(s), at a price not less than \$225 per square foot.
3. Authorize the City Manager to reimburse the Environmental Volunteers (EV) in the amount of \$300,000 from the sale proceeds of the TDR for expenses incurred for the rehabilitation and capital improvement of the Sea Scout Building.

Staff requests that the Council provide direction on the following requests:

1. EV requests the amendment of Section IXB of the Lease between the City of Palo Alto and the Environmental Volunteers to release EV from the development and construction obligations of building a public restroom in the Baylands Parkland and authorize the City to assume and manage the construction of the public restroom.

2. EV requests the reimbursement amount of \$40,334 paid to the City for fees including Utilities and engineering, City dump, Plan Checks or a reduction in the payment from EV to the City for the cost of construction of the public restroom from \$75,000 to \$35,000.
3. Consideration of any additional amount over the \$300,000 from the sale of the TDR to apply to the Sea Scout Building's project capital cost consistent with July 9, 2007, Council's approved motion.

EXECUTIVE SUMMARY

The Sea Scout Building is City owned property located in the Palo Alto Baylands Nature Preserve. In July 9, 2007, after a lengthy Request for Proposal (RFP) process, the City and Environmental Volunteers (EV) entered into an Option to Lease Agreement (Option) for a 40 year term to facilitate the occupancy and rehabilitation of this historical building. The City approved the waiver of \$36,000 for building plan check and permit fees and \$15,000 in planning fees. EV was to construct and pay for the cost of a public restroom up to \$75,000, which the City would maintain. EV is a non-profit organization devoted to promoting the understanding and responsibility of the environment through hands on science education. The Option allowed EV to prepare a detailed construction plan, raise adequate funding for the proposed renovation, and implement its mission for the use of the Sea Scout Building. On October 23, 2008, EV exercised its option and entered into a 40 year lease (Attachment A) with the City.

The City Council adopted the Sea Scout Building as a Category 1 structure to the City of Palo Alto's historic inventory, and later, the City Council approved resolutions designating the City owned buildings, known as the former Sea Scout buildings located at 2560 Embarcadero Road and 2300 Wellesley Street, known as the College Terrace Library and Palo Alto Child Care Center (College Terrace Library will be eligible as a "sender site" in the TDR program).

The purpose of the TDR program is to encourage and support the rehabilitation of historic buildings. The program provides a floor area bonus for the qualified rehabilitation of Category 1 and 2 historic buildings and Seismic Category I, II, and III buildings which are either owned by the City of Palo Alto or located in the Downtown Commercial District zone. For City-owned properties, floor area bonuses from eligible sender sites may be sold by the City on the open market through a public bid process.

On April 6, 2009, the City Council approved a Request for Proposal (RFP) for the sale of TDR Rights from the Sea Scout Building and allocated the amount of \$300,000 or higher from the sale to be given as reimbursement to (EV) towards the capital cost of rehabilitating the building. The City issued an RFP for the sale of 5,000 square feet of TDR from the Sea Scout and College Terrace Buildings, but there were no offers to purchase the TDR.

In the past four years, the real estate market has been undergoing a growth cycle indicating positive trends in the Bay Area. In Palo Alto, we are witnessing some of the highest valuations in decades for residential and commercial properties. The recent sale of the 9,592 square feet of TDR from the Roth Building that did not include any “Parking Exemption Rights” for the price of \$300.25 per square foot in May of 2015 indicated that there is robust market demand for this type of product. The proposed sale of 2,500 square feet of TDR will serve to reimburse the EV for their capital cost expenses and the remaining funds from the sale can be used toward the rehabilitation of other historical City owned properties. With the \$75,000 contribution from EV, the City can initiate the permitting and construction of the public restroom project in the Baylands, since EV lacks the personnel and the resources to undertake this project. Council has the option of approving and authorizing additional payment above the \$300,000 to reimburse EV for the project’s capital costs.

The public bidding process for selling bonus floor area development rights is contained in Policy and Procedure 1-46 ASD (Attachment B) for City owned TDRs. The Council is involved in the TDR sale process when it designates a site as a sender site and subsequently approves or rejects bids. Policy and Procedure 1-46 ASD was changed on April 13, 2009 to allow staff to initiate an RFP to market TDR without requiring Council approval in advance. This change eliminated a procedural step for staff and the Council while preserving the Council's discretion to designate a site as a TDR sender site, and Council’s power to make the ultimate decision to accept or reject bids for those TDR. The successful sale of the subject TDR without any parking exemption rights will settle all the outstanding and remaining issues between the City and EV which need to be resolved by mutual cooperation.

BACKGROUND

A. Sea Scout Building

The former Sea Scout building was a 2,209 square foot wood frame structure composed of two one-story wings on each side and a taller center section equivalent to two stories in height. The building was 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 was in poor condition and its floors were subject to flooding during biannual extreme high tides. Its rehabilitation required extensive sub-floor rehabilitation and relocation to higher elevation at its current location in the Baylands Preserve.

The Baylands Master Plan (Plan), adopted by the Council in 1979, called for the removal of berths and buildings, including the Sea Scout building, and the return of the harbor to its natural state. Voters reaffirmed the Plan on November 4, 1980, when a ballot measure to continue operation of the harbor was defeated. On February 10, 1986, (CMR:142:86), staff presented Council with a Yacht Harbor Building Assessment Report that recommended the demolition of the Sea Scout building as part of the harbor reclamation project. That same year, Council approved Capital Improvement Program (CIP) Project No. 86-06, which was established to implement the goals of the Plan, including demolition of the Sea Scout building.

On October 24, 1988 (CMR:495:88), and again on June 8, 1998 (CMR:249:98), Council delayed the demolition of the Sea Scout building in order to give the Sea Scouts time to remove its boats from the harbor and find a new place to meet. During this time, the boats were moved to Redwood City's harbor and Pacific Skyline, Council gave notice that due to liability and financial constraints it would no longer be able to support the Palo Alto Sea Scout base.

On May 6, 2002, Council adopted the Historic Resources Board's (HRB) recommendation to designate the former Sea Scout building as part of the City of Palo Alto's Historic Inventory in Category 1, as provided in Municipal Code Chapter 16.49. Council referred to the Policy and Services Committee consideration of how the building could become a viable element in the Baylands to be used by the Sea Scouts and other organizations committed to preserving the building for youth and other community uses. The Council also gave direction to the Committee to review issuance of an RFP so that nonprofit organizations would be encouraged to participate.

On August 7, 2002, the Historic Resource Board (HRB) was asked to recommend one of three specific sites for the relocation of the Sea Scout Building. In an effort to save the building, the HRB chose to prioritize the sites rather than to select a specific site. HRB also recommended that the Plan be amended to protect and save all historic improvements and that the City take steps to protect the Sea Scout Building from further deterioration prior to turning it over to a third party for renovation. On September 10, 2002, staff requested direction from the Council (CMR: 375:02) regarding issuing a Request for Proposal to relocate, repair, and lease the Sea Scout Building.

On March 17, 2003, Council adopted the recommendation (CMR: 143:03) of the Policy and Services Committee directing staff to: 1) remove the direction that the building be used for Sea Scout and other youth activities; 2) prepare a Request for Proposal (RFP) to solicit proposals for options to lease the facility; 3) in the process of selecting a tenant, give preference to an organization that would allow space for public use; and 4) ensure that the tenant's use of the building be compatible with the Baylands. In response to the RFP, one proposal was received on April 13, 2004. On October 12, 2004, Council approved the September 14, 2004 Policy and Services Committee recommendation (CMR: 410:04) to: 1) not accept the proposal submitted by the Lucie Stern Maritime Center responding to an RFP to relocate, repair and lease the former Sea Scout base; and 2) direct staff to open discussions with EV with a view towards developing a long-term lease. In accordance with Council direction, staff cooperated with EV while it conducted analyses to determine the feasibility of the project for the former Sea Scout building based on the requirements of the City's RFP for the property. On January 2007, EV submitted a proposal for an option to lease the site.

On July 9, 2007, Council approved a motion (Attachment C, CMR: 291:07) to: 1) authorize the City Manager to execute an Option to Lease Agreement with the EV ; 2) waive certain City processing fees for the project in accordance with Policy and Procedures 1-25, Public/Private

Partnerships; and 3) allow funds from the sale of the TDR Transfer Development Rights to apply to the EV project capital costs up to \$300,000 with any additional amount over \$300,000 subject to the approval of the City Council . The Option to Lease Agreement, dated July 9, 2007, provides for a two-year option term during which EV must receive required approvals of its project plans to rehabilitate, relocate and reuse the former Sea Scout building and provide evidence it has the funds to complete the project. The 40-year lease provides for the EV to use the site as its office headquarters for conducting its mission and providing other public benefits. EV proposed to rehabilitate the building consistent with the Secretary of the Interior's Standards for Historic Rehabilitation and relocate the building to use as its office headquarters for conducting its mission and providing other public benefits. The plan was to use the small rooms in the building for its offices and the large, two-story-high central room for meetings, training sessions and possibly to accommodate other groups who need meeting space. Additionally, EV planned to provide ecologically-oriented classes and exhibits at the site for Palo Alto citizens and the general public. EV also offered to pay for up to \$75,000 of the construction cost of a public restroom, and improve and operate the leased premise at no cost to the City.

On August 6, 2008, the HRB reviewed the EV project plans and its March 9, 2007 Historic Structures report for the building and recommended approval with conditions to the Architectural Review Board (ARB) and the Director of Planning and Community Environment. The HRB affirmed that the proposed rehabilitation of the building meets the definition of "Historic Rehabilitation" set forth in Municipal Code 18.18.030(b), and that the proposed plan complies with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. On August 21, 2008, the ARB recommended approval of the project, including a Conditional Use Permit and an Initial Study/Draft Mitigated Declaration. On September 4, 2008, the project received final approval from the Planning Director. On September 15, 2008,(CMR:367:08), Council adopted a Park Improvement Ordinance for the rehabilitation and relocation of the Sea Scout Building in accordance with the approved EV project plans.

On October 20, 2008, the Council approved the First Amendment to the Option to Lease with EV (CMR: 419:08) to address the jurisdiction dispute between the State of California and the City by requiring the City to defend any ownership claims asserted by the State. Council also approved that day a resolution (CMR: 414:08) designating the former Sea Scout building as a "Sender Site" in the TDR program, fulfilling the first of five provisions required for eligible City-owned buildings to participate in the TDR program. A summary of those provisions is attached (Attachment C). The second provision, requiring the City Manager to establish a public bidding process to sell the bonus floor area development rights, has been completed and is attached (Attachment D). The third provision was fulfilled by the March 9, 2007 Historic Structures Report prepared by EV for the building and the fourth provision by the project approvals from the HRB, ARB and Director of Planning. Satisfaction of the fifth provision, the establishment by the City Manager of a fund for the proceeds from the TDR sale, will occur following the second attempt for the sale of the TDR. The Council had approved allowing the funds from the sale of the TDR to apply to the EV project capital costs up to \$300,000, with any additional amount over \$300,000 subject to the approval of the City Council.

On April 6, 2009, the City approved a Request for Proposal (CMR: 171:09) for the sale of TDR from the Sea Scout Building and allocated the amount of \$300,000 with any additional amount subject to Council approval from the projected sale to be given as reimbursement to Environmental Volunteers (EV) to apply toward the Capital Cost of the rehabilitation of the building. In August of 2010, the City issued an RFP for the sale of 5,000 square feet of TDR from the Sea Scout and College Terrace Building, but there were no offers to purchase the TDR. The real estate development market was in a downward cycle recovering from the 2007 financial crisis which impacted the demand for products such as TDR that could have been used to add value to new real estate projects.

B. Transfer of Development Rights (TDR)

The City's Historic Sites are located in the Public Facility Zoning District. To promote the preservation and historic and seismic rehabilitation of historic buildings, Palo Alto Municipal Code Chapter 18.18.080 permits transfer of footage of development rights from the Historic Site to an eligible receiver site. As a condition of such transfer, the Historic Sender Sites were developed and maintained in conformance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The City has completed the requirements of Palo Alto Municipal Code Section 18.28.060. No floor area bonus will be utilized at the Historic Sender Site.

C. College Terrace Building

On February 7, 2005, Council approved revisions to the Zoning Code to allow eligible City owned historic properties located in any zone district to be "sender sites" under the Transfer of Development Rights ordinance, transferring historic or seismic rehabilitation floor area bonuses from these sites to eligible "receiver" sites located in the Downtown CD Zone District. As a Category 2 resource, and with the planned historic rehabilitation of the building, the College Terrace Library was eligible as a "sender site" for a 2,500 square foot floor area bonus.

The TDR program allows the City to sell the floor area bonus. On April 13, 2009 (CMR: 202:09), the City Council approved Resolutions designating the City owned Building the College Terrace Library and Palo Alto Child Care Center (College Terrace Library) to be eligible as a "sender Sites in the " in the Transfer of Development Rights (TDR) program. In August of 2010, the City issued an RFP for the sale of 5,000 square feet of TDR from the Sea Scout and College Terrace Building. There were no offers to purchase the TDR and College Terrace TDR (2,500 square feet) will not be offered for sale at this time.

DISCUSSION

Sea Scout Building

The City of Palo Alto offered the EV the opportunity to renovate the historic Sea Scout Building. The EV envisioned a space in which to offer the public environmental education study programs

both indoors and throughout the Preserve, trainings, lectures, educational displays and even allowing the building itself – as a rehabilitated historic structure with sustainable (‘green’) elements – to teach visitors about historic and sustainable buildings. Following an arduous seven-year development process and the successful completion of a \$3.8 million capital campaign, the EcoCenter (as it was renamed) opened its doors to the public in July 2012. Since then the EcoCenter has welcomed over 5,000 visitors annually and now offers a wide array of educational programs for children, adults, and families.

The successful restoration of the Sea Scout Building included:

- Planning and acquisition of permits from 15 local, state, and federal agencies.
- Temporary relocation of the building and construction of a new foundation upon which the building now sits.
- Total building restoration using multiple sustainable (‘green’) building elements.
- Adaptive reuse of the original facility now allowing for public access to educational programs and displays.
- Reconnection of the Bay Trail that previously was interrupted due to the unsafe nature of the site.
- Native plants monitoring program that facilitates enrichment of preserve fauna.
- Installation of outdoor educational exhibits including: native marsh-appropriate plants with interpretive signage; interpretive historical plaques; and Eco-Box, a hand-cranked device installed on the front deck that allows visitors to hear recorded educational lessons about the Preserve’s flora and fauna.

As a result of the Environmental Volunteers’ successful completion of this project, the following impacts on the community are noted:

- Removal of a blighted structure: for decades, the building was an eyesore literally sinking into the Bay.
- Safety and security: the deserted, abandoned building was a haven for illicit activity.
- Educational enhancements to the Baylands Preserve: with the installation of both outdoor and indoor exhibits and displays, visitors to the preserve enjoy a much enhanced park experience.
- Preservation of a local historic resource and honoring of the personalities who created it (Birge Clark, Lucie Stern).

Permit and Planning Fees

On July 9, 2007, the City Council approved the waiver of City processing fees that included \$36,000 in building plan check and permit fees and an estimated minimum of \$15,000 in Planning Fees (for detail see attachment E in CMR: 291:07), (Attachment D).

EV is also requesting reimbursement of \$41,334 in fees that it’s paid to the City (Attachment E). The basis of EV’s request is one of fairness. The City Council in 2007 did not waive the fees for charges pertaining to Utilities and City Dump. EV is requesting a refund since they contend that

it is not fair that EV should pay any City fees to restore the City's own property. EV believes that in successfully undertaking this project, they increased the City's real estate portfolio value by millions of dollars; removed a security hazard with which the City had struggled for decades; turned a blighted building that was an eyesore prominently visible in the Nature Preserve into a beautiful structure that adds value to the visitor experience in the Preserve; and restored a historic resource to the community. On October 29, 2012, EV contacted the City by letter requesting that EV's public restroom obligation be reduced from \$75,000 to \$35,000 to compensate for the payment of City fees by EV (Attachment F).

Public Restroom

According to Section IXB of the Lease, *"Tenant shall arrange for the construction of a public restroom facility in the existing porta-potty at the Duck pond at the Baylands Park. To the extent the cost of this bathroom exceeds \$75,000, the City shall reimburse Tenant for additional cost. The City shall be responsible for maintenance of the restroom."* EV is requesting that the City undertake the management and development of the public restroom at this location. According to EV, the development of the restroom will require the acquisition of numerous permits from many local, state, and federal agencies and the City is better set up to manage that process. According to EV the management of this task would present an undue burden since EV would need to hire a company to manage the project since it lacks the personnel and the resources to implement this part of their lease obligation. EV will pay the City \$75,000 toward the future cost of the public bathroom. According to Public Works, the cost of a single unisex public restroom can range from \$250,000 to \$300,000. A dual public restroom cost can range from \$300,000 to \$350,000.

EV has indicated it will remit to the City a check for whatever amount they are obligated to pay towards the restroom, or offset from any proceeds they receive, however it would present an undue burden for them to manage the construction process. One of the reasons for this is that their construction team has been released due to the fact that the work has been completed for quite some time. It is also important to note that there are multiple local, state, and federal agencies with permitting requirements in the Baylands.

Transferrable Development Rights

The purpose of the TDR program is to encourage and support the rehabilitation of historic buildings. The program provides a floor area bonus for the qualified rehabilitation of Category 1 and 2 historic buildings and Seismic Category I, II, and III buildings which are either owned by the City of Palo Alto or located in the Downtown CD zone district. For City-owned property, floor area bonuses from eligible sender sites may be sold by the City on the open market through a public bid process. Funds from the sale will be placed in a separate account that accrues interest and can be used to rehabilitate eligible City-owned historic buildings as the Council directs. On February 7, 2005, Council approved revisions to the Zoning Code to allow eligible City-owned historic properties located in any zone district to be "sender sites" under the Transfer of Development Rights ordinance, transferring historic or seismic rehabilitation

floor area bonuses from these sites to eligible “receiver” sites located in the Downtown CD Zone District.

Provisions for eligible City-owned buildings to participate in the TDR program are outlined in Chapters 18.18.080, 18.18.070 and 18.28.060 of the Palo Alto Municipal Code (PAMC), Attachment G. First, the Council must designate by resolution City-owned buildings that are Category 1 or Category 2 on the City’s historic inventory or Category I, II or III on the City’s seismic hazards identification list as eligible to participate as a “sender site” in the TDR program.

If the City Council does not approve the sale of the TDR, the City will need to pay EV per previous approval. Since the TDR did not sell in 2010, the City did not pay EV the amount that was approved by City Council, and EV did not pay toward the cost of a public restroom. The rehabilitation of the Sea Scout building has been completed. The market for TDR is active and staff has received calls regarding the availability of these products. The City will be marketing only the TDR (2,500 square feet) from the Sea Scout Building. The successful sale of the proposed TDR will facilitate the completion of the following:

1. The City’s refund to EV for the rehabilitation expense of the Sea Scout Building consistent with to the previous existing agreements and Council approval.
2. Deposit of any remainder funds from the sale into a City account to be used for the future improvement of other historical City Buildings.
3. EV’s funding of \$75,000 toward the construction of a public restroom.
4. City’s refund to EV for additional expense of City permits.

In 2015, Sea Scout Building won a Preservation Design Award from the California Preservation Foundation, a statewide organization that celebrates and recognizes exemplary work in historic preservation, restoration, and rehabilitation (Attachment H).

Request for Proposal

In accordance with the attached Policy & Procedure I-46D/ASD and Palo Alto Municipal Code sections 18.28.060, 18.18.060, 18.18.070 & 18.18.080, staff intends to prepare and release an RFP sometime in the next several months. Upon release of the RFP, and receipt of responses, if the minimum sale target (\$225) per square foot for the TDR has not been achieved, staff will forward the results of the bidding to the Council with a staff recommendation. The Council may accept the bid, or a bid which in its opinion best serves the public interest, or reject any and all bids. If the base bid amounts are received the City will award to the highest single for combined bids.

The RFP will include the date proposals are due, the minimum bid price and instructions on how to obtain and submit the bid package. The Information Flyer will explain the TDR program, including both limits and advantages of the development rights offered for sale. The development rights do not have to be assigned to or used on a receiver site at the time of

purchase. They may be held for use or resale at a later date. The Proposal Package will contain detailed information on submitting the bid and the offer and agreement to purchase. Major terms of the RFP are:

1. Minimum bid price of \$225 per square foot of floor area bonus.
2. City to offer a maximum of five (5) lots of 500 square foot.
3. Bidders may bid on one or more lots, and the City reserves the right to accept or reject all or part on multiple lot bids.
4. Sealed written bids, accompanied by a good faith deposit in the amount of 10 percent of the actual bid, but not less than \$20,000, will be accepted until 3:00 p.m. on ___(TBD)___, 2016. Bids will be opened on ___(TBD)___, but will not be accepted or rejected at that time.
5. Within seven days following notification from the City that a bidder was the qualified high bidder, the bidder is to pay the City the difference between the good faith deposit and 25 percent of the total bid.
6. Following acceptance of the bid(s) by the City, the buyer is to pay the balance of the purchase price within 30 days of written notification of acceptance of the bid(s).
7. The proposed Sea Scout TDR cannot be used for "Parking Exemption Rights".

Following Council approval, the RFP will be advertised in local newspapers and the information flyer will be sent to all persons on the Real Estate Division "Surplus Property Mailing List," persons owning eligible "receiver sites" in the CD District, local developers and others likely to be interested in the offering.

TIMELINE

Staff expects the transaction to take approximately 30-60 days to complete.

RESOURCE IMPACT

Sale of these development rights will result in settling an obligation to Environmental Volunteers, and any remaining proceeds will be set in a special account to be applied to planned rehabilitation work of other historical City owned Buildings as Council directs. The release of the RFP is anticipated to coincide with active market conditions for these instruments. The City is to pay the Environment Volunteers the amount of \$300,000 from the TDR proceeds or higher amount as discussed above. If the Council does not approve the sale of the TDR, staff will return to the City Council with a budget amendment recommendation to pay EV \$300,000 from its General Fund Budget Stabilization Reserve.

POLICY IMPLICATIONS

This recommendation is consistent with existing City policy.

ENVIRONMENTAL REVIEW

Authorization of the sale of the development rights for former Sea Scout Building is Categorically Exempt from California Environmental Quality Act (CEQA) review under CEQA guidelines section 15305, Minor Alterations in Land Use Limitation. The rehabilitation project

was Categorically Exempt from CEQA review pursuant to CEQA guidelines section 15331, Historical Resource Restoration/Rehabilitation, as a project limited to maintenance, repair, and rehabilitation in accordance with the secretary of interior standards for historic preservation.

Attachments:

- Attachment A: Lease - City and EV (PDF)
- Attachment B: P&P I-46 ASD (PDF)
- Attachment C: CMR- 291-07 Full report (PDF)
- Attachment D: Fees Waived Sea Scout Building 07-08 (DOC)
- Attachment E: EcoCenter Expenses for City Permits EV (PDF)
- Attachment F: Letter EV to Jim Keene_request_2012 (PDF)
- Attachment G: Municipal Code TDRs (DOCX)
- Attachment H: California Preservation Award 2015 (PDF)

ATTACHMENT A

EXHIBIT I

LEASE

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Exhibit I

LEASE #

This Lease is made this 23 day of Oct., 2008 by and between the City of Palo Alto, a chartered California municipal corporation, (CITY) and Environmental Volunteers a California non-profit corporation (TENANT).

RECITALS

1. CITY owns the real property and improvements located at 2560 Embarcadero Road, Palo Alto, California, commonly referred to as the "Sea Scout Base," and more specifically described and shown in Exhibit "B" to this Lease, which is attached hereto and incorporated herein by this reference (PREMISES").
2. On 7/11, 2007, CITY entered into an Option Agreement with TENANT, on file with the City Clerk as City Contract No. n/a (the "Option Agreement"). Under the Option Agreement, TENANT agreed to secure all necessary CITY approvals and permits in order to exercise the option granted under the Agreement to lease the PREMISES (the "Option"), relocate the building, construct improvements and operate the PREMISES as described in Exhibit "C" to this Lease which is attached hereto and incorporated herein by this reference (the "Project").
3. TENANT has satisfied all the conditions set forth in the Option Agreement, and now desires to exercise the Option and lease the PREMISES from CITY for the Project.
4. CITY desires to lease the PREMISES to TENANT for the Project, in accordance with the terms and conditions set forth below.

Now, therefore, in consideration of these recitals and the following covenants, terms and conditions, the parties hereto mutually agree as follows:

I. PURPOSE

The purpose of this Lease is to allow TENANT to perform the Project as described in Exhibit C, by developing and operating on the Premises a facility to house Tenant's offices and programs and to provide various educational and training programs to the public. according to the terms and conditions of this Lease.

II. PREMISES

Subject to the terms and conditions set forth in this Lease, CITY leases to TENANT that certain property (PREMISES) described and shown in "Exhibit B" attached to this Lease and by this reference made a part of this Lease. Unless specifically provided elsewhere in this Lease, TENANT accepts the PREMISES "as-is" on the date of execution of this Lease.

III. TERM

The term of this Lease shall be Forty (40) years, unless extended or terminated in accordance with this Lease, commencing the first day of the month following the date of execution of the Lease by the Mayor of CITY (the "Commencement Date"). Lessee shall, at the expiration of the term of this lease, or upon its earlier termination, surrender the property in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear. The City shall have the right, upon the termination of the term or upon a breach, to enter the Property and take possession of it.

IV. MONTHLY RENT and RENT WAIVER

A. TENANT agrees to pay to CITY as monthly rent the sum of One Dollar (\$1) per year without deduction or offset. Rent shall be payable, in advance, on or before the first day of each month at the place (or places) as may be designated in writing from time to time by CITY.

V. INTENTIONALLY DELETED

VI. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant shall deposit with the CITY the sum of \$ 5,000, which sum shall be held by CITY as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease. With the consent of the City Manager, in the sole and absolute discretion of the City Manager, in lieu of cash Tenant may deposit a letter of credit, pledged account or certificate of deposit, in form and substance acceptable to the City Manager, issued by a bank or other financial acceptable to the City Manager; the terms of the pledged account or certificate of deposit may provide for the direct payment of accrued interest directly to Tenant. If Tenant breaches any provision of this Lease, including, but not limited to the provisions relating to the payment of monthly rent, CITY may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any delinquent rent or other sum, or for the payment of any amount which CITY may spend or become obligated to spend by reason of Tenant's breach, or to compensate CITY for any other loss or damage which CITY may suffer by reason of Tenant's breach. If any portion of the security deposit is so used or applied Tenant shall, within 5 days after written demand therefor, deposit cash with CITY in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a breach of this Lease. CITY shall not be required

to keep the security deposit separate from its general funds, and Tenant shall not be entitled to interest on the security deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant (or, at CITY's option, to the last assignee of Tenant's interest hereunder) within 30 days following expiration of the Term. If CITY transfers its interest in this Lease, CITY shall transfer the security deposit to CITY's successor in interest.

VII. INCREASE IN SECURITY DEPOSIT NON-PROFIT ENTITY

On the fifth anniversary of the Commencement Date, and every five years thereafter, Tenant shall increase the amount of the initial security deposit according to the following formula:

$$R=SD[(B+I(A-B))/B]$$

Where:

R= Revised security deposit.

SD=Initial security deposit.

A=Average monthly index for the 12 calendar months ending with and including the index published just prior to the month in which each security deposit adjustment is to become effective.

B=Average monthly index for the 12 calendar months ending with and including the index published just prior to commencement of this Lease.

In no event shall the amount of the revised security deposit be less than the initial security deposit. The difference between the initial security deposit and the revised security deposit shall be due and payable to City within ten (10) days of receipt of a notice of revision of the security deposit from the Real Property Manager.

VIII. PERMITTED USES OF THE PREMISES

Tenant shall use the Premises for the uses specified below in this Article and Article IX and for no other use without CITY's prior written consent, which consent may be withheld in the sole and absolute discretion of the City Council; TENANT shall not use the PREMISES for any other purpose nor to engage in, or permit, any other business activity within or from the PREMISES. The uses which are permitted by this Article are the following:

- A. Use of the Premises for the offices and programs of Tenant.
- B. Workshops, classes and lectures associated with Tenant's mission and operations;
- C. Administrative offices and storage space to support the required services and uses under this Lease;

- D. Fundraising activities to support the permitted and required services and uses specified in this Lease, including but limited to sales of goods and gifts related to Tenant's use and programs and the hosting of benefits and social activities;
- E. Periodic rental of portions of the Premises by Palo Alto-based community groups and individuals, but in no event shall such rental be permitted for commercial purposes and in no event shall such rental interfere with or limit the required services and uses of the Premises set forth in Article IX. Any rental fee charges shall conform to an annual fee schedule approved in advance by the City Manager or his or her designee. Tenant may request modifications to the fee schedule during the year due to changed circumstances.

In addition to the foregoing, subject to the prior written approval of the City Manager, or his or her designee, Tenant may also use the Premises to provide such additional services and uses which are ancillary to and compatible with the permitted services and uses stated above and are not in conflict with the required services and uses specified in Article IX. In addition, and also subject to the prior written approval of the City Manager, or his or her designee, Tenant may also use the Premises to conduct revenue-generating events or operations so long as (i) such uses do not materially interfere with Tenant's ability to provide the required services and uses described in Article IX, (ii) such services or uses will not result in damage to the Premises or materially impair the operations conducted on the Premises, and (iii) all net revenue generated by such services or uses are devoted exclusively to funding the activities of Tenant conducted at the Premises. In each case, the approval of the City Manager, or his or her designee, shall not be unreasonably withheld.

IX. REQUIRED USES OF THE PREMISES

Throughout the term of this Lease TENANT shall provide the following uses, services, activities and public benefits ("Required Uses"):

- A. Rehabilitate, adaptively re-use, improve and maintain the historic building known as the "Sea Scout Base Building" located on the Premises;
- B. Tenant shall arrange for the construction of a public restroom facility in the vicinity of the existing porta-potty at the duck pond at the Baylands Park. To the extent the cost of this restroom exceeds \$75,000, the City shall reimburse Tenant for the additional cost. The City shall be responsible for the maintenance of the restroom.
- C. Trail Access: Following relocation of the building Tenant will construct accessible connections between the promenade deck of the building and the two adjacent termini of the existing Marsh Front Trail in order to close the gap in the multi-use public trail. The trail connections and promenade deck will be open and accessible to the public during the open hours of the park. Tenant shall be responsible for the maintenance of the trail tread along the promenade deck itself so that it is safe, smooth, clean, accessible, unobstructed and attractive.

D. **Historic and Environmental Displays:** Tenant shall create at least two permanent, exterior informational and educational displays and shall make them available at the Premises for the public and Palo Alto community members to enjoy. One such permanent exhibit will highlight the historical background and former uses of the building and another one or more displays will deal with Bayland Ecology related to the flora and fauna of the Bay. These displays will be continually maintained by Tenant with the intention that over time the Bay flora and fauna displays will be periodically re-designed and updated.

E. **Waterfront Restoration:** Tenant shall remove the existing seawall in front of the existing building and adjacent parking lot which now interferes with the waterfront bank to allow the waterfront bank to be returned to its natural state.

F. **Nature Preserve Restoration:** Tenant shall restore the natural area around the building after its relocation to create an opportunity for public education and study of natural area restoration that can, in both the short and long term, lead to lasting, significant and positive impacts on natural areas for which the City is responsible. Subject to regulatory agency review, Tenant will rehabilitate the areas surrounding the building by adding as much as four times the number of types of native plants than would otherwise be required for basic mitigation. The plants to be added will likely include Pickleweed, Alkali Heath, Pacific Gumplant, Sea-Lavender, Quail Bush, Coyote Bush, and Silver Lupine.

G. **Public Information and Education:** Tenant will provide 50 hours annually of public information and education to Baylands visitors and/or Palo Alto community members. This public information and education may include, but is not limited to, environmental education programs, community lectures, open houses, nature walks, Baylands restoration projects, camp programs and similar educational opportunities that facilitate the public's use of the Baylands Nature Park and the dissemination of information in ways and manners that further the public's understanding to the Baylands Preserve. Over time it is Tenant's intention to increase the hours offered for these activities should the availability of increased resources so permit.

H. **Provision of public benefits through fulfillment of the Environmental Volunteers charitable mission;**

I. **Enhance environmental awareness of, and sensitivity to, natural science issues by Palo Alto residents and the general public through various programs which may include classes, displays, exhibits and demonstrations relating to local environmental conditions available to the public; provided, however, that Tenant may elect to charge an admission fee and establish specific viewing and attendance times with respect to displays, exhibits, demonstrations, classes or programs that are available to the public. Any admission fee charged shall conform to an annual fee schedule approved in advance by the City Manager or his or her designee. Tenant may request modifications to the fee schedule during the year due to changed circumstances.**

J. **Green design features:** The rehabilitation and adaptive re-use of the building will incorporate numerous "green" design features in order to make it a more environmentally sensitive and responsive facility and, additionally, to provide an example for other organizations and the community. Tenant will periodically conduct on-site meetings, seminars and educational

programs designed to share its developed knowledge in this area based on its experience in implementing the "green" design materials and features as well as maintain an ongoing display and exhibit.

Every five (5) years, the City and TENANT shall meet and confer to review the effectiveness and relevance of the above listed Required Uses. Upon mutual agreement, the parties may substitute, modify, add or eliminate Required Uses to reflect current and projected community interest, need or preference. Any changes agreed to by Tenant shall be readily achievable within Tenant's annual budget constraints. Any change to the Required Uses shall be reflected in a written modification to this Lease.

X. MAINTENANCE AND REPAIR

TENANT at TENANT's expense, shall perform all maintenance and repairs, including all painting, and all maintenance of landscaped areas necessary to keep the PREMISES and all improvements thereto in first-class order, repair and condition, and shall keep the PREMISES and all improvements thereto in first-class order, repair and condition as contemplated under the approved development plans and construction drawings for the Project, throughout the term of this LEASE. For purposes of continued historic preservation of the PREMISES, TENANT shall comply with the maintenance plan and schedule described in Exhibit "F" attached hereto and incorporated herein by this reference. In addition, TENANT shall maintain, at TENANT's expense, all equipment, furnishings and trade fixtures upon the PREMISES required for the maintenance and operation of the Project. TENANT expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of Sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair. TENANT further agrees that if and when any repairs, alterations, additions or betterments shall be made by TENANT as required by this paragraph, TENANT shall promptly pay for all labor done or materials furnished and shall keep the PREMISES free and clear of any lien or encumbrance of any kind whatsoever. If TENANT fails to make any repairs or perform any maintenance work for which TENANT is responsible within a reasonable time (as determined by the City Manager in the City Manager's sole discretion) after demand by the CITY, CITY shall have the right, but not the obligation, to make the repairs at TENANT's expense; within ten (10) days of receipt of a bill therefor, TENANT shall reimburse CITY for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by CITY shall in no event be construed as a waiver of the duty of TENANT to make repairs or perform maintenance as provided in this Section.

XI. INITIAL CONSTRUCTION BY TENANT

- A. Plans and Specifications. TENANT shall improve the PREMISES, at no cost to CITY, to adequately accommodate those services, activities and uses required by the Project under Section IX (REQUIRED USES OF THE PREMISES) and Exhibit C hereof. The

development plans prepared by TENANT and approved by CITY during the Option period under the Option Agreement, preceding execution of this Lease, shall be a master plan for development of the PREMISES, and the construction drawings prepared by TENANT and approved by the City Engineer and Chief Building Official during the same period shall provide the plans, specifications, and time schedule for constructing such improvements. The approved development plans and constructions drawings are attached hereto as Exhibit "D" and incorporated herein by this reference.

- B. Construction Standards. All design and construction shall conform to the approved plans and specifications, and shall meet all other requirements contained in this Lease, including but not limited to Section XIV (CONSTRUCTION STANDARDS) and Section XV (ASSURANCE OF COMPLETION).
- C. Asbestos and Lead Paint. The CITY is not aware of lead paint and asbestos laden materials in the Sea Scout Base building. However, TENANT shall be solely responsible for any lead and asbestos abatement or containment in the building to the extent required under all applicable federal, state and local building and safety codes and regulations, and shall fully comply with any applicable asbestos notification requirements under California Health and Safety Code section 25915 et seq., as amended.
- D. Cost of Improvements. Promptly after completion of construction, TENANT shall provide to the City Manager a statement of the reasonable and actual costs of construction for the initial improvements, which statement shall be certified as to accuracy and signed by TENANT under penalty of perjury.
- E. Permits. To the extent allowed under current policy and to the extent authorized by the City Council, the City shall work with Tenant in seeking waiver of all or a portion of applicable City permit fees.

XII. CERTIFICATE OF INSPECTION.

Upon completion of construction of any building, TENANT shall submit to the City Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

XIII. ALTERATIONS BY TENANT

TENANT shall not make any alterations or improvements to the PREMISES without obtaining the prior written consent of the City Manager, which consent shall not be unreasonably withheld. TENANT may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by CITY, provided such fixtures and installation have been reviewed and approved by the City Manager.

XIV. CONSTRUCTION STANDARDS

All construction and alterations performed by or on behalf of Tenant shall conform to the construction and architectural standards contained in Exhibit D. Once the work is begun, Tenant shall with reasonable diligence prosecute all construction to completion. All work shall be performed in a good and workmanlike manner, shall substantially comply with any plans and specifications approved by CITY and shall comply with all applicable governmental permits, laws, ordinances and regulations.

Tenant shall pay all costs for construction done or caused to be done by Tenant on the Premises as permitted or required by this Lease. Tenant shall keep the Premises free and clear of all claims and liens resulting from construction done by or for Tenant.

Tenant shall defend and indemnify CITY against all claims, liabilities and losses of any type arising out of work performed on the Premises by Tenant, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by CITY in negotiating, settling, defending or otherwise protecting against such claims.

XV. ASSURANCE OF COMPLETION

Prior to commencement of this Lease and any construction or alteration to the PREMISES, or any phase thereof, TENANT shall furnish the City Manager evidence that assures CITY that sufficient monies will be available to complete the proposed work. The amount of such assurance shall be at least the total estimated construction cost that was submitted to and approved by CITY in accordance with the Option Agreement. Evidence of such assurance shall take one of the forms set out below and shall guarantee TENANT'S full and faithful performance of all of the terms, covenants, and conditions of this Lease:

- A. Completion Bond;
- B. Performance, labor and material bonds, supplied by TENANT'S contractor or contractors, provided the bonds are issued jointly to TENANT and CITY;
- C. Irrevocable letter of credit from a financial institution; or
- D. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the City Manager. All bonds and letters of credit shall be in a form acceptable to the City Manager, and shall insure faithful and full observance and performance by TENANT of all of the terms, conditions, covenants, and agreements relating to the construction of improvements or alterations in accordance with this Lease. To the extent a letter of credit is utilized, the amount of the letter of credit shall be substantially equal to the estimated cost to complete all approved construction, and City shall cooperate with Tenant to structure the letter of credit so that its amount may be periodically reduced to reflect the remaining cost to complete all approved construction, to permit Tenant to recover from the issuer of the letter of credit any excess collateral.

XVI. AS BUILT PLANS

Upon completion of any (i) new construction, (ii) structural alterations or (iii) non-structural alterations costing more than \$25,000, TENANT shall provide the City Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the PREMISES.

XVII. UTILITIES

TENANT shall make all arrangements for and fully and promptly pay for all utilities and services furnished to the Premises or used by Tenant, including, without limitation, gas, electricity, water, sewer, telephone service, and trash collection, and for all connection charges.

XVIII. INSURANCE

Tenant's responsibility for the Property begins immediately on commencement and Tenant, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in an amount(s) and in a form acceptable to City as set forth in Exhibit E attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Tenant's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit E.

XIX. DAMAGE OR DESTRUCTION - LEASE TO GOVERN TENANT'S RIGHTS

Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease. Tenant waives the provisions of any statutes that relate to termination of leases when leased property is destroyed, including Civil Code §1932(2) and Civil Code §1933(4), and agrees that Tenant's rights in case of damage or destruction shall be governed solely by the provisions of this Lease.

XX. RESTORATION BY TENANT

(A) Destruction Due to Risk Covered by Insurance.

If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section XVIII (INSURANCE), rendering the Premises totally or partially inaccessible or unusable, Tenant shall restore the Premises to substantially the same condition as they were in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. Notwithstanding the foregoing, in the event the insurance proceeds are not sufficient to cover ninety-five percent (95%) of the cost to restore all damage to the Premises and Tenant is not in default of its obligation to carry required insurance,

then Tenant shall have the option to terminate this Lease unless City agrees to pay the amount of restoration cost that is not covered by insurance proceeds actually recovered.

(B) Destruction Due to Risk Not Covered by Insurance.

If, during the term, the Premises are totally or partially destroyed from a risk not covered by the insurance described in Section XVIII (INSURANCE), rendering the Premises totally or partially inaccessible or unusable, Tenant shall restore the Premises to substantially the same condition as they were in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ninety-five percent (95%) of the then replacement value of the Premises destroyed, Tenant can elect to terminate this Lease by giving notice to CITY within sixty (60) days after determining the Restoration cost and replacement value. If Tenant elects to terminate this Lease, CITY, within thirty (30) days after receiving Tenant's notice to terminate, can elect to pay to Tenant, at the time CITY notifies Tenant of its election, the difference between ninety-five percent (95%) of the replacement value of the Premises and the actual cost of restoration, in which case Tenant shall restore the Premises. On CITY's making its election to contribute, each party shall deposit immediately the amount of its contribution with the Insurance Trustee provided for in Subsection (C). If the Destruction does not exceed ninety-five percent (95%) of the then replacement value of the Premises, Tenant shall immediately deposit the cost of restoration with the Insurance Trustee as provided in Subsection (c). If Tenant elects to terminate this Lease and CITY does not elect to contribute toward the cost of restoration as provided in this section, this Lease shall terminate.

(C) Restoration of Premises.

(1) Minor Loss.

If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section XVIII (INSURANCE), and the total amount of loss does not exceed ten percent (10%) of the replacement cost of the Premises, Tenant shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Tenant for the sole purpose of making the restoration of the Premises in accordance with this Lease

(2) Major Loss - Insurance Trustee.

If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section XVIII (INSURANCE), and the total amount of loss exceeds the amount set forth in paragraph (1), Tenant shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to such institutional lender or title company as may be jointly selected by the parties ("the Insurance Trustee").

If the Premises are destroyed from a risk not covered by the insurance described in Section XVIII (INSURANCE), and Tenant has the obligation to restore the Premises as provided in subsection (B), both parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Tenant as construction progresses, for payment of the cost of Restoration. A 10% retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Premises are free of all mechanics' liens and lienable claims.

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund.

If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration Tenant shall deposit the amount of the deficiency with the Insurance Trustee within fifteen (15) days after request by the Insurance Trustee indicating the amount of the deficiency.

Any undisbursed funds after compliance with the provisions of this section shall be delivered to CITY to the extent of CITY's contribution to the fund, and the balance, if any, shall be paid to Tenant.

All actual costs and charges of the Insurance Trustee shall be paid by Tenant.

If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, CITY shall substitute a new trustee in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this section.

(3) Procedure for Restoring Premises.

Within sixty (60) days after the date that Tenant is obligated to restore the Premises, Tenant at its cost shall prepare final plans and specifications and working drawings complying with applicable Laws that will be necessary for Restoration of the Premises. The plans and specifications and working drawings must be approved by CITY. CITY shall have thirty (30) days after receipt of the plans and specifications and working drawings to either

approve or disapprove the plans and specifications and working drawings and return them to Tenant. If CITY disapproves the plans and specifications and working drawings, CITY shall notify Tenant of its objections and CITY's proposed solution to each objection. Tenant acknowledges that the plans and specifications and working drawings shall be subject to approval of the appropriate governmental bodies and that they will be prepared in such a manner as to obtain that approval.

The restoration shall be accomplished as follows:

(1) Tenant shall complete the restoration as soon as reasonably practicable after final plans and specifications and working drawings have been approved by the appropriate governmental bodies and all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Tenant's reasonable control).

(2) Tenant shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section XVIII (INSURANCE). Such insurance shall contain waiver of subrogation clauses in favor of CITY and Tenant in accordance with the Provisions of Exhibit B.

(3) Tenant shall notify CITY of the date of commencement of the restoration at least ten (10) days before commencement of the restoration to enable CITY to post and record notices of nonresponsibility. The contractor retained by Tenant shall not commence construction until a completion bond and a labor and materials bond have been delivered to CITY to insure completion of the construction.

(4) Tenant shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Premises.

(5) On completion of the restoration Tenant shall immediately record a notice of completion in the county in which the Premises are located.

(6) The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this section.

(7) If TENANT elects to terminate this lease and not rebuild or repair such damage, then if CITY so requires, TENANT shall demolish any remaining structures or portions of structures not desired by CITY and clean up any and all debris and shall pay to CITY a pro-rata portion of the proceeds of insurance required in accordance with Section ____ hereof. The pro-rata portion shall be based on the following formula:

$$L = P(R/T)$$

Where:

L = TENANT's portion of insurance proceeds.

P = Total insurance proceeds paid exclusive of demolition and debris removal expenses.

- R = Remaining term of the Lease in months.
 T = The total Lease term in months, including any extensions made in accordance with this Lease.

TENANT's liability for demolition and cleanup shall be limited to insured losses including any deductible amount.

XXI. ASSIGNING AND SUBLETTING PROHIBITED

The parties acknowledge that CITY has relied on the unique background, character and capabilities of TENANT in entering into this Lease or in establishing the rent payable under this Lease. Consequently, Tenant shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest herein, or any right or privilege appurtenant hereto, or allow any other person (the employees, agents and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof. Any purported assignment or subletting without such consent shall be void, and shall, at the option of the CITY, constitute a default under this Lease.

For purposes of this Section, each of the following shall also be deemed an assignment subject to the provisions hereof: (i) if Tenant is a partnership or joint venture, a withdrawal, addition, or change (voluntary, involuntary, by operation of law, or otherwise) of any of the partners or venturers thereof; (ii) if Tenant is a limited liability company, a withdrawal, addition, or change (voluntary, involuntary, by operation of law, or otherwise) of any of the members or managers thereof; (iii) if Tenant is composed of more than one person, a purported assignment or transfer (voluntary or involuntary, by operation of law, or otherwise) from one thereof to the other or others thereof; (iv) if Tenant is a corporation, a change in the ownership (voluntary or involuntary, by operation of law, or otherwise) of 25% or more of its capital stock or members (or, in the case of a nonprofit corporation without members, of 25% or more of its directors); or (v) a change in Tenant's status as a non-profit, charitable organization.

XXII. NON-PROFIT COMMUNITY ORGANIZATION

For purposes of this Section, each of the following shall also be deemed an assignment subject to the provisions hereof: (i) any amendment, revision or repeal of Tenant's articles of incorporation or bylaws, unless approved by the City Manager before becoming effective, which approval shall not be unreasonably withheld; (ii) any change in the membership fees, if any, charged by Tenant, unless approved by the City Manager before becoming effective, which shall not be unreasonably withheld, provided however, that approval shall not be required if the increase in question is not more than five percent (5%) per year since the last time the membership fee in question was adjusted; (iii) any denial of membership in Tenant to any person meeting the requirements for membership described in Tenant's articles of incorporation or bylaws. Tenant shall at all times assure that the City Manager has on file copies of Tenant's then-current articles of incorporation, bylaws and fee schedules.

XXIII. RESERVATION OF AVIGATIONAL EASEMENT

CITY hereby reserves for the use and benefits of the public, a right of avigation, flight and resulting noise for the passage of aircraft landing at, taking off or operating from the adjacent airport operated by the County of Santa Clara.

XXIV. POST-ACQUISITION TENANCY

TENANT hereby acknowledges that TENANT was not an occupant of the PREMISES at the time the PREMISES were acquired by CITY. TENANT further understands and agrees that as a post-acquisition tenant, TENANT is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

XXV. BROKERS

Each party represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this Lease in any manner. Each Party ("Indemnifying Party") shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

XXVI. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and shall be deemed given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit into the United States mail, postage prepaid, by registered or certified mail, return receipt requested. Hand delivery includes, without limitation, delivery by a reputable commercial delivery service and delivery by facsimile transmission ("Fax") or internet electronic mail ("Email") (if the receiving party has designated a Fax number and/or a valid internet Email address); provided, however, that delivery by Fax or by Email shall not be effective unless (i) transmitted during normal business hours of the receiving party, and (ii) confirmed by delivering party within 24 hours by delivery of a physical copy of the material initially sent by Fax or Email. Unless notice of a different address has been given in accordance with this section, all such notices shall be addressed as follows:

TO: CITY

Real Property Manager
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 329-2468

TO: TENANT

Executive Director
Environmental Volunteers
3921 E. Bayshore Road
Palo Alto, CA 94303
(650) 961-0548

with a copy to:
City Clerk, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 328-3631

with a copy to:
Executive Director
Environmental Vounteers
2560 Embarcadero Road
Palo Alto, CA 94303
(650) 961-0548

and
City Attorney, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto CA 94303
FAX: (650) 329-2646

Brad O'Brien, Esq
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-6811

XXVII. ATTACHMENTS TO LEASE.

This Lease includes the following exhibits, which are attached hereto and by this reference incorporated into this Lease:

- Exhibit A - General Conditions
- Exhibit B - Description of Leased Premises
- Exhibit C - Description of the Project
- Exhibit D - Development Plans and Construction Drawings
- Exhibit E - Insurance Requirements
- Exhibit F - Long Term Maintenance Plan and Schedule for the Premises

The inclusion of Sections in Exhibit A (GENERAL CONDITIONS), Exhibit B (DESCRIPTION OF LEASED PREMISES), Exhibit C (DESCRIPTION OF THE PROJECT), Exhibit D (DEVELOPMENT PLANS AND CONSTRUCTION DRAWINGS), Exhibit E (INSURANCE REQUIREMENTS) or Exhibit F (LONG TERM MAINTENANCE PLAN AND SCHEDULE FOR PREMISES) is not in any way intended to lessen the importance of these Sections, but is merely done to enhance the organization of various Sections and this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY:

TENANT:

CITY OF PALO ALTO (LESSOR)

ENVIRONMENTAL VOLUNTEERS

BY: Steph J. ...
for City Manager

BY: [Signature]
a California non-profit corporation

Its: EXECUTIVE DIRECTOR

ATTEST:

By: _____

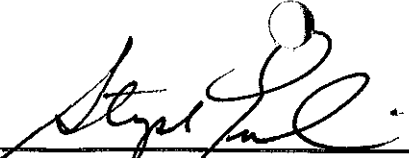
BY: Wanda J. Grider
City Clerk

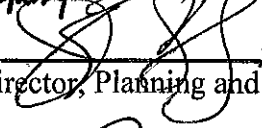
Its: _____
(Corporate Seal)


APPROVED AS TO FORM:

By: [Signature]
Senior Asst. City Attorney

RECOMMENDED FOR APPROVAL:

By: 
Assistant City Manager
~~Deputy~~

By:  for Curtis Williams
Director, Planning and Community Environment

By: 
Director, Community Services

**EXHIBIT A
GENERAL CONDITIONS**

1. DEFINITION AND AUTHORITY OF CITY MANAGER

City Manager means the City Manager of the CITY, and the City Manager's designee or designees. The City Manager may establish different designees for different purposes. The City Manager may designate persons individually or by office or title. If a person is designated by office or title, and the position is eliminated or the title changed, the designation shall automatically apply to the position or title succeeding to the responsibilities of the former position or title.

Any consent or approval anticipated by, required under, or consistent with this Lease may be given on behalf of CITY by the City Manager. The City Manager is not authorized to enter into any amendment of this Lease without the approval of the City Council of CITY.

Notwithstanding any grant of authority to the City Manager under this Lease, the City Manager may in the City Manager's sole and absolute discretion waive the grant of authority in a specific matter, in which event the City Council of CITY shall retain the authority to act in that matter on behalf of CITY.

2. RENT PAYMENT PROCEDURES

- A. Rent includes all amounts payable by Tenant to City under this Lease, including but not limited to monthly rent, percentage rent, prepaid rent, security deposit, taxes and assessments, common area charges, operating costs, insurance, utilities, and other charges payable by Tenant (even if payable directly to someone other than CITY).
- B. TENANT'S obligation to pay rent shall commence upon the commencement of this Lease. If the term commences or terminates on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month.
- C. Rent (other than percentage rent, if applicable) payments shall be delivered to CITY's Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. The designated place of payment may be changed at any time by CITY upon ten (10) days' written notice to TENANT.
- D. TENANT specifically agrees that acceptance of any late or incorrect rentals submitted by TENANT shall not constitute an acquiescence or waiver by CITY and shall not prevent CITY from enforcing Section 3 (CHARGE FOR LATE PAYMENT) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any nonmonetary breach.

3. CHARGE FOR LATE PAYMENT

Tenant acknowledges that late payment of rent will cause CITY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Accordingly, if any payment of rent is not received by CITY within five (5) days after the due date, then, without any requirement for notice to Tenant, Tenant shall pay to CITY a late charge equal to the greater of (i) six percent (6%) of the amount of the overdue payment, and (ii) \$100.00. The parties agree that such late charge represents a fair and reasonable estimate of the costs CITY will incur by reason of late payment by Tenant. Acceptance of the late charge by CITY shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent CITY from exercising any of the other rights and remedies available to CITY.

4. PARTNERSHIP/CORPORATE AUTHORITY & LIABILITY

If TENANT is a partnership, each general partner:

- A. represents and warrants that the partnership is a duly qualified partnership authorized to do business in Santa Clara County; and
- B. shall be jointly and severally liable for performance of the terms and provisions of this Lease.

If TENANT is a limited liability company, each individual signing this Lease on behalf of TENANT represents and warrants that:

- A. he or she is duly authorized to do so in accordance with the Articles of Organization and Operating Agreement of TENANT; and
- B. TENANT is a duly qualified limited liability company authorized to do business in the State of California.

If TENANT is a corporation, each individual signing this Lease on behalf of TENANT represents and warrants that;

- A. he or she is duly authorized to do so in accordance with an adopted Resolution of TENANT'S Board of Directors or in accordance with the Bylaws of the corporation; and
- B. TENANT is a duly qualified corporation authorized to do business in State of California.

As used in this Lease, the term "TENANT'S AGENT" shall mean TENANT'S agents, employees, Board members, Project Management Group members, sublessees, concessionaires, or licensees, or any person acting under contract with TENANT; however, the definition of TENANT'S AGENTS used herein, shall not be construed to authorize or permit any sublease or

license not authorized or permitted elsewhere in this Lease. As used in this Lease, the term "CITY'S AGENTS" shall mean City officers, agents or employees

5. TIME

Time is of the essence of this Lease.

6. SIGNS

TENANT agrees not to construct, maintain, or allow any sign to be placed upon the PREMISES except as may be approved by CITY, which approval shall not be unreasonably withheld. Signs shall be allowed identifying the Environmental Volunteers as occupant. Unapproved signs, banners, etc., may be removed by CITY.

7. PERMITS AND LICENSES

Neither CITY's execution of this Lease nor any consent or approval given by or on behalf of CITY hereunder in its capacity as a party to this Lease shall waive, abridge, impair or otherwise affect CITY's powers and duties as a governmental body. Any requirements under this Lease that Tenant obtain consents or approvals of CITY are in addition to and not in lieu of any requirements of law that Tenant obtain approvals or permits. However, CITY shall attempt to coordinate its procedures for giving contractual and governmental approvals so that Tenant's requests and applications are not unreasonably denied or delayed. TENANT shall be solely responsible for obtaining any and all permits and/or licenses that may be required by law, including but not limited to building permits and business licenses.

8. MECHANICS LIENS

TENANT shall at all times indemnify and save CITY harmless from all claims for labor or materials supplied in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the PREMISES, and from the cost of defending against such claims, including attorney fees. TENANT shall provide CITY with at least ten (10) days written notice prior to commencement of any work that could give rise to a mechanics lien or stop notice. CITY reserves the right to enter upon PREMISES for the purposes of posting Notices of Non-Responsibility.

In the event a lien is imposed upon the PREMISES as a result of such construction, repair, alteration, or installation, TENANT shall either:

- A. Record a valid Release of Lien; or
- B. Deposit sufficient cash with CITY to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

- C. Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the PREMISES from the claim of the lien from any action brought to foreclose the lien.

Should TENANT fail to accomplish one of the three optional actions within fifteen (15) days after the filing of such a lien, the Lease shall be in default and may be subject to immediate termination.

9. LEASE ORGANIZATION AND RULES OF CONSTRUCTION

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this agreement, refer to this agreement.

All the terms and provisions hereof shall be construed to effectuate the purposes set forth herein, and to sustain the validity hereof.

The titles and headings of the sections of this agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms of provisions hereof or be considered or given any effect in construing this agreement or any provision hereof in ascertaining intent, if any question of intent shall arise.

10. ENTIRE AGREEMENT

This Lease contains all of the agreements and understandings of the parties regarding the PREMISES, and supersedes any and all prior leases or agreements entered into by CITY for use of the PREMISES. All such prior leases or agreements are null and void.

11. AMENDMENTS

Any modifications or amendments of this Lease must be written, and shall not be effective unless executed by both parties.

12. UNLAWFUL USE

TENANT agrees that no improvements shall be erected, placed upon, operated, nor maintained within the PREMISES, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, or ordinance of a governmental agency having jurisdiction over TENANT'S use of the PREMISES.

Lessee further agrees not to use Premises for any purpose not expressly permitted hereunder. Lessee shall not (i) create, cause, maintain or permit any nuisance or waste in, on or about the Premises or permit or allow the Premises to be used for any unlawful or immoral purpose, and (ii) do or permit to be done anything in any manner which unreasonably disturbs the users of the City Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises.

13. NONDISCRIMINATION

TENANT and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, national origin, disability, sexual preference, housing status, marital status, familial status, weight or height of such person. TENANT shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, disability, sexual preference, housing status, marital status, familial status, weight or height of such person. TENANT covenants that in all of the activities TENANT conducts or allows to be conducted on the leased PREMISES, TENANT shall accept and enforce the statements of the policy set forth in Palo Alto Municipal Code Section 9.73.010 regarding human rights and nondiscrimination. If TENANT is found in violation of Palo Alto Municipal Code Section 9.73.010 by a court or administrative body of competent jurisdiction or in violation of the nondiscrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Lease by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default under this Lease, and such default shall constitute a material breach of this Lease. CITY shall then have the power to cancel or suspend this Lease in whole or in part

14. INSPECTION

CITY'S employees and agents shall have the right at all reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, determining if the provisions of this Lease are being complied with, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements or additions to the Premises as City may deem necessary.

15. HOLD HARMLESS

TENANT hereby waives all claims, liability and recourse against CITY including the right of contribution, to the extent growing out of or arising from Tenant's use or occupancy of the Premises or from any activity undertaken by Tenant or Tenant's Agents which is related to this Lease for loss or damage of or to persons or property arising from, growing out of or in any way connected with or related to this Lease. CITY and its elected and appointed officials, officers, agents, employees and volunteers (individually and collectively "Indemnitees") shall have no liability to TENANT or to any other person or entity for, and to the fullest extent permitted by law, TENANT shall indemnify, hold harmless and defend the Indemnitees against, any and all

claims, liability, demands, damages, losses, attorneys' fees, defense costs including expert witness fees, court costs, and any other costs or expenses, arising out of or in any manner related to the operation or maintenance of the property described herein or TENANT'S performance or non performance of the terms of this Lease, except to the extent caused by the active negligence, willful misconduct, or breach of this Lease by CITY or CITY's agents. In the event CITY or another Indemnitee are named as co-defendant, TENANT shall notify CITY of such fact and shall represent the Indemnitees in such legal action unless CITY undertakes to represent the Indemnitees as co-defendants in such legal action, in which event TENANT shall pay to CITY its litigation costs, expenses and attorneys' fees. CITY shall be entitled to recover its attorney fees and costs in any action against TENANT to enforce the terms of this Section 15.

16. TAXES AND ASSESSMENTS

This Lease may create a possessory interest that is subject to the payment of taxes levied on such interest. Lessee specifically acknowledges it is familiar with §107.6 of the California Revenue and Taxation Code, realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code §107.6. It is understood and agreed that all taxes and assessments (including but not limited to the possessory interest tax) which become due and payable upon the PREMISES or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT and TENANT shall pay the taxes and assessments prior to delinquency.

17. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

18. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (FORCE MAJEURE)

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

19. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is determined to be invalid, void, or unenforceable in full or in part, by a court of competent jurisdiction, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

20. WAIVER OF RIGHTS

The failure of CITY or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that CITY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease.

21. DEFAULT BY TENANT

A. Default Defined. The occurrence of any of the following events shall constitute a material default or breach of this lease by TENANT:

1. TENANT's failure to pay all or any portion of rent or any other payment due CITY at the times and in the manner provided in this Lease, if the failure continues for three (3) days after notice has been given to TENANT;
2. TENANT's a.) abandonment or vacation the PREMISES (absence from the PREMISES for thirty (30) days or more shall conclusively be deemed an abandonment of the PREMISES), b.) violation of the provisions of Section XXI (ASSIGNING, SUBLETTING, and ENCUMBERING), or c.) failure to provide evidence of insurance coverage throughout the term of this Lease in accordance with Section XVIII (INSURANCE) where such failure is not cured within five (5) days after written notice thereof is given by City to Tenant; and
3. TENANT's violation of any other provision of this Lease, if the violation is not cured within thirty (30) days after written notice of such violation by CITY to TENANT. However, if the violation cannot reasonably be cured within thirty (30) days, TENANT shall have a reasonable period of time (as determined by the City Manager) to cure such violation so long as Tenant commences to cure the default within the thirty-day period and thereafter diligently and in good faith continues to cure the default.
4. TENANT's:
 - a. filing of a voluntary petition or having an involuntary petition filed against it in bankruptcy or under any insolvency act or law;
 - b. adjudication as a bankrupt; or
 - c. attempt to make a general assignment for the benefit of its creditors.

B. Rights and Remedies of CITY. If TENANT commits a default, as defined in Subparagraph A. of this Section, CITY shall have the following rights and remedies, which rights and remedies shall not be exclusive, but which shall be

cumulative and in addition to any and all rights and remedies now or hereafter allowed by law or otherwise specifically provided in other Sections in this Lease:

1. CITY may continue this Lease in full force and effect and not terminate TENANT'S right to possession of the PREMISES, in which event CITY shall have the right to collect rent and other payments when due;
2. CITY may terminate this Lease and TENANT'S right to possession of the PREMISES;
3. CITY may have a receiver appointed to collect rentals and conduct TENANT'S business;
4. CITY may cure the default for the account and at the expense of TENANT. If CITY, by reason of an act of default by TENANT, is compelled to pay, or elect to pay, any sum of money or do any act that will require the payment of any sum of money, the sum or sums paid by CITY, together with an administrative charge equal to fifteen percent (15%) of said sum or sums, shall be deemed to be additional rent due CITY under this Lease and shall be due immediately from TENANT at the time the sum is paid, and if repaid at a later date shall bear interest at the rate of 10% per annum from the date the sum is paid by CITY until CITY is reimbursed by TENANT;
5. CITY may seek an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of CITY;
6. CITY may seek a mandamus or other suit, action of proceeding at law or in equity to enforce its right against TENANT and any of its officers, agents, employees, assigns or subtenants, and to compel it to perform and carry out its duties and obligations under the law and this Lease.

C. Termination and Damages

1. CITY and TENANT specifically agree that acts of maintenance or preservation or efforts to relet the PREMISES (including the making of alterations and/or improvements to the PREMISES in connection with any reletting), and/or the appointment of a receiver upon initiative of CITY to protect CITY'S interests under this Lease will not constitute a termination of TENANT'S right to possession. CITY'S efforts to mitigate the damages caused by TENANT'S default shall not constitute a waiver of CITY'S right to recover damages under this Section.
2. Upon a termination of TENANT'S right to possession, CITY shall have the right to recover from TENANT:

- a. The worth, at the time of award, of the unpaid rental which had been earned at the time of termination of this Lease; and
- b. The worth, at the time of award, of the amount by which the unpaid rent which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided; and
- c. The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided; and
- d. Any other amount necessary to compensate CITY for all detriment approximately caused by TENANT'S default or which in the ordinary course of things would be likely to result therefrom, including, without limitation, all costs incurred by CITY in connection with reletting the PREMISES, court costs and reasonable attorney's fees.

"The worth, at the time of the award," as used in paragraphs (a) and (b) of this section is to be computed by allowing interest at the rate of 10% per annum. "The worth, at the time of the award," as used in paragraph (c) of this section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

Nothing in this Section shall affect CITY'S right to indemnification for liability arising prior to termination of this Lease for personal injury or property damage pursuant to other provisions of this Lease.

- D. Appointment of Receiver. If a receiver is appointed at the request of CITY in any action against TENANT to take possession of the PREMISES and/or to collect the rents or profits derived therefrom, the receiver may, if it is necessary or convenient in order to collect such rents from profits, conduct the business of TENANT then being carried on in the PREMISES, and may take possession of any personal property belonging to TENANT and used in the conduct of such business and may be used by the appointed receiver in conducting such business on behalf of CITY and TENANT. Neither the application for the appointment of such receiver nor the appointment of such receiver shall be construed as an election by CITY to terminate this Lease unless a notice of such intention is given to TENANT. TENANT agrees to indemnify and hold CITY harmless from any liability arising out of the entry by any such receiver and the taking of possession of the PREMISES and/or use of personal property.

22. DEFAULT BY CITY

CITY shall be in default of this Lease if CITY fails or refuses to perform any provision of this Lease that CITY is obligated to perform if the failure to perform is not cured within thirty (30) days after notice of the default has been given by Tenant to CITY. If the default cannot reasonably be cured within thirty days, CITY shall not be in default of this Lease if CITY

commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default.

23. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT (RL 27.20) S

In the event either CITY or TENANT commences legal action against the other claiming a breach or default of this Lease, the prevailing party in such litigation shall be entitled to recover from the other cost of sustaining such action, including reasonable attorney fees, as may be fixed by the Court.

24. RESERVATIONS TO CITY

The PREMISES are accepted "as is" and "where is" by TENANT subject to any and all existing easements, and encumbrances. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is and has ascertained that it can be used for the limited purposes specified in Sections VII and IX. CITY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the PREMISES or any part thereof, and to enter the PREMISES for any and all such purposes. CITY also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the PREMISES. No right reserved by CITY in this Section shall be so exercised as to interfere unreasonably with TENANT'S operation hereunder. CITY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to the original condition upon the completion of any construction.

25. SURRENDER OF PREMISES

Upon expiration or termination of this Lease TENANT shall redeliver possession of the PREMISES to CITY in substantially the same condition that existed immediately prior to TENANT'S occupancy, reasonable wear and tear and damage by, flood, earthquake and act of war excepted.

26. OWNERSHIP OF IMPROVEMENTS

All improvements constructed, erected or installed upon the PREMISES must be free and clear of all liens, claims, or liability for labor or material and shall become the property of CITY, at its election, upon expiration or earlier termination of this lease and, upon City's election, shall remain upon the PREMISES upon termination of this Lease.

Title to all equipment, furniture, furnishings and trade fixtures placed by TENANT upon the PREMISES shall remain in TENANT, and replacements, substitutions and modifications thereof may be made by TENANT throughout the term of this Lease. TENANT may remove such fixtures and furnishings upon termination of this Lease, provided that TENANT shall repair to the satisfaction of CITY any damage to the PREMISES and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the PREMISES upon termination of this Lease.

27. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If upon expiration or termination of this Lease TENANT fails to remove any personal property belonging to TENANT from the PREMISES, such property shall at the option of CITY at any time after forty-five (45) days after the date of expiration or termination be deemed to have been transferred to CITY. CITY shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor.

28. QUITCLAIM OF TENANT'S INTEREST

Upon expiration or termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall, at CITY'S request execute, acknowledge and deliver to CITY within five (5) days after receipt of written demand thereof, a good and sufficient deed whereby all rights, title, and interest of TENANT in the PREMISES are quitclaimed to CITY. Should TENANT fail or refuse to deliver the required deed to CITY, CITY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed and the notice shall be conclusive evidence of the termination of this Lease, and of all right of TENANT or those claiming under TENANT in and to the PREMISES.

29. HOLDING OVER

After the term of this lease has expired, and until the Parties execute a written extension to the Lease, or Lessee surrenders the Property to the City, this Lease shall continue on a month-to-month basis subject to all terms and conditions of this lease, at City's then prevailing monthly rate of rent for the Property. The rent under a month- to-month tenancy shall be payable in advance of each month due and payable in full by the first day of each successive month of the Lease, subject to the provisions for late fees in Section 3 of this lease. The rent under a month-to-month tenancy is subject to increase on thirty (30) days prior written notice from City. Lessee shall be liable for such other damages incurred through the loss of a prospective tenant, or other expenses incurred due to its breach of this condition of the Lease. Nothing contained in this Lease shall give to Lessee the right to occupy the Property after the expiration of the term, or upon an earlier termination for breach.

30. CONFLICT OF INTEREST

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. TENANT warrants and covenants that no official or employee

of CITY nor any business entity in which any official or employee of CITY is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to CITY. In the event that CITY determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of CITY, TENANT upon request of CITY shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and CITY may terminate this Lease as a result of such violation.

31. EMINENT DOMAIN

If all or any part of the PREMISES (or the building in which the PREMISES are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the PREMISES by the condemning public entity.

If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, TENANT shall continue to be bound by the terms, covenants and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the PREMISES. If the condemnation of a part of the PREMISES substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, TENANT may:

- A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or
- B. Continue to occupy the remaining PREMISES and thereby continue to be bound by the terms, covenants and conditions of this Lease. If TENANT elects to continue in possession of the remainder of the PREMISES, the monthly rent shall be reduced in proportion to the reduced in proportion to the diminution in value of the PREMISES.

TENANT shall provide CITY with written notice advising CITY of TENANT'S choice within thirty (30) days of possession of the part condemned by the condemning public entity.

CITY shall be entitled to and shall receive all compensation related to the condemnation, except that TENANT shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any TENANT-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach, and (b) any amount specifically designated as a moving allowance or as compensation for Tenant's personal property. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

32. CPI

CPI means Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose CSMA published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is not published for a specific month, any reference to the CPI for that month shall be deemed to refer to the CPI for the last month prior to that month for which the CPI was published. (For example, if the CPI is published for the month of January 2002 but is not published for the month of February 2002, any reference to the CPI for February 2002 shall be deemed to refer to the CPI for January 2002.)

If the CPI is changed so that the base year differs from that used for the month in which the Term commences, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

33. HAZARDOUS SUBSTANCES

- A. Compliance with Laws. TENANT shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by TENANT, its agents, employees, contractors or invitees except ordinary and customary cleaning supplies and office supplies.
- B. Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that (i) any use of the Premises by TENANT involves the generation or storage, use, treatment, disposal or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) TENANT has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from TENANT's action or use of the Premises; or (iii) Tenant is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Premises caused by Tenant or Tenant's Agents.
- C. Assignment and Subletting. If (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment or disposal or release of Hazardous Material in a manner or for any purpose, (ii) the proposed assignee or sublessee has been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question, or (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material, then it shall not be unreasonable for City to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.
- D. Hazardous Materials Defined. The term Hazardous "Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances,

materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

- E. City's Right to Perform Tests. At any time prior to the expiration of the Lease Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil and to deliver to Tenant the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Tenant's use of the Premises. Tenant shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to comply with all applicable legal or other regulatory requirements related to the investigation or remediation of Hazardous Materials released upon the Premises as a result of Tenant's use of the

Premises. The testing shall be at Tenant's expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the Premises or the Project, which has been caused by or resulted from the activities of Tenant, its agents, employees, contractors or invitees.

- F. Hazardous Materials Indemnity. TENANT shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold Landlord harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses, including, without limitation, diminution in value of the Premises or Project, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises or Project, damages arising from any adverse impact or marketing of the Premises or Project and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Premises or Project by TENANT, TENANT'S Agents, licensees or invitees or at TENANT'S direction, of Hazardous Material, or by TENANT'S failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. TENANT'S indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term. For purposes of the indemnity provided herein, any acts or omissions of TENANT or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of TENANT (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to TENANT.

B. TENANT'S USE OF PREMISES.

- i. TENANT shall comply with all laws now or hereafter in effect relating to the use of Hazardous Materials on, under or about the PREMISES, and TENANT shall not contaminate the PREMISES, or its subsurfaces, with any Hazardous Materials.
- ii. TENANT shall not cause or permit any Hazardous Materials to be used, stored, generated, or disposed of on or in the PREMISES by TENANT, TENANT's agents, employees, contractors, or invitees without first obtaining the written consent of the CITY'S Fire Chief and the City Manager.

- iii. TENANT shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from TENANT'S activities on the PREMISES. TENANT shall immediately inform CITY of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.
- iv. TENANT shall be solely and fully responsible and liable for such releases at the Premises, or into CITY'S sewage or storm drainage systems caused by Tenant or Tenant's Agents. TENANT shall take all necessary precautions to prevent any of its Hazardous Materials from entering into any storm or sewage drain system or from being released on the Premises. TENANT shall remove releases of its Hazardous Materials caused by Tenant or Tenant's Agents in accordance with all laws. In addition to all other rights and remedies of CITY hereunder, if the release of Hazardous Materials caused by TENANT is not removed by TENANT within a reasonable period of time (taking into account any threat to health and safety, the time to obtain appropriate permits and clearances from regulatory authorities, and the time to obtain competitive bids from contractors), CITY or any other third party, CITY may pay to have the same removed and TENANT shall reimburse CITY for such costs within five (5) days of CITY'S demand for payment.
- vi. TENANT'S obligations under this Section shall survive the expiration or earlier termination of this Lease.

34. ALL COVENANTS ARE CONDITIONS

All provisions of the Lease are expressly made conditions.

35. PARTIES OF INTEREST

Nothing in this agreement, expressed or implied, is intended to, or shall be construed to, confer upon or to give to any person or party other than CITY and TENANT the covenants, condition or stipulations hereof. All covenants, stipulations, promises and agreements in this Lease shall be for the sole and exclusive benefit of CITY and TENANT.

36. RECORDATION OF LEASE

Neither CITY nor TENANT shall record this Lease; however, a short-form memorandum of Lease may be recorded at CITY'S request.

EXHIBIT B
(page 1 of 2)

DESCRIPTION OF LEASED PREMISES
LEASE BETWEEN CITY OF PALO ALTO AND
ENVIRONMENTAL VOLUNTEERS

PARCEL 3

Beginning at a point North 45° 49' 01" East 104.46 feet from a 3/4 inch iron pipe with plug stamped CPA LS5223 said 3/4 inch iron pipe being North 53° 44' 04" East 1492.79 feet, from a monument in the centerline of Embarcadero Road. Said Monument being North 51° 37' 00" East 1558.72 feet, from the intersections of the centerlines of Embarcadero Road and Faber Place;

Thence South 45° 08' 45" East 83.68 feet;

Thence North 42° 52' 45" East 108.00 feet to a nail;

Thence North 45° 08' 45" West 78.14 feet to a 3/4 inch iron pipe with plug stamped CPA LS5223;

Thence South 45° 49' 01" West 107.95 feet to **point of beginning**.

Being part of that certain 29.66 acre parcel recorded January 14, 1921 in Volume 532 of deeds at page 59 of Santa Clara County Official Records.

Parcel 3 containing 8,733 square feet (0.20 acres) more or less

Parcel 3 shown on Exhibit B and made a part hereof.

James Kiehl, LS 7152
Expires 6-30-2009

EXHIBIT B



SEA SCOUT LEASE

DRAWN BY: JAMES D. KIEHL
 DRAWING: SEA SCOUT 2007.DWG
 DPO: SC062507.DOC
 COGO: SC062507 JOB REV: (S) 6-28-07

CITY OF PALO ALTO, CALIFORNIA

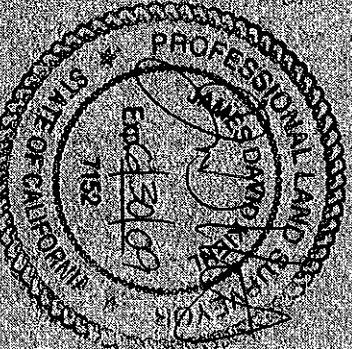
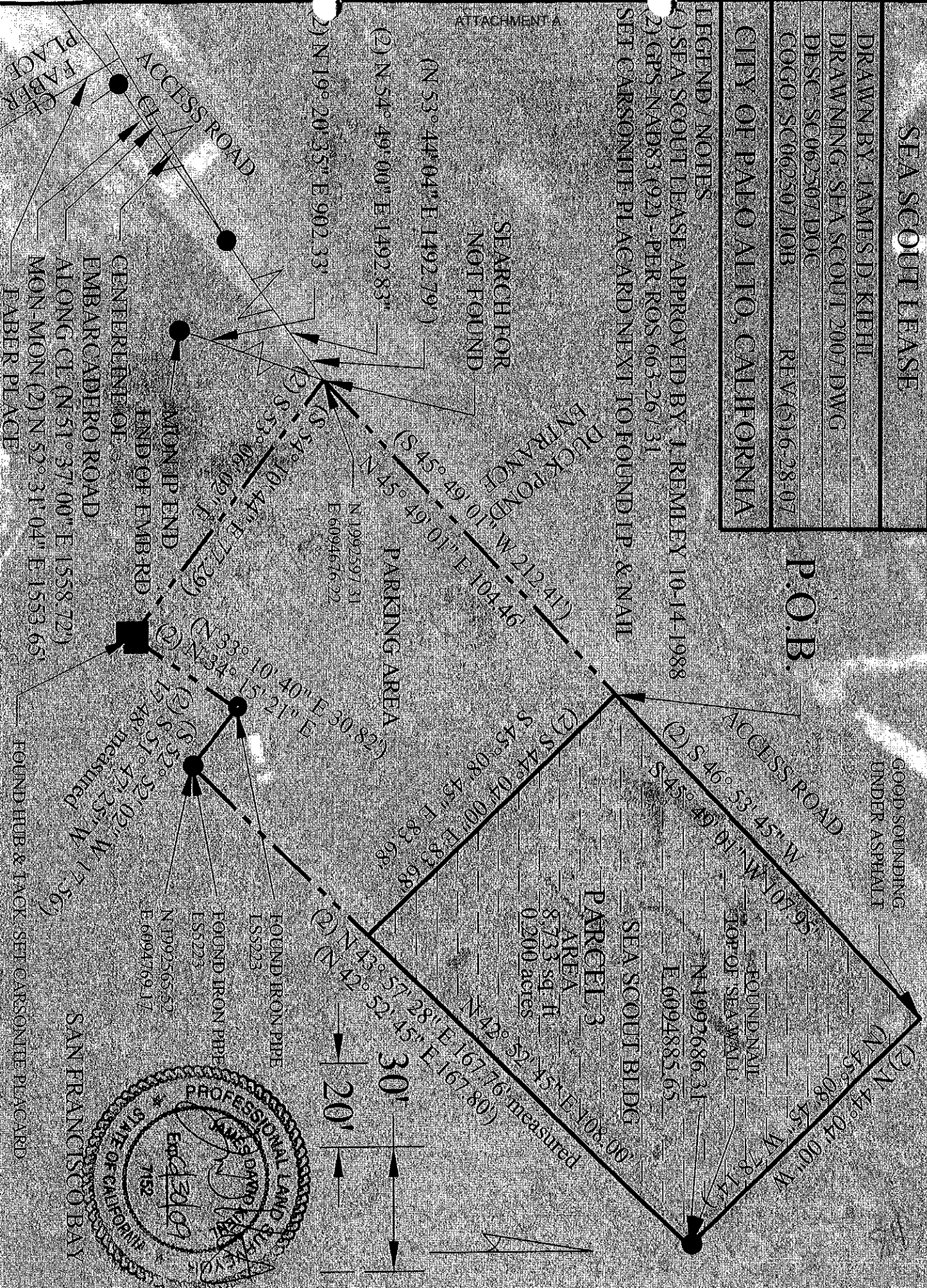
LEGEND NOTES

- (1) SEA SCOUT LEASE APPROVED BY 1 REMEX 10-14-1988
- (2) GPS NAD83 (92) - PERROS 663-26731
- SIT CARSONITE PLACARD NEXT TO FOUND IP & NAIL

PLAT 10 ACCOMPANY DESCRIPTION

GOOD SOUNDING UNDER ASPHALT

P.O.B.



ATTACHMENT A

EXHIBIT C
PROJECT DESCRIPTION

The Project consists of the rehabilitation and relocation of the former Sea Scout building for use as TENANT's office headquarters for conducting its mission of promoting the understanding of and responsibility for the environment through hands-on-science education. TENANT will provide 50 hours per year of public information and education to Baylands visitors and/or Palo Alto community members including environmental education programs, community lectures, open houses, nature walks, Baylands restoration project, and camp programs. TENANT will create and display for the public at least two permanent, exterior educational exhibits which will be periodically re-designed and updated.

Rehabilitation and adaptive re-use of the building will be in accordance with the findings of the Historic Resources Report for the building and the Secretary of Interior's Standards for Historic Rehabilitation. Improvements include seismic upgrading including a new foundation, addition of sustainable and environmentally sensitive features and improvement of the site with a natural landscaping plan. The existing seawall will be removed and the waterfront bank returned to its natural state. The Marsh Front Trail will be improved by closing the gap in the multi-use public trail. The rehabilitation of the building will incorporate numerous "Green" design features to make it a more environmentally sensitive and responsive facility and to provide an example to other organizations and the community.

A public restroom near the duck pond will be constructed and CITY will reimburse TENANT for costs over \$75,000

EXHIBIT D
DEVELOPMENT PLANS AND CONSTRUCTION DRAWINGS

**EXHIBIT E
INSURANCE REQUIREMENTS**

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by TENANT shall provide the following limits and coverages:

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Commercial General Liability	\$1,000,000 per each occurrence for bodily injury, personal injury and property damage
(2) Automobile Liability Including Owned, Hired and Non-Owned Automobiles	\$ 1,000,000 Combined Single Limit
(3) Workers' Compensation Employers Liability	Statutory \$1,000,000 per accident for bodily injury or disease

(4) Tenant's Property Insurance

Tenant shall procure and maintain property insurance coverage for:

- (a) all office furniture, trade fixture, office equipment, merchandise,

and all other items of Tenant's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Tenant;

- (b) all other improvements, betterments, alterations, and additions to the premises.

Tenant's property insurance must fulfill the following requirements:

- (a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable City of Palo Alto, including earthquake sprinkler leakage.
- (b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the TENANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
2. Include a waiver of all rights of subrogation against the CITY and the members of the City Council and elective or appointive officers or employees, and each party shall indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.
3. Name the CITY OF PALO ALTO as a loss payee on the property policy.
4. Provide that the CITY, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the TENANT; products and completed operations of the TENANT; premises owned, occupied or used by the TENANT; or automobiles owned, leased, hired or borrowed by the TENANT. The coverage shall contain

- no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the TENANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of the TENANT's insurance and shall not contribute with it.
 6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees, agents or volunteers.
 7. Provide that TENANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 8. TENANT agrees to promptly pay to CITY as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of TENANT's act(s) or TENANT's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-:VII.

Other Insurance Requirements

TENANT shall deposit with the City Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy CITY that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefor on deposit with CITY during the entire term of this Lease. Should TENANT not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, CITY may purchase such insurance, on behalf of and at the expense of TENANT to provide six months of coverage.

CITY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the CITY's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for CITY and for members of the public using the PREMISES, the City Manager may require TENANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. CITY'S requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The City Manager shall notify TENANT in writing of changes in the insurance requirements. If TENANT does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, or in the event TENANT fails to maintain in effect any required insurance coverage, TENANT shall be in default under this lease without further notice to TENANT. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of CITY.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT'S liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, TENANT shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the PREMISES.

EXHIBIT F
LONG TERM MAINTENANCE PLAN AND SCHEDULE FOR THE PREMISES

EXHIBIT II
(to Option Agreement)

Secretary of the Interior's Standards for Rehabilitation*

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of the property shall be retained and preserved. The removal of historic material or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time: Those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

*Guidelines for these Standards are available for public review in the Palo Alto Planning Department, or they may be reviewed on the Internet at www2.cr.nps.gov/tps/tax/rhb/stand.htm. Click on "Guidelines."

ATTACHMENT D

SUMMARY OF OPTION TO LEASE

between the City of Palo Alto and the Environmental Volunteers (EV)
for the Sea Scout building at the Palo Alto Baylands

Conditions of the Option

Prior to exercising its option to lease the property, the EV (Optionee) must satisfy the following conditions:

1. Pay the Purchase Price of the Option.
2. Submit schematic plans for the project within twelve (12) months of the commencement of the option;
3. Receive approval of its development plan for the entire project from the Historic Resources Board, Architectural Review Board, Planning & Transportation Commission and City Council;
4. Receive approval from the City Engineer and Chief Building Official of construction drawings, including the construction contract form and proposed construction schedule. If property is phased, this requirement shall apply only to Phase I improvements.
5. Comply with all requirements of the California Environmental Quality Act (CEQA);
6. Receive approval from the City Manager of a long-term maintenance plan and schedule for the building during the Lease term.
7. Provide evidence to the Real Property Manager that any and all permits from any agencies having pre-construction jurisdiction over the proposed development have been authorized and are available.
8. Satisfy the Director of Administrative Services that the EV has sufficient finances or financial commitments to implement the project as approved by the City and furnish to the Director of Administrative Services evidence that sufficient financial security will be available to construct the project.
9. Submit to the Real Property Manager a security deposit as required by the Lease.

Terms of the Lease

LESSOR:
City of Palo Alto

TENANT:
The Environmental Volunteers, a non-profit corporation

PREMISES:
Sea Scout building at Palo Alto Baylands, 2560 Embarcadero Road

PURPOSE:

The purpose of the lease is to allow the EV to perform the project as described in Exhibit C to the lease by developing and operating a facility to house EV's offices and programs and to provide various educational and training programs to the public according to the terms and conditions of this Lease.

TERM:

The term of the lease is 40 years.

REQUIRED AND PERMITTED USES AND SERVICES:**Required Uses:**

1. Rehabilitate, adaptively re-use and improve and maintain the Sea Scout Building.
2. Construct a public restroom near the duck pond at the Baylands Park. City to reimburse EV for any cost over \$75,000 and be responsible for the maintenance of the restroom.
3. Improve Marsh Front Trail access by constructing accessible connections between the promenade deck of the building and the two adjacent termini of the trail in order to close the gap. The trail connections and promenade deck to be open to the public during park hours and EV shall maintain the trail along the promenade deck.
4. Create at least two permanent, exterior educational displays for the public highlighting the historical background and former uses of the building and another dealing with Bayland Ecology related to the flora and fauna of the Bay.
5. Remove the existing seawall which will allow the waterfront bank to return to its natural state.
6. Restore the natural area around the building to create an opportunity for public education and study of natural area restoration.
7. Provide 50 hours annually of information and education to the public, including but not limited to environmental education programs, community lectures, open houses, nature walks, Baylands restoration projects, and camp programs.
8. Provide public benefits through fulfillment of the EV mission.
9. Enhance the public's environmental awareness and sensitivity to natural science issues through activities which may include classes, displays, and exhibits, provided that EV may charge an admission fee and establish specific attendance times. Fee schedules shall be subject to approval by the City Manager or designee.
10. Incorporate numerous "green" design features in the rehabilitation of the building to make a more environmentally sensitive and responsive facility and, additionally, to provide an example for other organizations and the community.
11. Meet with City every five (5) years to confer and review the effectiveness and relevance of the above listed Required Uses. Upon mutual agreement, the parties may substitute, modify, add or eliminate Required Uses to reflect current and projected community interest, need or preference. Any change to the Required Uses shall be reflected in a written modification to this Lease.

Permitted Uses:

1. Administrative offices and storage.
2. Workshops, classes and lectures associated with EV mission and operations.
3. Fundraising activities to support the required and permitted services including but limited to sales of goods and gifts related to EV's use and programs and hosting of benefits and programs.
4. Periodic rental of space for fundraising purposes as long as it is not for commercial purposes and does not interfere with or limit required services. Rental fee charges shall be subject to approval by City Manager.

CONSIDERATION/RENT:

1. Monetary: One Dollar (\$1.00) per year rent and up to \$75,000 of the construction cost of the public restroom.
2. Non-monetary: Development and operation of a non-profit environmental organization headquarters consistent with the purpose and clauses of the Lease, at no cost to the City.

SECURITY DEPOSIT:

A \$5,000 security deposit which can be cash, assignment of savings account, certificate of deposit or letter of credit.

REQUIRED IMPROVEMENTS:

Required improvements are those improvements which are identified and shown in the plans approved by the City during the option period. All improvements to be at no cost to City.

MAINTENANCE AND REPAIRS:

EV shall be responsible for all maintenance and repairs in accordance with the City-approved maintenance program approved during the option period.

ASSIGNMENT AND SUBLETTING:

Any assignment, subletting or encumbrance of the lease is prohibited.

TAXES, ASSESSMENTS AND UTILITIES:

EV shall be responsible for all costs for utilities, taxes and assessments for the premises.

INSURANCE:

The EV shall maintain insurance meeting the City's standard requirements for insurance protection.

ATTACHMENT E**Permit/Planning Fees To Be Waived
Environmental Volunteers**

Building permit fee	\$12,958
Building plan check	\$10,366
Planning plan check	\$ 3,886
Fire plan check	\$ 5,829
PW plan check	\$ 1,554
SMIP	\$ 420
Elec/Mech/Plumbing	<u>\$ 1,026</u>
Planning Fees	<u>\$15,000*</u>
TOTAL	\$51,000

*Planning fees are estimated because some are cost recovery and charged on an hourly basis.

**PROCEDURE FOR SALE/TRANSFER OF DEVELOPMENT RIGHTS
FOR CITY-OWNED PROPERTY**

(Policy and Procedures 1-46/ASD)

POLICY STATEMENT

It is the policy of the City of Palo Alto that the disposal of City property and assets, including the transfer of certified development rights, be accomplished through a public bid process. To assure the highest return for sale of its assets, the process involves an appraisal of fair market value and an open and competitive bid process. The City Council may reject any or all bids and accept that bid which will, in its opinion, best serve the public interest.

PROCEDURE

1. Following designation of a city-owned site as an eligible "sender site," and determination of a floor area bonus in accordance with Palo Alto Municipal Code Chapters 18.18.070, 18.18.080 and 18.28.060 (d), the Real Property Manager shall appraise (or have appraised) the value of the rights to be sold to determine a minimum bid.
2. The Real Estate Division shall prepare a Request for Proposals (RFP) to be released as follows:
 - 1) An ad shall be placed in the Real Estate section of the local newspapers.
 - 2) Flyers advising of the offering shall be sent to all persons on the Real Estate Division "Surplus Property Mailing List," persons owning eligible "receiver sites," local developers and others likely to be interested in the offering.
3. The bid opening shall be scheduled by the Real Property Manager and the Purchasing Manager. At the bid opening the Purchasing Division shall:
 - 1) Open Sealed bids
 - 2) If specified in the RFP, accept oral bidding beginning at 5% above the highest written bid.
4. The Real Estate Division shall forward the results of the bidding to the Council with a staff recommendation. The Council may reject any or all bids and accept that bid which will, in its opinion, best serve the public interest.



City of Palo Alto City Manager's Report

17

TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: ADMINISTRATIVE SERVICES

DATE: JULY 9, 2007 CMR:291:07

SUBJECT: APPROVAL OF OPTION TO LEASE TO THE ENVIRONMENTAL VOLUNTEERS FOR THE FORMER SEA SCOUT BUILDING AT 2560 EMBARCADERO ROAD

RECOMMENDATION

Staff recommends that Council: 1) authorize the City Manager to execute the attached Option to Lease Agreement with the Environmental Volunteers (EV); and 2) waive certain City processing fees for the project in accordance with Policy & Procedures 1-25, Public/Private Partnerships.

BACKGROUND

The Sea Scout building is a 2,209 square foot wood frame structure composed of two one-story wings on each side and a taller center section equivalent to two stories in height. The building was 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 subject to flooding during biannual extreme high tides. Its rehabilitation will require extensive sub-floor rehabilitation and probable relocation to a higher elevation at or near its current location in the Baylands Preserve.

The Baylands Master Plan (Plan), adopted by the Council in 1979, called for the removal of the berths and buildings, including the Sea Scout building, and the return of the harbor to its natural state. Voters reaffirmed the Plan on November 4, 1980, when a ballot measure to continue operation of the harbor was defeated. On February 10, 1986, (CMR:142:86), staff presented Council with a Yacht Harbor Building Assessment Report that recommended the demolition of the Sea Scout building as part of the harbor reclamation project. That same year, Council approved Capital Improvement Program (CIP) Project No. 86-06, which was established to implement the goals of the Baylands Master Plan, including demolition of the Sea Scout building.

On October 24, 1988 (CMR:495:88), and again on June 8, 1998 (CMR:249:98), Council delayed the demolition of the Sea Scout building in order to give the Sea Scouts time to remove its boats from the harbor and find a new place to meet. During this time, the boats were moved to Redwood City's harbor, and Pacific Skyline Council gave notice that due to liability and financial constraints it would no longer be able to support the Palo Alto Sea Scout base.

On May 6, 2002, Council adopted the Historic Resources Board's recommendation to designate the building at 2560 Embarcadero Road, known as the Sea Scout Base, to the City of Palo Alto's Historic Inventory in Category 1, as provided in Municipal Code Chapter 16.49. Council referred to the Policy and Services Committee (P&S): 1) the question of "how this unique building could become a viable element in the Baylands to be used by the Sea Scouts and other organizations committed to preserving the building for youth and other community uses"; and 2) gave direction to the Committee to review, as expeditiously as possible, issuance of an RFP so that other nonprofit organizations would be encouraged to participate. On March 17, 2003, Council adopted the recommendation of the Policy and Services Committee directing staff to: 1) remove the direction that the building be used for Sea Scout and other youth activities; 2) prepare a Request for Proposals to solicit proposals for an option to lease the facility; 3) in the process of selecting a tenant, give preference to an organization that would allow space for public use; and 4) ensure that the tenant's use of the building be compatible with the Baylands.

On October 12, 2004, Council approved the September 14, 2004 Policy and Services Committee recommendation (CMR410:04) to: 1) not accept the proposal submitted by the Lucie Stern Maritime Center responding to an RFP to relocate, repair and lease the former Sea Scout base; and 2) directed staff to open discussions with Environmental Volunteers (EV) with a view to developing a long-term lease. .

DISCUSSION

Pursuant to Council's direction, staff has worked with EV on a development plan that would fulfill the following objectives:

- provide public benefit and public access
- preserve and maintain the historic significance of the property
- not adversely impact the Palo Alto Baylands Preserve
- give preference to non-profit groups benefiting youth, seniors, wildlife and/or the environment
- relocate the building to higher ground and improve, maintain and operate the property at no cost to the City.

EV conducted its analysis to understand the extent of the relocation and renovation. It consulted with an architect, structural engineer, and contractors to determine more specifically the costs associated with the project and developed a fundraising plan based on project costs. In January 2007, EV submitted its proposal (Attachment A), which is summarized below.

Proposal

Proposer:

EV is a non-profit organization devoted to promoting the understanding of and responsibility for the environment through hands-on-science education. EV accomplishes its mission through the donated services of 160+ trained volunteers supported and coordinated by a paid administrative staff of seven (five fulltime and two part-time). Since its founding in 1972, EV has served over 300,000 school children in Santa Clara and San Mateo Counties. EV volunteers teach specific, ecologically-oriented science topics in classroom settings as well as lead field trips to appropriate sites using local Bay Area environments, such as the Baylands.

Proposed Use:

EV proposes to rehabilitate and relocate the building to use as its office headquarters for conducting its mission and providing other public benefits. It will use the small rooms in the building for its offices and the large, two-story high central room of over 1,000 square feet for meetings, training sessions and possibly to accommodate other groups who might need meeting space. Additionally, EV intends to provide ecologically-oriented classes and exhibits at the site for Palo Alto citizens and the general public.

Proposed Improvements and Relocation:

Other than the relocation of the building to higher ground, EV anticipates no changes to the defining historic characteristics of the building, and plans no additions or exterior alterations. The plan for rehabilitation and adaptive re-use will be consistent with the Secretary of the Interior's standards for Historic Rehabilitation and in accordance with the City's analysis that the building needs to be at a higher elevation to ensure it is high enough to avoid problems related to water incursion from high tides. EV notes that while it might be feasible to adequately elevate the structure and provide a new foundation at its current location, that alternative is less preferable and likely more expensive, than relocating it a short distance to nearby adjacent high ground as identified by the City in the RFP. EV and its architects will evaluate and analyze both possibilities and also consult with various permitting agencies and entities, and propose to the City the alternative that provides the optimum solution for achieving the overall desired outcomes for a properly functioning and faithfully rehabilitated historic building.

Financial Information:

EV has an annual operating budget of \$560,000. Projected construction costs total \$2.2 million to adequately cover overall short and long term costs of the project. As of November 2006, a total of \$1,722,500 has been received, pledged or committed.

Proposed Method of Operation:

EV has created a Project Management Group (PMG) made up of former and current Board members to oversee all aspects of the project. It has also hired a professional Project Manager to: 1) coordinate activities of planning, permitting, and hiring contractors; 2) interface with City staff and review boards; and 3) work with community groups as necessary. EV has engaged a Palo Alto architecture firm with experience in historic rehabilitation to advise it on how to restore and rehabilitate the building exterior to optimally retain its character and how to remodel the interior of the building to serve EV's near and long term operation needs while also retaining significant historic interior features. The firm will help to incorporate environmentally sensitive materials and features into the restoration and to create a green building to the extent feasible under various codes and historic standards.

Bid Items:

The proposal offers \$5,000 for the purchase price of the option and \$1.00 per year rent.

Proposal Criteria/Evaluation

Staff from the Departments of Public Works, Planning & Community Environment, Community Services, and Administrative Services reviewed EV's proposal based on criteria similar to that

identified in the earlier RFP (Attachment C). Following is a discussion of the proposal in terms of this criteria.

Public Benefits:

The proposed use directly benefits youth and the environment, as encouraged by Council and the RFP. Public benefits provided by the proposed use include the advantage of EV headquarters being located at the Palo Alto Baylands, which will enable it to better conduct its mission, facilitate public outreach efforts and enhance its capability to provide volunteer staffing for Palo Alto's Lucy Evans Baylands Interpretive Center in partnership with the City. Last year, EV served 474 teachers and benefited 10,428 Santa Clara and San Mateo County children through 348 class room services and 129 natural science field trips.

EV will provide 50 hours per year of public information and education to Baylands visitors and/or Palo Alto community members. This will include, but not be limited to, environmental education programs, community lectures, open houses, nature walks, Baylands restoration projects, and camp programs. Over time, EV intends to increase the hours offered for these activities, according to the availability of its resources. EV will also create and make available to the public at least two permanent, exterior informational and educational displays. One will highlight the historical background and former uses of the building and another one or more displays will deal with Baylands ecology related to the flora and fauna of the Bay. These displays will be periodically re-designed and updated.

In addition, the project will provide for the rehabilitation and adaptive re-use of a historically important but deteriorating building owned by the City. Improvements include seismic upgrading including a new foundation; addition of sustainable and environmentally sensitive features; and improvement of the site with a natural landscaping plan. The rehabilitation and adaptive re-use of the building will incorporate numerous "green" design features to make it a more environmentally sensitive and responsive facility and to provide an example to other organizations and the community. EV will periodically conduct on-site meetings, seminars and educational programs to share its knowledge in this area. The restoration of the natural area around the building will create the opportunity for public education and study of natural area restoration and will include the addition of many more types of native plants than would otherwise be required for basic mitigation. EV will remove the existing seawall and return the waterfront bank to its natural state. EV will also complete an important gap in the popular Marsh Front Trail, which currently circles around the building, to its preferred location along the marsh bank in front of the building. It will accomplish this by constructing accessible connections between the promenade deck of the relocated building and the two adjacent termini of the existing trail in order to close the gap in the trail. The trail connections and promenade deck will be open and accessible to the public during park hours, and EV will be responsible for the maintenance of the trail along the promenade deck itself. Finally, EV will construct a public restroom near the Baylands Duck Pond, to replace the existing porta-potty. EV will pay up to \$75,000 for the cost of construction, with the City to reimburse it for any additional cost. The City will maintain the restroom.

Degree of Public Access and Fees to be Charged to Palo Alto Citizens:

Public access will be provided through the public education, displays and trail access outlined above. In addition, EV will enhance the public's environmental awareness of natural science

issues through programs for which EV may chose to charge fees. It may also periodically rent portions of the building to Palo Alto-based, non-profit, community groups. Both activity fees and rental fees will conform to similar fees charged by Community Services and in accordance to an annual fee schedule approved in advance by the City Manager.

Responsiveness to Historic Guidelines and Standards:

EV has contracted for a Historic Structures Report (HSR) on the building which insures compliance under both Federal and State historic statutes, including the Secretary of Interior's Standards for Historic Rehabilitation. Based on the findings and recommendations of the HSR, and under guidance of Palo Alto Historic Resources Board, EV will develop a plan to restore the building as close as possible to its original state in accordance with current building, disability and other codes, EV's needs, and environmental sensitivity.

Consistency with City Goals and Objectives:

The proposed use will be allowed under the existing zoning PF-D (Public Facilities-Site and Design District) provided the proposer obtains a conditional use permit during the option term. The proposed use includes public access for exhibits, classes, and demonstrations and is therefore consistent with the requirements that City parkland be open to the public and not limited to exclusive use by private groups. In addition, the proposed use meets policies and programs of Comprehensive Plan Land Use Goal 7: Conservation and Preservation of Palo Alto's Historic Buildings, Sites and Districts, such as Policy L-51, "Encourage public and private upkeep and preservation of resources that have historic merit;" Policy L-52, "Encourage the preservation of significant historic resources owned by the City of Palo Alto;" Policy L-57, "Develop incentives for the retention and rehabilitation of buildings with historic merit in all zones;" and Policy L-58, "Promote adaptive reuse of old buildings."

Impact of the proposed use upon the immediate vicinity/neighborhood, the community generally and the environment:

The relocation, restoration and rehabilitation of the building and its use by EV is in accordance with Council's March 17, 2003 direction that the use of the building be compatible with the Baylands and preserve the historic significance of the building. The impact of the proposed use on park traffic and parking will be addressed during the option period as part of the development approvals. As detailed above in the "Public Benefits" section, the rehabilitation and adaptive reuse of the building will incorporate numerous "green" design features to make it a more environmentally sensitive and responsive facility and the natural area around the building will be restored and enhanced with native plants. Both the building and landscape restoration will provide examples and opportunities for education to other organizations and the community.

Consideration to be Provided to the City:

In addition to the \$5,000 purchase price of the option and the \$1.00 per year rent, EV will pay for up to \$75,000 of the construction cost of the public restroom, and improve and operate the leased premises at no cost to the City. Non-monetary consideration is the public benefit described above. In addition, any transferable development rights created by the project will belong to the City.

History/assessment of the proposer's ability to finance and carry out the proposed use and improvements:

EV has performed a revised cost analysis to determine the funding required to complete the project successfully and has determined it would need \$2.2 million to cover overall short and long term costs of the project, including short term restoration and relocation; overhead and administrative costs during the years the project would be underway; long range capital for future maintenance and repairs; and contingency. A copy of the \$2.0 million campaign budget is attached as Exhibit 1 to Attachment B of the attached proposal. EV has begun soliciting funds and so far has raised approximately \$1.7 million in cash or commitments, anchored by a \$1 million grant from the David and Lucille Packard Foundation. EV is less than \$500,000 from its funding goal and will continue to raise funds during the months before most of the funds will be needed. Estimated costs of planning, design, permitting, engineering and construction are included in Exhibit 4 to Attachment B of the proposal.

EV's Project Management Group (PMG) includes members with experience overseeing and managing similar projects, including working with the City on planning, permitting and building an interpretive center at the Enid Pearson Arastradero Open Space Preserve. EV's Project Manager has had 28 years experience in coordinating project teams for an award-winning architecture firm, providing project management on community buildings and feasibility studies and in working with City staff members. EV's architectural firm has experience in historical restoration work, and the contractor is well known locally for many local projects including the Palo Alto YMCA, Castilleja School and Allied Arts building in Menlo Park. A list of PMG members and biographical data along with résumés are attached as Exhibit 2 and 3 to Attachment B of the proposal

Pro Forma Analysis:

In lieu of the 5-year pro forma financial analysis, EV has submitted its operating budget and results for its fiscal year ended June 30, 2006 and its approved budget for the fiscal year ending June 30, 2007 (Exhibit 5 to Attachment B of the proposal). EV states that its operating budgets do not change significantly from year to year, so any subsequent year budget projections would be similar, though slightly higher in most categories except for occupancy expenses, which would be lower due to reduced rental expenses related to its current location.

Option Agreement and Lease

Under the attached Option Agreement and Lease (Attachment C), EV is granted a two-year period to satisfy the specified conditions prior to exercising the option and entering into the lease. The major option conditions the EV must satisfy are the following:

1. Pay the option purchase price (\$5,000).
2. Submit schematic plans within twelve months of the commencement of the Option Agreement.
3. Receive approval of its development plans from the Historic Resources Board, Architectural Review Board (if applicable), Planning and Transportation Commission and City Council. The development plans will include specific details of the interior

and exterior historic preservation and maintenance features to be included in the development of the property.

4. Receive approval of any land use permits or approvals required to implement the proposed use and improvements. The proposed use and improvements will require approval of a conditional use permit and a variance for parking.
5. Receive approval of a long term maintenance plan and schedule for the building from the City Manager or his designee.
6. Satisfy the Director of Administrative Services that the EV has sufficient finances or financial commitments to implement the project as approved by the City and furnish the Director of Administrative Services with evidence that sufficient financial security will be available to construct the project.

EV Requested Changes and Additions to Option and Lease Agreements

Attachment D includes a summary of the conditions of the option and the terms of the proposed lease. The terms of the attached option agreement and lease are consistent with the above evaluation criteria with the exception of extending the schematic plan timeline in the Option Agreement and extending the term of the lease. EV has requested an extension of the time requirement to submit its schematic plans to the City from 6 months to 12 months. Staff feels EV's request to extend the time is reasonable, given the complexity of the project.

EV also requested a change to the term of the lease as offered in the RFP from 20 to 40 years. Staff did not feel the public benefits included in EV's written proposal justified the extended term, and during lease negotiations, requested that EV increase the public benefit provided by its use. EV offered added benefits including the following, which are described in detail above: 1) improving and maintaining a portion of the Marsh Front Trail; 2) providing at least two permanent exterior informational and educational displays for the public; 3) providing at least 50 hours annually of environmental education to the public; 4) restoring the area around the building to its natural state including the addition of more plants than required for basic mitigation; 5) providing educational programs to share EV's knowledge based on its experience in implementing the green design materials and features that will be incorporated into the rehabilitation of the building; and 6) constructing a public restroom and contributing up to \$75,000 of the cost. Staff feels the EV's requests for extending the schematic plan timeline and the term are justified and has included them in the attached proposed Agreements.

Waiver of Fees

EV has requested a waiver of City processing fees for its development project. Subject to Council approval, the City's Policy and Procedures 1-25, Public/Private Partnerships provides for the waiver of any normal City processing or use fees required by the Municipal Fee Schedule, with the exception of utilities fees and charges. The waiver may apply to fees associated with a construction project which results in a new or improved public facility which will be owned or controlled by the City. The City has previously waived fees for such projects as the improvements by Friends of the Children's Theater to the Children's Theater, and the improvements by the Museum of American Heritage to the Williams property. Staff recommends a waiver of fees for the Environmental Volunteer project to include approximately

\$36,000 in building plan check and permit fees and an estimated minimum of \$15,000 in Planning fees (see Attachment E). Any fees relating to Transferable Development Rights (TDR), should the project apply for TDR, are cost recovery and will not be waived.

NEXT STEPS

The two-year option term will begin upon the execution of the option by the City, and the EV will begin the process of fulfilling option conditions. When the conditions have been met, the lease will be executed and construction of the approved improvements and operation of EV project will commence. Once the option conditions have been met, and assuming no substantial changes are made to the proposal or the form of lease during the development approval process, the lease will be executed by both parties without returning to Council. Council will have the opportunity to review and approve the detailed plans for the project during the option period.

RESOURCE IMPACT

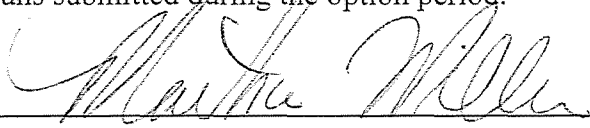
The proposed improvements, maintenance and operation of the property will be at no cost to the City. EV will construct and pay for costs of the public restroom up to \$75,000 which the City will maintain. Since this public restroom will replace a contracted porta-potty, the net increase in maintenance costs for this restroom will be insignificant. The estimated total of fees to be waived by the City for this project is \$36,000 in building plan check and permit fees and \$15,000 in Planning fees, for a total of \$51,000.


POLICY IMPLICATIONS

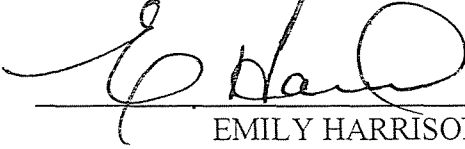
Accepting the EV proposal and approving the option to lease is consistent with the Comprehensive Plan policies related to historic structures and the Baylands, the City Zoning Ordinance, park use, the Policy and Procedures for Leased Use of City Facilities, and the Sea Scout RFP including Council's stated preference that the Sea Scout building be used by groups benefiting youth, seniors, wildlife and/or the environment. The fee waiver is consistent with Policy and Procedures 1-25, Public/Private Partnerships.

ENVIRONMENTAL REVIEW

The optionee will be required to fully comply with all provisions of CEQA as may apply to the specific development plans submitted during the option period.

PREPARED BY: 
MARTHA MILLER
Senior Financial Analyst

DEPARTMENT HEAD APPROVAL: 
CARL YEATS, Director
Administrative Services

CITY MANAGER APPROVAL: 
EMILY HARRISON
Assistant City Manager

ATTACHMENTS

Attachment A: Proposal from Environmental Volunteers

Attachment B: Proposal Evaluation Criteria

Attachment C: Option Agreement and Lease

Attachment D: Summary of Option to Lease

Attachment E: Permit Fees to be Waived

cc: Environmental Volunteers

>>> **PROPOSAL PACKAGE** <<<
(With Option to Lease)

PROJECT: Environmental Volunteers EcoCenter Building (the former Sea Scout Base)

THIS IS A PROPOSAL TO ACQUIRE AN OPTION TO LEASE FROM THE CITY OF PALO ALTO FOR FORTY (40) YEARS THE BUILDING FORMERLY KNOWN AS THE SEA SCOUT BASE OR SEA SCOUT BUILDING.

PROPOSER

Name: Environmental Volunteers (The EV)
Attention: Allan Berkowitz, Executive Director

Address: 3921 East Bayshore Road
Palo Alto, CA 94303

Phone No. (650) 961-0545 (office)

The undersigned ("PROPOSER") hereby submits a proposal to the City of Palo Alto ("City") to acquire a lease, more fully described in the Option to Lease Agreement (ATTACHMENT C) and its exhibits, in accordance with the terms, covenants, and conditions contained in this PROPOSAL and in the Option to Lease Agreement.

A. THE ENVIRONMENTAL VOLUNTEERS (THE EV) HEREBY PROPOSE THE FOLLOWING:

1. Monetary Bid Items:

a) The EV agrees to pay to the CITY as purchase price for the option as set forth in Section 3 (PURCHASE PRICE OF OPTION) of the attached Option to Lease Agreement:

Five Thousand Dollars (\$5,000.00)

b) Additional monetary bid items (including proposed rental during lease term):

One Dollar (\$1.00) per year rental to be paid annually to the City each year on the anniversary date of the lease for the forty (40) years of the lease.

2. Non-Monetary Bid Items (See also Attachment A, PROPOSED USE, PRESERVATION AND DEVELOPMENT OF PROPERTY):

The Environmental Volunteers (The EV), a Palo Alto based nonprofit IRS chartered 501(c)(3) charitable organization, proposes to rehabilitate and prepare for adaptive re-use (in compliance with the Secretary of the Interior's

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Standards for Rehabilitation) and relocate, if necessary, to a location approved by the City, the historic former Sea Scout Base building owned by the City. During the term of the lease the EV organization, whose charitable mission is to provide natural science education (via its more than 160 active volunteers) to school aged children in classroom settings and on field trips to natural areas, will use the rehabilitated building as its office headquarters, for storage of its classroom visual aid materials and for meetings and training sessions of its volunteer service providers, board members, donors, supporters and other interested parties. In addition, to the extent possible, the EV intends to make the building's meeting spaces available periodically to compatible community groups, educational institutions and civic entities. The EV also plans to hold training classes covering ecological subjects that will be available to Palo Alto citizens and members of the general public. And, lastly, the restoration of the building will, to every allowable extent possible, be performed with the goal of being environmentally sensitive and responsive.

B. TERMS AND CONDITIONS

1. The EV has carefully read and fully understands this PROPOSAL document and the Option to Lease Agreement attached to this PROPOSAL, including its exhibits.

2. The Option to Lease Agreement, and its exhibits, are an integral part of this PROPOSAL and are attached to this PROPOSAL.

3. The EV warrants that it has the capability to successfully undertake and complete the responsibilities and obligations of the OPTIONEE and TENANT contained in the Option to Lease Agreement and its exhibits.

4. A deposit in the sum of Five Thousand Dollars (\$5,000.00), in the form of a Cashier's or Certified Check made payable to the City of Palo Alto, is hereby submitted with this PROPOSAL and is attached hereto.

5. The EV's deposit will be held by the CITY as a guarantee securing the obligations that the EV agrees to assume in this PROPOSAL. In the event this PROPOSAL is accepted by the CITY, and the EV fails to meet the terms hereof, the EV agrees that said sum represents a fair and reasonable estimate of the City's costs in preparing and solicitating this offering, and the EV further agrees that said sum shall be retained by CITY as compensation for these costs. Upon execution of the Option to Lease Agreement, said sum shall, at the EV's option, be returned to the EV or shall be credited toward the Security Deposit required under Section 4(M) of the Option to Lease Agreement as related to security deposit requirements of the LEASE. The EV's deposit will be returned to the EV if its PROPOSAL is not selected by the City or upon the City's execution of an Option to Lease Agreement with another successful proposer.

6. This PROPOSAL may be withdrawn if not acted upon by the CITY within 30 days of submittal.

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7. Within ten (10) days after notification of the acceptance of this PROPOSAL by CITY, the EV will execute copies of the Option to Lease Agreement in duplicate and deliver to CITY the executed copies of said Agreement, the required Security Deposit, and the balance, if any, of the purchase price of the option as set forth in the Option to Lease Agreement.

8. The EV has fully completed the Proposed Use, Preservation and Development of Property (Attachment A); the Proposer's Questionnaire (Attachment B); and the Proposed Physical Changes to Property portion of the Proposed Physical Changes to Property and Environmental Assessment Worksheet (Attachment D). Attachment A; the completed Questionnaire (Attachment B); the Option to Lease Agreement (Attachment C) with its exhibits, including the Lease (Exhibit I to the Option to Lease Agreement); and the Proposed Physical Changes to Property portion of the Proposed Physical Changes and Environmental Assessment Worksheet (Attachment D), are attached to this PROPOSAL together with any appropriate or requested supplemental details. The Environmental Assessment Worksheet portion of Attachment D will be submitted later as one of the CONDITIONS PRECEDENT items requiring approval by the Real Property Manager under Section 4 of the Option to Lease Agreement prior to exercising the Option by the OPTIONEE.

9. The EV represents that all of the information contained in or supplementing said Questionnaire is true and correct to the best of the EV's knowledge.

10. The CITY reserves the right to reject any or all PROPOSALS and to accept that PROPOSAL which will, in its opinion, best serve the public interest.

11. By submission of this proposal, the EV acknowledges and agrees that the CITY has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the Questionnaire, and authorizes the release to the CITY of any and all information sought in such inquiry or investigation.

12. ATTACHMENT A (Proposed Use, Preservation and Development of Property), ATTACHMENT B (Proposer's Questionnaire), ATTACHMENT C (Option to Lease Agreement), and the Proposed Physical Changes to Property portion of ATTACHMENT D (Proposed Physical Changes to Property and Environmental Assessment Worksheet) are attached to and by this reference made a part of this PROPOSAL.

13. The EV acknowledges and agrees that the Option to Lease Agreement and its exhibits, including the Lease, may be subject to change and further negotiation with the CITY, if the EV's proposal is selected by the CITY.

ENVIRONMENTAL VOLUNTEERS

by: _____
Allan Berkowitz, Executive Director

Corporate Seal

Date

ATTACHMENT A
(To the Proposal)

ENVIRONMENTAL VOLUNTEERS ECOCENTER BUILDING
(FORMER SEA SCOUT BASE)

PROPOSED USE, HISTORIC PRESERVATION
AND DEVELOPMENT OF PROPERTY

1. How the proposed use will satisfy a public need and benefit the City and/or community.

Occupancy of this building, located at the Palo Alto Baylands, by the Environmental Volunteers organization (the EV) for its headquarters, will enable it to better support its important charitable mission serving local communities which is to:

Promote understanding of, and responsibility for, the environment through hands on science education.

In addition, utilization of this building will all also enable the EV to better benefit the City of Palo Alto since, among the many other public needs that will be provided by the EV as enumerated below, the EV currently provides volunteer staffing for Palo Alto's Lucy Evans Baylands Interpretive Center in partnership with the city..

The Environmental Volunteers organization is a nonprofit, IRS chartered, 501(c)(3) charitable entity founded in 1972. It accomplishes its charitable mission through the donated services of 160+ trained volunteers who are supported and coordinated by a small paid administrative staff of only seven (five full time and two part-time). Now entering its 35th year of providing important community services, the EV can look back proudly at having served over 300,000 school children during that time in Santa Clara and San Mateo counties.

In the EV's most recently completed fiscal year (ended June 30, 2006) its accomplishments included the following:

- Total number of children taught: 10,428
- Number of students taught in EV classroom programs: 7,590
- Number of children taught on 129 EV field trip programs: 2,838
- Number of adult chaperones educated while on field trips: 473
- Number of classroom services: 345
- Number of teachers served: 474
- Number of schools served in Santa Clara and northern San Mateo counties: 70

Each of the EV's volunteers participates in either a comprehensive semester long training program accredited by San Jose University's Education Department, or in month-long single-subject training sessions on one of the required scientific subjects.

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Fulfillment of THE EV's mission is pursued by its volunteers who teach specific, ecologically-oriented science topics in classroom settings (primarily local elementary schools) as well as lead field trips to appropriate sites using local Bay Area environments. Topics currently being offered include:

- Baylands Ecology
- Foothills Ecology
- Marine Ecology
- Earthquake Geology and Preparedness
- Early California Indian Life: An Environmental Focus
- Water Science and Conservation
- Nature in Your Neighborhood
- All About Birds

Teaching is done exclusively in small groups with hands-on methodology.

Field Trip Sites include: Palo Alto Baylands, Sunnyvale Baylands Park, Stanford University's Jasper Ridge Biological Preserve, Stevens Creek County Park, Los Trancos Open Space Preserve, Rancho San Antonio Open Space Preserve, Huddart Park, Fitzgerald Marine Preserve and Pillar Point Tidepools.

2. The degree to which public access will be provided by the proposed use, including fees to be charged to Palo alto citizens.

The goal of the EV in occupying this important historic building is to help provide public access in several primary ways:

A. After rehabilitation and adaptive re-use, including relocation if necessary, a key feature of the building to be rehabilitated is the very large, two-story high central room of over 1,000 square feet in area. This room will be ideal for holding large meetings, training sessions and other associated uses. It is the hope of the EV that in addition to serving the organization's important training and service needs, it will be possible to periodically accommodate other groups who might also find it useful to use this meeting space. Organizations such as community groups, educational institutions and civic entities might find this space inviting, especially due to its proximity to the adjacent wildlife-filled marshlands, the Palo Alto Duck Pond and Palo Alto's nearby Lucie Evans Baylands Interpretive Center. At present time there has been no thorough analysis given as to what fees, if any, might appropriately be charged for use by such groups, however, the desire of the EV would certainly be to primarily cover its variable costs for any use or events plus obtain some contribution to associated overhead expenses. Additionally, the EV intends to conduct ecologically oriented classes at the site that will be of interest to Palo Alto citizens and members of the general public who may wish to attend.

B. The EV is planning to include two types of exhibits in the building that would be open to public viewing and should be interesting to anyone interested either in Bayland Ecology and/or environmentally sensitive "green" buildings:

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1) The EV plans to have an educational exhibit related to Bay Area flora and fauna. This is likely to be a periodically changing exhibit emphasizing topics associated with mission related aspects of the EV training.

2) Another exhibit planned would be one that would highlight the various environmentally sensitive features that are anticipated to be introduced into the building's rehabilitation (as compatible with the Secretary of the Interior's Standards for Rehabilitation of Historic Buildings). This might include explanations about, and examples of, certain types of insulation, certain flooring materials, usage of hidden-from-view solar panels for heating, special windows and the like.

C. One unfortunate aspect of the building in its current state and location is that it blocks access to what should be a publicly available Bayfront Trail. It has long been a local and regional goal that this trail could skirt the bay and marshlands and run along in front of the building. As noted above, however, the building presently sits practically on top of the seawall prohibiting anyone from walking along its bay front, unless done in a very unsafe and certainly unrecommended way. Consequently, in its present state the Bayfront Trail officially circles around the building on the side away from the bay. However, with the strong probability that rehabilitation of the building will also require that it be moved to higher ground, such a move may be potentially accomplished in a way that would also allow for more space between the building and the bay and therefore result in allowing the Bayfront Trail to skirt the bay as intended. Thus public access to this important trail would have been finally restored to its desired route.

3. How the proposed modifications to the property will be responsive to the Secretary's Standards for Rehabilitation of Historic Buildings (attached as Exhibit II to the Option and Lease Agreement).

The EV has contracted for an Historical Structures Report (HSR) by the firm of Preservation Architecture of Oakland, California which has conducted an investigation and evaluation of the building in accordance with California's Office of Historic Preservation guidelines (which ensures compliance under both Federal and State historic statutes). Based on the findings and recommendations of this report, and working with the EV's architects (Cody, Anderson and Wasney of Palo Alto) and under the guidance of Palo Alto's Historic Resources Board, the EV will develop a plan to restore the building as close as possible to its original state in consonance with current building, disability (ADA) and other requisite code requirements and certain specific needs (as long as allowable) of the EV's for interior space utilization and desired environmental sensitivity enhancements to the building as appropriate and permitted.

In response to the Standards for Rehabilitation set forth by the Secretary of the Interior the following observations by line item are offered:

1. Basically no changes to the defining characteristics of the building and its site and environment are contemplated or expect to be proposed other than the need, as previously identified by the CITY, to relocate the building to nearby higher ground.
2. Historic character shall be retained and preserved and no alteration of the defining spaces that characterize the building will be proposed. This will mean retaining the

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overall character and layout of the large central meeting area. No exterior changes are contemplated and the chief contemplated changes to the interior will entail enhancements to the non-historic office and "rigging" or general workplace areas plus required ADA and other applicable code upgrades and/or alterations.

3. There is no current evidence that any exterior changes have been made to the exterior over time and none are contemplated.
4. As no changes have been made, there is nothing of historical significance that has been added and needs to be retained.
5. All distinctive features of craftsmanship will be restored and maintained.
6. All deteriorated historic features will be repaired rather than replaced to the extent possible and practicable and will match the old features in design, color, texture and visual qualities. There is no current evidence of any significant missing features needing replacement other than portions of the deck on the waterfront side of the building.
7. All cleaning shall be undertaken using gentlest possible means and chemical or physical treatment such as sandblasting shall be assiduously avoided.
8. No archeological resources of any significance are expected to be found. If they should be they will be evaluated and a plan developed for protection and/or mitigation as appropriate and advisable.
9. No new additions, exterior alterations, or related new construction is planned. The only possible exterior alterations contemplated would relate to the addition of solar roof panels if they could be added in a manner that would keep them unobservable to a passerby.
10. No new additions or adjacent or related construction should be needed nor are contemplated.

4. Describe the plan for relocation and rehabilitation to be performed to the property as per Section II (C) (2) of the Information Flyer.

Essentially the plan for rehabilitation adaptive re-use will be in accordance with the CITY's prior analysis that the building needs to be at a higher elevation in order to ensure that it is high enough to avoid the past problems related to water incursion from high tides. In addition, the building has reportedly sunk approximately 30 inches since it was constructed in 1941. While it might be feasible to adequately elevate the structure and provide a new foundation at its current location, that alternative seems less preferable, and likely more expensive, than relocating it a short distance to nearby adjacent higher ground as identified by the CITY. In addition relocating the building will likely better allow for restoring the Bayfront Trail in front of the building rather than keeping it behind the building as it is now.

The EV and its architects and advisors will evaluate and analyze both possibilities, and also consult with the various permitting agencies and entities, and then propose to the CITY the alternative that, in their judgment, best provides the optimum solution for achieving the various

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parties' overall desired outcomes for a properly functioning, and faithfully rehabilitated historic building at this very special site.

Rehabilitation of the building is intended to include restoration of the outside of the building aimed at retaining, and to some extent enhancing, its unique historical and architectural character. No exterior changes are contemplated other than the possibility of restoring and/or replacing some features that have deteriorated or been destroyed over time (such as windows, railings, building trim and portions of the seaward deck). Any such work will be conducted in accordance with the Secretary of Interiors' Standards for Rehabilitation as noted previously.

The only physical changes contemplated will be related to the adaptive re-use of the interior of the building in order to enhance the usability of the two wings of the building for office space, a utilities room, a small meeting room, storage and equipment rooms and other typical office infrastructure needs. In addition the restroom facilities will be remodeled and upgraded to comply with American Disability Act requirements. The main central room will be largely retained in its present form although, due to lack of attention and some misuse, it will need to be restored and upgraded to more appropriately match its original character.

ATTACHMENT B
(To the Proposal)

ENVIRONMENTAL VOLUNTEERS ECOCENTER BUILDING
(FORMER SEA SCOUT BASE)

PROPOSER'S QUESTIONNAIRE

How did Environmental Volunteers (the EV) learn about this proposal offering?

Word of mouth via contact by Karen Holman, member of the Palo Alto City Planning Commission.

I. PROPOSER.

Environmental Volunteers

3921 East Bayshore Road
Palo Alto, CA 94303

Phone No. (650) 961-0545 Fax: (650) 961-0548

E-mail: allan@evols.org (Allan Berkowitz, Executive Director)

Proposer intends to operate as a California nonprofit corporation.

II. SOLE PROPRIETOR STATEMENT.

Not applicable.

III. PARTNERSHIP STATEMENT.

Not applicable.

IV. [Section not found in CITY supplied document]

V. NONPROFIT CORPORATION STATEMENT

1. Copies of the following documents are attached:

- a. Articles of Incorporation dated September 25, 1978 and filed on November 1, 1978.

- b. Bylaws including revisions thru August 4, 2006.
 - c. IRS code Section 501(c)(3) tax exempt determination letter dated May 24, 2002, addressed to the EV at its current location, which refers to the IRS's original tax exempt determination letter dated May 1979, and each of which acknowledge the EV's tax exempt status under IRC Section 170(b)((1)(a)(vi).
 - d. The state of California's dated January 26, 1979 acknowledging the organization's tax exempt status under California Section 23701d.
2. The mission statement of the Environmental Volunteers is as follows:
- "To promote understanding of, and responsibility for, the environment through hands on science education."**
3. A copy of the Environmental Volunteers organization chart is attached showing management and staff.
 4. A list of the Board of Trustees, their city of residence, occupations, and dates of service on the Board is attached. Also attached are brief biographical summaries of each Board member.
 5. The EV Board of Trustees meets monthly (although it may occasionally skip the August meeting).
 6. The average attendance at EV Board meetings for the last year was 85%.

VI. JOINT VENTURE STATEMENT.

Not applicable.

VII. FINANCIAL DATA.

A. FINANCIAL STATEMENTS

Complete audited financial statements, prepared in accordance with generally accepted accounting principles, and reflecting the EV's current financial condition and that of the previous five years, are attached.

B. SURETY INFORMATION

The EV has never applied for or obtained a bond nor has it ever

had a bond or surety denied, canceled or forfeited.

C. BANKRUPTCY INFORMATION

The EV has never filed for bankruptcy nor been declared bankrupt.

D. PROPOSED METHOD OF FINANCING REPAIRS/IMPROVEMENTS/USE/ OPERATIONS

In June of 2004 the EV created an internal Task Force of Board members for the purpose of conducting a feasibility study to determine whether undertaking the restoration, rehabilitation and, possibly, relocation of the former Sea Scout Base building, in order to take it over for use as the long term EV headquarters, would make short and long term sense for the organization given that the CITY was offering the EV a long term lease of the building for \$1.00 per year.

Upon completion of the study, the findings of which indicated that such a project would be feasible and in the long term best interests of the organization, the Task Force then performed a cost analysis to determine what funding would be required to complete the project successfully. This analysis included an assessment of not only what funds would be necessary for the short term restoration and relocation (if necessary), but also additional funding needs for covering the organization's overhead and administrative costs during the several years that the project would be underway as well as creation of a long range capital pool for funding major maintenance and repairs that might be needed in the future (e.g., new roofing 20 years out). In addition the budget included funding for potential unforeseen contingencies. The result of this financing analysis was that the EV would need to raise \$2 million to adequately cover the overall short and long term costs of the project. A copy of the \$2 million capital campaign budget that was developed is attached as Exhibit 1 to Attachment B.

Once the campaign goal was established the EV began soliciting donations and pledges to raise the \$2 million and by late 2005 a total of approximately \$1.7 million had been either raised or committed for the project, anchored by a \$1 million grant from the David and Lucille Packard Foundation. The latter grant was received in full by the EV in December 2005 at which time the Board felt it was in a position to approve committing the organization to moving forward and undertaking the project.

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As of November 10, 2006 the total campaign funding of \$1,722,500 has either been received, pledged or contingent (upon satisfaction of certain fund raising goals) as follows:

- \$1,057,000 Received and on hand.
 - 615,000 Pledged based on achieving certain project milestones such as signing a lease.
 - 50,000 Contingent on certain fundraising goals which have now been 87% reached
- \$1,722,500 TOTAL raised or committed to date.

Thus the EV is now less than \$280,000 away from reaching the full campaign goal of \$2 million with at least 9 months remaining before the majority of the funds will be needed (and longer for funding of the future long term maintenance and repair capital pool).

The EV's capital campaign will continue its process of raising the remaining funds necessary to reach the full campaign goal. Additionally it should be noted that interest income earned on the funds received to date has already reached approximately \$30,000 and it is projected that approximately \$40,000 more will be received over the next 12 months (\$70,000 total).

E. FELONY INFORMATION

None of the officers or directors of the organization have ever been convicted of a felony.

VIII. EXPERIENCE STATEMENT

The EV has created a special Project Management Group (PMG) made up of three current Board members and three former Board members. The function of this group will be to oversee all aspects of the project including such items as approving the engagement of professional contractors and consultants; periodically reviewing budgets and updates of financial forecasts; making reports on progress and achievements to the EV's Board; and ensuring that the project remains on track. Please see list of PMG members and biographical data attached as Exhibit 2 to Attachment B.

One of the former Board members has recently been involved in overseeing and managing a somewhat similar project. That project entailed working with the City of Palo Alto on planning, permitting and building an interpretive center at Palo Alto's Enid Pearson Arastadero Open Space Preserve.

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Two of the Board members, now retired, had extensive corporate, senior management business experience during their working careers.

In addition to the above, and in order to ensure that adequate hands on expertise will be available to the EV throughout the project, a professional Project Manager has been hired to oversee and coordinate the activities of planning; permitting; hiring of consultants and contractors; interfacing with CITY staff and CITY review boards; and working with community groups as necessary. The Project Manager is Maryanne Welton who has had over 28 years experience in coordinating project teams for an award-winning architecture firm; providing project management on community buildings and feasibility studies; and in working with CITY staff members. She is a Palo Alto resident and is currently employed at the Palo Alto based architectural firm of Rob Wellington Quigley, AIA where she serves in the roles of Vice President, Project Manager and Business Manager. Her resume is attached as Exhibit 3 to Attachment B.

Lastly, the EV has engaged the Palo Alto headquartered architectural firm of Cody Anderson Wasney as its architectural consultant and design provider and the Palo Alto headquartered construction firm of Vance Brown Builders as its prime contractor.

Cody Anderson Wasney (CAW) is well versed in historical restoration work and has received many awards for its work in this field, some which are related to buildings in Palo Alto including one from the Palo Alto Historical Society for the Waverley Oaks Renovation. Other notable projects accomplished by CAW include the 530 Ramona Street Renovation in Palo Alto, the Museum of American Heritage Renovation in Palo Alto and the Allied Arts Guild Renovation in Menlo Park.

Vance Brown Builders is also very well know locally having provided construction for many local projects such as the Palo Alto YMCA, Castilleja School, and Evvia Restaurant in Palo Alto; the Allied Arts building in Menlo Park; and the Arrillaga Family Sports Center, the Taube Family Tennis Stadium and the Avery Aquatics Complex on the Stanford campus.

IX. REFERENCES.

REFERENCE No. 1

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David Coale, Building Manager
 Peninsula Conservation Center
 3921 East Bayshore Road
 Palo Alto, CA 94303

Phone: (650) 962-9876 ext. 309

The Peninsula Conservation Center is the EV's landlord at the building where the EV has had its headquarters over the last 10 years. The building is jointly owned by a consortium of nonprofits and a representative from the EV's staff participates on the building management committee.

REFERENCE No. 2.

Michael Brierly
 Customer Service Supervisor
 California Association of Nonprofits (C.A.N.)
 820 Bay Avenue, Suite 230
 Capitola, CA 95010

Phone (888) 427-5224 ext. 220
 Fax (831) 465-6684

The California Association of Nonprofits is a statewide membership organization of over 1,700 diverse nonprofits and is dedicated to protecting, strengthening and promoting nonprofit organizations in California. The EV has worked with C.A.N. as an educational and technical resource, as a network facilitator and for assistance with risk management and cost savings.

REFERENCE No. 3

Jordan Walters, Vice President
 Salomon Smith Barney
 225 W. Santa Clara Street
 San Jose, CA 95113

Phone (408) 947-2203

Salomon Smith Barney serves as the Investment Manager and Advisor to the EV for funds being held by the organization. The EV maintains three different brokerage accounts with the firm. One consists of the organization's basic operating funds and is generally in the range of \$150,000 to \$250,000. These funds are all invested in short term instruments. Another account consists of an Endowment Fund in the amount of approximately \$220,000. This is invested long term allocated 60% to equities (mutual funds as advised by Salomon Smith Barney) and 40% to fixed income investments. The third account is for EcoCenter (Sea Scout Base) Building Project Fund. It currently holds approximately \$1,000,000 and is totally invested in short term instruments consisting primarily of certificates of deposit of \$95,000 or less, that have

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maturities ranging from 3 to 12 months, and money market funds invested in short term U.S. Treasury securities..

REFERENCE No. 4

Dennis Costa, CPU	Phone (877) 669-5101 (toll free)
President	Fax (877) 669-5109
Nonprofit Services Insurance Agency	
2843 Hopyard Road, Suite 169	
Pleasanton, CA 94588	

Nonprofit Services Insurance Agency is the EV's insurance broker for providing liability insurance, health insurance, workman's compensation insurance, fire and theft insurance and other insurance needs.

X. METHOD OF OPERATION

The EV plans to restore, rehabilitate and relocate, if necessary, the former Sea Scout Base building to use as its office headquarters and for conducting its important, ecologically oriented, natural science mission. The EV has engaged the well known and respected Palo Alto based architecture firm of Cody Wasney Anderson (CAW) to advise it on how to restore and rehabilitate the exterior of the building to most optimally retain its historic look and character and also on how to best remodel the interior of the building to serve EV's near and long term operating needs in consonance with retaining significantly important historical interior features. CAW will also be working to help incorporate environmentally sensitive materials and features into the restoration wherever possible in order to help create a "green" building to the extent feasible under the various codes and standards that have to be honored in the process. CAW has had extensive experience in restoring historic buildings, in working on such sites within the city of Palo Alto, and with incorporating environmentally sensitive features into buildings on which it has been involved.

Once the building has been moved to its new site, if necessary, and has been restored and rehabilitated based on final CITY approved plans, the building will then be occupied by the EV as it headquarters (and for conducting its mission oriented activities as enumerated above) for the duration of the lease and, very likely thereafter as well, CITY permitting.

XI. FINANCIAL INFORMATION

Please refer to Exhibit 4 attached for the projected costs of all aspects of this project over all the phases of planning, design, engineering, permitting, relocation (if necessary), construction, remodeling, decorating and move-in.

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Approximately 85% (\$1.7 million) of all budgeted costs for the project will be covered with funds already raised for and committed to the EV by various individuals and foundations. Only 15% (\$300,000) of the budget remains to be raised, and the intended use of that portion of the budget is mostly related to establishing reserves for future major maintenance and repair items (such as periodic re-painting and, at some time during the lease, re-roofing).

A. ESTIMATED CONSTRUCTION COSTS

For detailed analysis of the project's full projected planning, design, permitting, engineering and construction costs please also refer to Exhibit 4.

B. PRO-FORMA ANALYSIS

Since the EV does not intend to be a landlord nor plan to rent out space in the EcoCenter building, but will occupy it as its organizational headquarters, it is not felt that a 5-year pro-forma analysis of rental income and expenses would be instructive. Instead, please refer to Exhibit 5 attached which shows the EV's Operating Budget and Results for its fiscal year ended June 30, 2006 (including actual results versus budget) and its approved budget for the fiscal year ending June 30, 2007. As can be seen the EV's Operating Budgets do not change significantly from year to year so any subsequent year budget projections would be similar, though slightly higher in most categories shown (other than occupancy expenses which would be lower due to the reduced rental expenses related to the EcoCenter building).

XII. OTHER INFORMATION

The Environmental Volunteers organization has proven itself to be an important and effective nonprofit member of the Palo Alto area community for some 35 years. It has grown from a small group of dedicated volunteer docents into a vibrant force of over 160 dedicated docents who last year provided natural science education instruction in 70 peninsula area schools involving over 10,000 individual student services. The EV has thus developed a strong track record of organizational competency, effective community leadership and fiscal responsibility. Over the years the EV's supporters have helped it create a \$217,000 endowment fund, build operating reserves on the order of \$175,000 and now raise a capital fund of \$1.7 million (soon to be \$2 million) that will ensure adequate fiscal backing for carrying out the important EcoCenter project, including funding of future major maintenance and repair reserves, as outlined in this Proposal.

EXHIBIT 1
(to Attachment B)

ENVIRONMENTAL VOLUNTEERS ECOCENTER
CAPITAL CAMPAIGN BUDGET
RENOVATION, REHABILITATION AND CAPITAL COSTS

Move-in Costs (2005 to 2009):

Design, development and oversight costs	
Legal Advice	\$15,000
Project Manager	\$50,000
Permits	\$50,400
Architect	\$156,000
Subtotal design, development and oversight	<u>\$271,400</u>

Building Renovation, Rehabilitation and Relocation	
Utility hook-ups	\$25,000
Civil/Soils engineering	\$20,000
Foundation and relocation	\$105,000
Renovation, rehab & construction	\$1,195,000
Subtotal renovation, rehab and relocation	<u>\$1,345,000</u>

Furnishings	\$50,000
Renovation, rehab and construction contingencies	\$85,000
Pre Move-in insurance	\$55,500
Total building project costs	<u>\$1,806,900</u>

EV Project oversight, monitoring & admin. costs	<u>\$146,000</u>
Total initial project move-in costs	<u>\$1,952,900</u>

Less: Anticipated city transfer of development rights funding	<u>(\$250,000)</u>
Net initial project move-in costs	<u>\$1,702,900</u>

Other Capital Costs and expenditures (2010 to 2039)

Reserve for periodic major maintenance & repairs	\$205,000
Reserve for unexpected capital needs and overall project contingencies	<u>\$92,100</u>
Subtotal other	<u>\$297,100</u>

TOTAL BUDGET \$2,000,000

**EXHIBIT 2
(to Attachment B)**

**ENVIRONMENTAL VOLUNTEERS ECOCENTER
PROJECT MANAGEMENT GROUP (PMG)**

Chairperson: Jerry Hearn, Portola Valley - B.A. Anthropology, Stanford University. Currently Upper School teacher, Peninsula School, Menlo Park. Was member of the Environmental Volunteers Board of Trustees for 10 years. Appointed as the EV's representative to the planning task force for the Arastradero Gateway Facility (at Palo Alto's Enid Pearson Arastradero Open Space Preserve) because of his extensive planning and building experience. Has remained involved in oversight of that building effort through his association with the Acterra Arastradero Preserve Project. Spent 10 years operating an independent contracting business. Current member of the San Francisquito Watershed Council and the Santa Clara County Community Resource Committee; former member of the Portola Valley Creekside Corridor Committee, the Stanford Dish Advisory Committee, and the San Mateo Fish and Wildlife Advisory Committee.

Treasurer, Robert McIntyre, Palo Alto - A.B. Sociology, Stanford University, M.B.A Harvard Business School. Currently retired. Formerly Senior V.P. Finance and CFO of The Trust for Public Land, San Francisco, for 30 years. Environmental Volunteers Board member since 1984, CFO and Chairman of the Finance Committee since 2004. Currently serving as Board member, CFO and Chairman of the Finance Committee of the Sempervirens Fund, Mountain View; Board member and Co-Chairman of the Finance Committee of the Stanford Historical Society; Advisory Board and Audit Committee member of the Peninsula Open Space Trust, Menlo Park; and Advisory Committee of the Dorothy Erskine Open Space Fund, San Francisco. Formerly served as Advisory Board member of the Marin Headlands Advisory Commission; Advisory Committee member of the Resource Renewal Institute, Sausalito; and Board member and Co-Chairperson of Families Adopting Interracially, San Jose. Palo Alto resident since 1946. Listed in Who's Who in America.

Bob Dodge, Portola Valley - B.A. Education, Central Washington University, M.A. Special Education, Boston University. Retired teacher of blind and visually impaired children in public and private schools in four states. Active Environmental Volunteers docent since 1989 and former Board member. Former board member of numerous state and national professional organizations.

Jan Fenwick, Los Altos Hills - B.A. Political Science, Middlebury College; M.A. Education, Stanford University. Honored by the Los Altos Town Crier as the 2005 Los Altan of the year. Recipient of the Josephine & Frank Duveneck Humanitarian Award in 2000. Has been an active docent with the Environmental Volunteers for over 30 years where she also served in the past as President and Board member. Past President of Morning Forum of Los Altos, the Foothill Commission and the Purissima Hills Water Board. Taught 4th and 5th grades in San Carlos School District for four years.

Joyce Friedrichs, Menlo Park - B.S. Elementary Education, University of Colorado. Curriculum Development Manager for Galileo Education Services a company operating summer camps where children engage in science, art and outdoor activities. Former CEO BizWorld Foundation, an organization teaching children in grades 3 thru 8 how to start and run their own businesses. Nine years experience spent in educational publishing as math and science consultant and product manager developing science series for students in grades K thru 6. Board member and chairperson (since 2002) of the Environmental Volunteers where she has served as an active docent since 1982.

Stan Mantell, Palo Alto - B.S. Industrial Engineering, Syracuse University. Retired. Business career included various senior management and entrepreneurial positions in the Silicon Valley high tech industry. Board member of the Environmental Volunteers since 1999 and active docent since 1996.

EXHIBIT 3 (to Attachment B)

Resume - Maryanne Welton

660 Kendall Avenue, Palo Alto, CA 94306 650.269.3341

Objective

My goal is to use my project management expertise, facilitation skills, and commitment to quality design to help create public facilities in my community.

Qualifications

- 28 years of experience in coordinating project teams for an award-winning architecture firm
- Extensive project management experience on community buildings and feasibility studies
- Understanding of the community's expectations for high design standards and involvement
- Expertise in facilitating public outreach during the design process to ensure community compatibility
- Established working relationships with many City of Palo Alto staff members
- Familiarity with the City of Palo Alto's review and approval process
- Connections with a wide range of community members based on my eleven years of civic involvement

Work Experience

1978 to present: Rob Wellington Quigley, FAIA, vice president, project manager, business manager

1994 to present: Vice President, Palo Alto office

Head of Northern California branch office. Responsible for project management and business development for community buildings, affordable housing, and planning projects. Duties include:

- Develop project program requirements, scope of work, budget, schedule and approval process
- Prepare building program, project objectives, and evaluation criteria for consideration of alternatives and preferred options
- Prepare feasibility studies and explore site and phasing options
- Manage and direct professional staff from pre-design through construction
- Administer consultant contracts including contract negotiations and development of selection process, scope of work, schedule, budget, and deliverables
- Coordinate public review and approval process, including presentations to appointed and elected boards and commissions
- Organize and facilitate community meetings for public input into design of buildings and planning projects
- Coordinate implementation of LEED criteria and certification
- Ensure implementation of program goals from design through post-occupancy evaluation
- Prepare technical reports and documents required for presentation and submittal to governmental agencies for approval and entitlement process
- Coordinate multiple client groups to ensure project objectives are met
- Represent firm as spokesperson to print and TV media
- Develop business contacts and marketing program to obtain projects

1978 to 1994: Project Manager, Business Manager, and Marketing Director, San Diego

In addition to project management duties listed above, responsibilities included:

- Coordinate staffing and scheduling for all design projects
- Coordinate human resource services, including management of personnel, compensation and benefits packages
- Oversee contract negotiations, insurance requirements, and finances
- Develop business contacts and lead marketing and public relations efforts
- Prepare marketing materials and presentations for awards programs, publications and lectures
- Supervise professional and administrative staff members

1976 to 1977: Various Companies, Secretary and Bookkeeper

1975 to 1976: Wayside Inn, Pastry Chef, Kennebunkport, Maine

1973 to 1975: Secretary and Payroll Clerk, Xerox Corporation, Boston, Mass.

Project Management Experience

- **Community Buildings**
 West Valley Branch Library, San José
 Sun Field Station, Jasper Ridge Biological Preserve, Stanford University
 Linda Vista Library, San Diego
 Half Moon Bay Library Needs Assessment Study, Half Moon Bay
 Huntington Beach Library Site Analysis and Feasibility Study, Huntington Beach
 Carlsbad Library and City Hall Space Needs and Feasibility Study, Carlsbad
 Chula Vista Library Site Analysis and Expansion Study, Chula Vista
 Sherman Heights Community Center and Child Care Center, San Diego
 Tijuana River Estuary Visitor Center, Imperial Beach
 Saint David's Episcopal Church, San Diego
 Unitarian Universalist Fellowship Hall, Solana Beach

- **Planning Studies**
 Palo Alto Intermodal Transit Station Study, City of Palo Alto and Stanford University
 Mayfield Housing Study, City of Palo Alto and Stanford University
 San José State University Garage Master Plan, San José
 Tanforan/BART Feasibility Study, San Bruno
 Solana Beach Transit Center Master Plan, Solana Beach
 Newport Avenue Design Guidelines and Revitalization Study, San Diego
 Ocean Beach Waterfront Planning Study, San Diego
 Imperial Beach Beachfront Master Plan, Imperial Beach
 Orange Avenue Design Guidelines, Coronado
 Fontana Civic Center Design Charette, Fontana

- **Housing Projects**
 Opportunity Center of the Midpeninsula, Palo Alto
 Casa Feliz, San José
 Arboretum Housing Feasibility Study, Stanford University
 Alma Place, Palo Alto
 McKee Senior Housing, San José
 Blossom Hill SRO Feasibility Study, San José
 Alameda SRO Feasibility Study, San José
 Esperanza Family Housing, Encinitas

Education

Advanced Management Institute, Project Management
 Leadership Midpeninsula
 Georgetown University, Languages and Linguistics

Community Activities

- Docent, Jasper Ridge Biological Preserve, Stanford University
- Vice President, Zoning and Land Use Chair, Barron Park Association
- South El Camino Real Design Study Working Group
- Safe Routes to School Committee
- Arastradero Gateway Facility Task Force
- PTA positions, including President, Treasurer, Site Council Chair, PTA Council Rep, newsletter editor, classroom volunteer (Juana Briones, Barron Park JLS, Terman and Gunn)
- Housing Action Coalition, organizer of Whistle Stop Housing Tours, speaker for outreach programs
- Guest lectures and critiques, Urban Design and Architecture studios, Stanford University and UC Berkeley

References

Frank Benest	City Manager, City of Palo Alto	650.329.2563
Steve Emslie	Director of Planning, City of Palo Alto	650.329.2354
Bill Fellman	Real Property Manager, City of Palo Alto	650.329.2472
Greg Betts ✓	Supervisor Open Space & Science, City of Palo Alto	650.463.4906
Cathy Howard	Principal, Barron Park Elementary School	650.858.0508
Marlene Prendergast ✓	Director, Palo Alto Housing Corporation	650.321.9709

ATTACHMENT B

**Former Sea Scout Building Request for Proposals
Proposal Evaluation Criteria**

(based on the City's policy for the Leased Use of City Land/Facilities)

1. The extent to which the proposed leased use satisfies a public need or provides public benefit;
2. The extent to which the proposal is responsive to the guidelines and standards for historic preservation/rehabilitation;
3. The consistency of the proposed use with existing City goals and objectives (as set forth in the Comprehensive Plan, Zoning Ordinance, Baylands Master Plan, and general municipal services objectives);
4. The impact of the proposed use upon the immediate vicinity/neighborhood, the community generally and environment;
5. The degree of public access and fees to be charged to Palo Alto citizens;
6. The monetary and non-monetary consideration to be provided to the City;
7. The history and assessment of the proposer's ability to finance and carry out the construction, operation and maintenance of the facility and services as proposed; and
8. A five-year pro-forma financial analysis of the proposed use, setting forth the project revenues and expenses for this period of time.

ATTACHMENT C

Project: Sea Scout Base
2560 Embarcadero Road

OPTION TO LEASE AGREEMENT

This Agreement is made this _____ day of _____, 200_, by and between the City of Palo Alto, a California municipal corporation ("CITY"), and the Environmental Volunteers, a California non-profit corporation ("OPTIONEE").

RECITALS

- A. CITY owns the building located at 2560 Embarcadero Road in the City of Palo Alto, Santa Clara County, commonly referred to as the Sea Scout Base (the "PROPERTY"), more specifically described and shown in Exhibit B to the Lease attached hereto as Exhibit I (the "Lease"), which Lease is made a part hereof by this reference.
- B. CITY, in compliance with its Policy and Procedures 1-11, published a Notice of Intent to Award an Option to Lease on or about June 8, 2007.
- C. "OPTIONEE desires to obtain an exclusive option to lease the PROPERTY, in accordance with the terms and conditions of this Agreement and the Lease, for the purpose of, among other things, rehabilitating, and relocating the building if necessary, for adaptive re-use as its administrative headquarters for conducting its mission; providing environmental educational programs and exhibits open to the public; improving and maintaining a portion of the Marsh Front Trail; improving the property in accordance with historic preservation and environmental guidelines; and arranging for the construction of a public restroom facility near the Duck Pond ("Project").
- D. CITY desires to grant an exclusive option to OPTIONEE to lease the PROPERTY, during which time OPTIONEE shall develop specific plans, obtain financing, and satisfy other conditions set forth herein prior to exercising the option and leasing and developing PROPERTY under the Project, in accordance with this Agreement and the Lease.

NOW, THEREFORE, in consideration of the premises set forth above, the parties hereto mutually agree as follows:

1. GRANT OF OPTION

CITY hereby grants to OPTIONEE an exclusive option to lease the PROPERTY for the purposes of developing and operating the Project, subject to the terms, covenants and conditions set forth below and

in the Lease.

2. TERM OF OPTION

The term of the option granted hereunder shall be twenty-four (24) months, and shall commence upon execution of this Agreement by the the CITY.

3. PURCHASE PRICE OF OPTION

The purchase price of the option under this Agreement shall be five thousand Dollars (\$5,000), due and payable to CITY upon the execution of this Agreement by OPTIONEE. CITY shall retain the five thousand Dollars (\$5,000) purchase price even if OPTIONEE does not ultimately exercise the option to lease in accordance with the terms of this Agreement.

4. CONDITIONS PRECEDENT

The option to lease the PROPERTY under this Agreement may not be exercised by OPTIONEE unless and until each and every following condition has been satisfied:

A. Purchase Price of Option

OPTIONEE shall have paid the purchase price of the option as required under Clause 3 hereof.

B. Schematic Plans Submittal

OPTIONEE shall have submitted the schematic plans to CITY for the Project (the "Schematic Plans") within twelve (12) months of the commencement of this Agreement. The Schematic Plans shall include relocation plans, a site layout of all buildings, schematic floor plans for all structures, simple elevations of all structures, identification of the methods and measures for preservation of historic features of the site in accordance with the Secretary of Interior's Standards for Rehabilitation for Historic Buildings attached to this Agreement as Exhibit II and incorporated herein by this reference, a plan for fulfilling parking requirements, a detailed description of all proposed improvements or modifications (including proposed uses and methods of operation and a general outline specification which identifies proposed construction material and methods), and a detailed estimate of the total construction cost for all proposed improvements relating to the Project. If the development of PROPERTY is intended to be performed in phases, the Schematic Plans shall include all planned phases of the PROPERTY's development.

C. Development Plans Approvals

OPTIONEE shall have submitted to, and shall have received approval of, the development plans for the PROPERTY ("the Development Plans") from CITY's Historic Resources Board, Architectural Review Board, if applicable, Planning & Transportation Commission and City Council. The Development Plans shall include the Schematic Plans, interior plans, structural plans, exterior elevations, and interior elevations and shall indicate specific plans and details of the interior and exterior historic preservation and maintenance features to be included in developing the PROPERTY. As much as possible, and as directed by the City Council, the Development Plans shall be in accordance with the standards included in Exhibit II hereof. If the development of the PROPERTY is intended to be performed in phases, the Development Plans shall include and describe all the phases of the PROPERTY's development. Phase I shall at least include the improvements necessary to make the PROPERTY usable for the required services and uses under the Lease.

D. Construction Drawings Approval

OPTIONEE shall have obtained approval of the construction drawings for the Project (the "Construction Drawings") from the City Engineer and the Chief Building Official. The Construction Drawings shall include:

- i. Complete architectural, and engineering working drawings;
- ii. Complete construction specifications;
- iii. Complete construction contract form; and
- iv. Proposed construction schedule.

Should the development of the PROPERTY be performed in phases, OPTIONEE need only obtain approval of the Construction Drawings for Phase I of the Project to exercise the option to lease the PROPERTY.

E. Long Term Maintenance Plan

OPTIONEE shall have submitted to and received approval of a long term maintenance plan and schedule for the building on the PROPERTY from the City Manager or his designee.

F. Land Use Designation

OPTIONEE shall have received approval from the City Council for any necessary change in land use zoning for the PROPERTY,

any necessary change in CITY's Comprehensive Plan designation and any other land use permit or approval required, if necessary, for the PROPERTY for implementation of the Project and the Development Plans as approved by CITY.

G. Subdivision Map Act Compliance

OPTIONEE shall have complied with the conditions of the State Subdivision Map Act (Government Code Section 66410 et seq.) and Title 21 of the Palo Alto Municipal Code, as amended, to the extent applicable to the PROPERTY and the Project.

H. CEQA Compliance

OPTIONEE shall have complied with the California Environmental Quality Act ("CEQA"), as amended, and all related CITY procedures for implementing CEQA, to allow the Project to be implemented.

I. Permits

OPTIONEE shall have provided to the Real Property Manager evidence that any and all permits and approvals from any and all agencies having pre-construction jurisdiction over the Project (including San Francisco Bay Conservation Development Commission, Regional Water Quality Control, Army Corps of Engineers, U.S. Fish & Game, California Fish & Game), including but not limited to moving permits, building permits, grading permits, street opening permits and health permits, have been authorized and are available. Should development of the PROPERTY be performed in phases, the requirement of this subparagraph (I) shall apply only to Phase I improvements.

J. Certification to Chief Building Official

OPTIONEE shall have submitted to the Chief Building Official certification that the plans for any proposed building construction comply, in all respects, with current building codes, the federal Americans with Disabilities Act of 1990, as amended, including any implementing regulations, and energy conservation requirements as set forth in the California Code of Regulations, Title 24, for non-residential construction. Should the development of the PROPERTY be performed in phases, the requirement of this subparagraph (J) shall apply only to Phase I improvements.

K. Sufficient Funds

OPTIONEE shall have satisfied the Director of Administrative

Services that OPTIONEE has sufficient finances or financial commitments to implement the Project as approved by CITY. Should the development of the PROPERTY be performed in phases, the requirement of this subparagraph (K) shall apply only to Phase I improvements.

L. Sufficient Security to Complete Project

OPTIONEE, in accordance with Clause XV (TENANT'S ASSURANCE OF CONSTRUCTION COMPLETION) of the Lease, shall have furnished to the Director of Administrative Services satisfactory evidence that assures CITY that sufficient financial security will be available to construct the Project, as set forth in the approved Development Plans and Construction Drawings. Should the development of the PROPERTY be performed in phases, the requirement of this subparagraph (L) shall apply only to Phase I improvements.

M. SECURITY DEPOSIT

OPTIONEE shall have submitted to the Real Property Manager a security deposit in accordance with Clause(VI) (SECURITY DEPOSIT) of the attached Lease. Notwithstanding the foregoing, OPTIONEE shall be entitled to apply the Five Thousand Dollars (\$5,000.00) purchase price of the option under this Agreement toward the required security deposit under the Lease.

5. EXERCISE OF OPTION

If at any time during the option term under this Agreement OPTIONEE has satisfied each and every condition precedent set forth in Clause 4 hereof to the satisfaction of CITY, OPTIONEE may exercise the option to lease PROPERTY by giving the Real Property Manager written notice of OPTIONEE's election to do so, accompanied by two (2) properly executed copies of the Lease substantially in the form of Exhibit I hereof. CITY shall execute the Lease within one (1) month of receipt of OPTIONEE's request to exercise the option in accordance with this Clause.

6. GENERAL CONDITIONS

A. Review by City

OPTIONEE hereby acknowledges that one of the purposes of this Agreement is to afford OPTIONEE and CITY the opportunity to determine whether or not OPTIONEE is able to meet the various conditions and obtain the required approvals as set forth in this Agreement to implement the Project. Several of those conditions involve obtaining review and approval from officers,

employees or agents of CITY. Each of those reviews shall be conducted in an independent manner and nothing contained herein shall be deemed to limit the jurisdiction or authority otherwise possessed by said officers, employees or agents in the conduct of such review. Nothing contained in this Agreement shall be deemed to imply that said approvals will be forthcoming, and the failure to issue any such approval or permit by any officer, employee or agent of CITY shall not be deemed in any manner a breach of this Agreement, nor shall any such denial give raise to any claim, liability, obligation, or cause of action with respect to this Agreement or the Lease.

B. Other Governmental Approvals

CITY agrees to consent to cooperate in the submission of any lawful and complete application by OPTIONEE with respect to any permits or approvals related to activities or improvements approved by CITY in accordance with this Agreement which may be required by any governmental or other regulatory agencies aside from CITY.

C. Assignment Prohibited

This option has been awarded based on the unique background and proposal of OPTIONEE. Therefore, this option cannot be sold, assigned or otherwise transferred without the prior written consent of CITY. Failure to obtain CITY's required written consent shall render said sale, assignment or transfer void.

D. Extension of Option

Upon written request of OPTIONEE stating the reasons therefore, the City Manager or designee shall, at his/her sole discretion, extend the term of the option under this Agreement as follows:

- i. The City Manager or designee shall grant an extension of the term of this option for a reasonable period of time to be reasonably determined by the City Manager or designee, but not to exceed six (6) months, in the event OPTIONEE is delayed in fulfilling the conditions precedent to the exercise of the option by reason of any cause not the fault of, or within the control of, OPTIONEE or its agents or employees; or
- ii. The City Manager or designee shall grant an extension of the term of the option for a period not to exceed six (6) months, in the event OPTIONEE is delayed in fulfilling the conditions precedent to the exercise of this option for any other reason. However, the City Manager or designee may grant such extension only upon the following

conditions:

- a. Written request for such extension shall have been delivered by OPTIONEE to the Real Property Manager at least fifteen (15) days prior to the expiration of the option term under this Agreement;
- b. Payment in an amount equal to Two Thousand Dollars (\$2,000) shall be submitted to CITY with the request for extension referred to above; in the event the extension is denied, CITY shall refund said amount to OPTIONEE; and
- c. OPTIONEE shall submit, together with its request for extension, evidence of its progress toward fulfilling the conditions precedent to the exercise of the option, documentation of its proposed actions and the feasibility of satisfying said conditions within the term of the extension requested and such other information and material as may be required by the City Manager or his designee.

E. Termination of Option

Subject to Clause 6(D) hereof, failure of OPTIONEE to meet the terms and conditions of this Agreement fully and satisfactorily within the time limits stated under Clause 2 hereof shall absolutely and conclusively terminate OPTIONEE's rights hereunder. Upon termination hereof without exercise of the option by OPTIONEE, OPTIONEE shall, within five (5) business days of receipt of request from the Real Property Manager, deliver to CITY a properly executed quitclaim deed, quitclaiming to CITY any and all interest of OPTIONEE in and to the PROPERTY. Execution of the Lease by CITY and OPTIONEE substantially in the form of Exhibit I hereof shall also constitute a termination of this Agreement.

F. OPTIONEE's Right to Enter and Related Indemnification Obligation During Option Term

CITY hereby grants to OPTIONEE, its officers, agents, contractors, Board members, EcoCenter Project Management Group members and employees, during the term of this Agreement or any extension thereof, the right to enter the PROPERTY or any portion thereof at reasonable times for the purposes of conducting, at OPTIONEE's own cost and expense, various project related activities such as, but not limited to, soil, geologic, and engineering investigations, architectural, environmental and historic analyses, construction evaluations, and hazardous substances studies as may be required in connection with the

Project. OPTIONEE hereby agrees to protect, indemnify, defend and hold CITY, its officers, agents and employees, free and harmless from and against any loss, damages or liability CITY may incur in connection with, as a result of, or by reason of any such investigation. Should the option or this Agreement be terminated without execution of the Lease, OPTIONEE agrees to repair any and all damage caused to the PROPERTY by reason of any such investigation performed.

G. Insurance Coverage During Option Term

OPTIONEE shall, at its sole cost and expense, obtain commercial general liability insurance coverage in the form and amounts as required and set forth in Clause XVIII (INSURANCE) of the Lease prior to any investigation on the PROPERTY by OPTIONEE, its agents, employees or assigns.

H. Notices

Any notice, tender, or delivery to be given in accordance with this Agreement by either party to the other shall be given in accordance with Clause XXVI (NOTICES) of the Lease.

I. OPTIONEE's Representations and Warranties

OPTIONEE represents and warrants to CITY that it has not employed any real estate broker or finder in connection with this Agreement and hereby agrees to hold CITY harmless and free from any liability in connection with any commission or finder's fee alleged to be incurred.

J. Entire Agreement

This instrument contains the entire agreement between the parties relating to the option granted under this Agreement. Any oral representations or modifications concerning this instrument shall be of no force and effect, except in a subsequent modification which is made in writing and signed by both parties.

K. Recovery of Attorneys' Fees

In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, including attorneys' fees, and other legal costs.

L. Binding on Successors

This Agreement shall bind and inure to the benefit of the

ATTACHMENT C

respective heirs, personal representatives, successors and assigns of the parties hereto, except as may be expressly provided elsewhere in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Preliminary Agreement on the day and year first above written.

CITY:
CITY OF PALO ALTO

OPTIONEE:

By: _____
City Manager

By: 
Allan Berkowitz

Its: Executive Director

ATTEST:

By: _____
City Clerk

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

Attachments: Exhibit I: Lease
Exhibit II: Secretary of the Interior's Standards

CERTIFICATE OF ACKNOWLEDGMENT

(Civil Code § 1189)

STATE OF California)

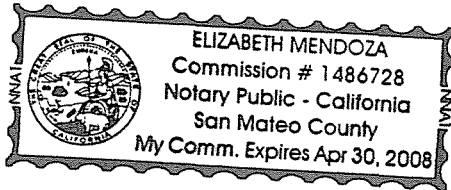
COUNTY OF Santa Clara)

On 06/19/2007, before me, Elizabeth Mendoza; Notary Public
(insert name and title of the officer)

personally appeared Allen Berkowitz
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that
he/~~she~~/they executed the same in his/~~her~~/~~their~~ authorized
capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the
instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Elizabeth Mendoza



CERTIFICATE OF ACKNOWLEDGMENT
(Civil Code § 1189)

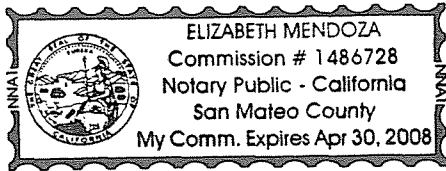
STATE OF California)
COUNTY OF Santa Clara)

On 06/19/2007, before me, Elizabeth Mendoza, Notary Public
(insert name and title of the officer)

personally appeared Joyce Friedrichs
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Elizabeth Mendoza



ATTACHMENT C

EXHIBIT I

LEASE

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Exhibit I

LEASE #

This Lease is made this _____ day of _____, 20__ by and between the City of Palo Alto, a chartered California municipal corporation, (CITY) and Environmental Volunteers a California non-profit corporation (TENANT).

RECITALS

1. CITY owns the real property and improvements located at 2560 Embarcadero Road, Palo Alto, California, commonly referred to as the "Sea Scout Base," and more specifically described and shown in Exhibit "B" to this Lease, which is attached hereto and incorporated herein by this reference (PREMISES").
2. On ____, 20__, CITY entered into an Option Agreement with TENANT, on file with the City Clerk as City Contract No. _____ (the "Option Agreement"). Under the Option Agreement, TENANT agreed to secure all necessary CITY approvals and permits in order to exercise the option granted under the Agreement to lease the PREMISES (the "Option"), relocate the building, construct improvements and operate the PREMISES as described in Exhibit "C" to this Lease which is attached hereto and incorporated herein by this reference (the "Project").
3. TENANT has satisfied all the conditions set forth in the Option Agreement, and now desires to exercise the Option and lease the PREMISES from CITY for the Project.
4. CITY desires to lease the PREMISES to TENANT for the Project, in accordance with the terms and conditions set forth below.

Now, therefore, in consideration of these recitals and the following covenants, terms and conditions, the parties hereto mutually agree as follows:

I. PURPOSE

The purpose of this Lease is to allow TENANT to perform the Project as described in Exhibit C, by developing and operating on the Premises a facility to house Tenant's offices and programs and to provide various educational and training programs to the public. according to the terms and conditions of this Lease.

II. PREMISES

Subject to the terms and conditions set forth in this Lease, CITY leases to TENANT that certain property (PREMISES) described and shown in "Exhibit B" attached to this Lease and by this reference made a part of this Lease. Unless specifically provided elsewhere in this Lease, TENANT accepts the PREMISES "as-is" on the date of execution of this Lease.

III. TERM

The term of this Lease shall be Forty (40) years, unless extended or terminated in accordance with this Lease, commencing the first day of the month following the date of execution of the Lease by the Mayor of CITY (the "Commencement Date"). Lessee shall, at the expiration of the term of this lease, or upon its earlier termination, surrender the property in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear. The City shall have the right, upon the termination of the term or upon a breach, to enter the Property and take possession of it.

IV. MONTHLY RENT and RENT WAIVER

A. TENANT agrees to pay to CITY as monthly rent the sum of One Dollar (\$1) per year without deduction or offset. Rent shall be payable, in advance, on or before the first day of each month at the place (or places) as may be designated in writing from time to time by CITY.

V. INTENTIONALLY DELETED

VI. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant shall deposit with the CITY the sum of \$ 5,000, which sum shall be held by CITY as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease. With the consent of the City Manager, in the sole and absolute discretion of the City Manager, in lieu of cash Tenant may deposit a letter of credit, pledged account or certificate of deposit, in form and substance acceptable to the City Manager, issued by a bank or other financial acceptable to the City Manager; the terms of the pledged account or certificate of deposit may provide for the direct payment of accrued interest directly to Tenant. If Tenant breaches any provision of this Lease, including, but not limited to the provisions relating to the payment of monthly rent, CITY may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any delinquent rent or other sum, or for the payment of any amount which CITY may spend or become obligated to spend by reason of Tenant's breach, or to compensate CITY for any other loss or damage which CITY may suffer by reason of Tenant's breach. If any portion of the security deposit is so used or applied Tenant shall, within 5 days after written demand therefor, deposit cash with CITY in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a breach of this Lease. CITY shall not be required

to keep the security deposit separate from its general funds, and Tenant shall not be entitled to interest on the security deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant (or, at CITY's option, to the last assignee of Tenant's interest hereunder) within 30 days following expiration of the Term. If CITY transfers its interest in this Lease, CITY shall transfer the security deposit to CITY's successor in interest.

VII. INCREASE IN SECURITY DEPOSIT NON-PROFIT ENTITY

On the fifth anniversary of the Commencement Date, and every five years thereafter, Tenant shall increase the amount of the initial security deposit according to the following formula:

$$R=SD[(B+1(A-B))/B]$$

Where:

R= Revised security deposit.

SD=Initial security deposit.

A=Average monthly index for the 12 calendar months ending with and including the index published just prior to the month in which each security deposit adjustment is to become effective.

B=Average monthly index for the 12 calendar months ending with and including the index published just prior to commencement of this Lease.

In no event shall the amount of the revised security deposit be less than the initial security deposit. The difference between the initial security deposit and the revised security deposit shall be due and payable to City within ten (10) days of receipt of a notice of revision of the security deposit from the Real Property Manager.

VIII. PERMITTED USES OF THE PREMISES

Tenant shall use the Premises for the uses specified below in this Article and Article IX and for no other use without CITY's prior written consent, which consent may be withheld in the sole and absolute discretion of the City Council; TENANT shall not use the PREMISES for any other purpose nor to engage in, or permit, any other business activity within or from the PREMISES. The uses which are permitted by this Article are the following:

- A. Use of the Premises for the offices and programs of Tenant.
- B. Workshops, classes and lectures associated with Tenant's mission and operations;
- C. Administrative offices and storage space to support the required services and uses under this Lease;

- D. Fundraising activities to support the permitted and required services and uses specified in this Lease, including but limited to sales of goods and gifts related to Tenant's use and programs and the hosting of benefits and social activities;
- E. Periodic rental of portions of the Premises by Palo Alto-based community groups and individuals, but in no event shall such rental be permitted for commercial purposes and in no event shall such rental interfere with or limit the required services and uses of the Premises set forth in Article IX. Any rental fee charges shall conform to an annual fee schedule approved in advance by the City Manager or his or her designee. Tenant may request modifications to the fee schedule during the year due to changed circumstances.

In addition to the foregoing, subject to the prior written approval of the City Manager, or his or her designee, Tenant may also use the Premises to provide such additional services and uses which are ancillary to and compatible with the permitted services and uses stated above and are not in conflict with the required services and uses specified in Article IX. In addition, and also subject to the prior written approval of the City Manager, or his or her designee, Tenant may also use the Premises to conduct revenue-generating events or operations so long as (i) such uses do not materially interfere with Tenant's ability to provide the required services and uses described in Article IX, (ii) such services or uses will not result in damage to the Premises or materially impair the operations conducted on the Premises, and (iii) all net revenue generated by such services or uses are devoted exclusively to funding the activities of Tenant conducted at the Premises. In each case, the approval of the City Manager, or his or her designee, shall not be unreasonably withheld.

IX. REQUIRED USES OF THE PREMISES

Throughout the term of this Lease TENANT shall provide the following uses, services, activities and public benefits ("Required Uses"):

- A. Rehabilitate, adaptively re-use, improve and maintain the historic building known as the "Sea Scout Base Building" located on the Premises;
- B. Tenant shall arrange for the construction of a public restroom facility in the vicinity of the existing porta-potty at the duck pond at the Baylands Park. To the extent the cost of this restroom exceeds \$75,000, the City shall reimburse Tenant for the additional cost. The City shall be responsible for the maintenance of the restroom.
- C. Trail Access: Following relocation of the building Tenant will construct accessible connections between the promenade deck of the building and the two adjacent termini of the existing Marsh Front Trail in order to close the gap in the multi-use public trail. The trail connections and promenade deck will be open and accessible to the public during the open hours of the park. Tenant shall be responsible for the maintenance of the trail tread along the promenade deck itself so that it is safe, smooth, clean, accessible, unobstructed and attractive.

D. Historic and Environmental Displays: Tenant shall create at least two permanent, exterior informational and educational displays and shall make them available at the Premises for the public and Palo Alto community members to enjoy. One such permanent exhibit will highlight the historical background and former uses of the building and another one or more displays will deal with Bayland Ecology related to the flora and fauna of the Bay. These displays will be continually maintained by Tenant with the intention that over time the Bay flora and fauna displays will be periodically re-designed and updated.

E. Waterfront Restoration: Tenant shall remove the existing seawall in front of the existing building and adjacent parking lot which now interferes with the waterfront bank to allow the waterfront bank to be returned to its natural state.

F. Nature Preserve Restoration: Tenant shall restore the natural area around the building after its relocation to create an opportunity for public education and study of natural area restoration that can, in both the short and long term, lead to lasting, significant and positive impacts on natural areas for which the City is responsible. Subject to regulatory agency review, Tenant will rehabilitate the areas surrounding the building by adding as much as four times the number of types of native plants than would otherwise be required for basic mitigation. The plants to be added will likely include Pickleweed, Alkali Heath, Pacific Gumplant, Sea-Lavender, Quail Bush, Coyote Bush, and Silver Lupine.

G. Public Information and Education: Tenant will provide 50 hours annually of public information and education to Baylands visitors and/or Palo Alto community members. This public information and education may include, but is not limited to, environmental education programs, community lectures, open houses, nature walks, Baylands restoration projects, camp programs and similar educational opportunities that facilitate the public's use of the Baylands Nature Park and the dissemination of information in ways and manners that further the public's understanding to the Baylands Preserve. Over time it is Tenant's intention to increase the hours offered for these activities should the availability of increased resources so permit.

H. Provision of public benefits through fulfillment of the Environmental Volunteers charitable mission;

I. Enhance environmental awareness of, and sensitivity to, natural science issues by Palo Alto residents and the general public through various programs which may include classes, displays, exhibits and demonstrations relating to local environmental conditions available to the public; provided, however, that Tenant may elect to charge an admission fee and establish specific viewing and attendance times with respect to displays, exhibits, demonstrations, classes or programs that are available to the public. Any admission fee charged shall conform to an annual fee schedule approved in advance by the City Manager or his or her designee. Tenant may request modifications to the fee schedule during the year due to changed circumstances.

J. Green design features: The rehabilitation and adaptive re-use of the building will incorporate numerous "green" design features in order to make it a more environmentally sensitive and responsive facility and, additionally, to provide an example for other organizations and the community. Tenant will periodically conduct on-site meetings, seminars and educational

programs designed to share its developed knowledge in this area based on its experience in implementing the “green” design materials and features as well as maintain an ongoing display and exhibit.

Every five (5) years, the City and TENANT shall meet and confer to review the effectiveness and relevance of the above listed Required Uses. Upon mutual agreement, the parties may substitute, modify, add or eliminate Required Uses to reflect current and projected community interest, need or preference. Any changes agreed to by Tenant shall be readily achievable within Tenant’s annual budget constraints. Any change to the Required Uses shall be reflected in a written modification to this Lease.

X. MAINTENANCE AND REPAIR

TENANT at TENANT’s expense, shall perform all maintenance and repairs, including all painting, and all maintenance of landscaped areas necessary to keep the PREMISES and all improvements thereto in first-class order, repair and condition, and shall keep the PREMISES and all improvements thereto in first-class order, repair and condition as contemplated under the approved development plans and construction drawings for the Project, throughout the term of this LEASE. For purposes of continued historic preservation of the PREMISES, TENANT shall comply with the maintenance plan and schedule described in Exhibit “F” attached hereto and incorporated herein by this reference. In addition, TENANT shall maintain, at TENANT’s expense, all equipment, furnishings and trade fixtures upon the PREMISES required for the maintenance and operation of the Project. TENANT expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of Sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at City’s expense or to terminate this Lease because of City’s failure to keep Premises in good order, condition and repair. TENANT further agrees that if and when any repairs, alterations, additions or betterments shall be made by TENANT as required by this paragraph, TENANT shall promptly pay for all labor done or materials furnished and shall keep the PREMISES free and clear of any lien or encumbrance of any kind whatsoever. If TENANT fails to make any repairs or perform any maintenance work for which TENANT is responsible within a reasonable time (as determined by the City Manager in the City Manager’s sole discretion) after demand by the CITY, CITY shall have the right, but not the obligation, to make the repairs at TENANT’s expense; within ten (10) days of receipt of a bill therefor, TENANT shall reimburse CITY for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by CITY shall in no event be construed as a waiver of the duty of TENANT to make repairs or perform maintenance as provided in this Section.

XI. INITIAL CONSTRUCTION BY TENANT

- A. Plans and Specifications. TENANT shall improve the PREMISES, at no cost to CITY, to adequately accommodate those services, activities and uses required by the Project under Section IX (REQUIRED USES OF THE PREMISES) and Exhibit C hereof. The

development plans prepared by TENANT and approved by CITY during the Option period under the Option Agreement, preceding execution of this Lease, shall be a master plan for development of the PREMISES, and the construction drawings prepared by TENANT and approved by the City Engineer and Chief Building Official during the same period shall provide the plans, specifications, and time schedule for constructing such improvements. The approved development plans and constructions drawings are attached hereto as Exhibit "D" and incorporated herein by this reference.

- B. Construction Standards. All design and construction shall conform to the approved plans and specifications, and shall meet all other requirements contained in this Lease, including but not limited to Section XIV (CONSTRUCTION STANDARDS) and Section XV (ASSURANCE OF COMPLETION).
- C. Asbestos and Lead Paint. The CITY is not aware of lead paint and asbestos laden materials in the Sea Scout Base building. However, TENANT shall be solely responsible for any lead and asbestos abatement or containment in the building to the extent required under all applicable federal, state and local building and safety codes and regulations, and shall fully comply with any applicable asbestos notification requirements under California Health and Safety Code section 25915 et seq., as amended.
- D. Cost of Improvements. Promptly after completion of construction, TENANT shall provide to the City Manager a statement of the reasonable and actual costs of construction for the initial improvements, which statement shall be certified as to accuracy and signed by TENANT under penalty of perjury.
- E. Permits. To the extent allowed under current policy and to the extent authorized by the City Council, the City shall work with Tenant in seeking waiver of all or a portion of applicable City permit fees.

XII. CERTIFICATE OF INSPECTION.

Upon completion of construction of any building, TENANT shall submit to the City Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

XIII. ALTERATIONS BY TENANT

TENANT shall not make any alterations or improvements to the PREMISES without obtaining the prior written consent of the City Manager, which consent shall not be unreasonably withheld. TENANT may, at any time and at its sole expense, install and place business fixtures and equipment within any building constructed by CITY, provided such fixtures and installation have been reviewed and approved by the City Manager.

XIV. CONSTRUCTION STANDARDS

All construction and alterations performed by or on behalf of Tenant shall conform to the construction and architectural standards contained in Exhibit D. Once the work is begun, Tenant shall with reasonable diligence prosecute all construction to completion. All work shall be performed in a good and workmanlike manner, shall substantially comply with any plans and specifications approved by CITY and shall comply with all applicable governmental permits, laws, ordinances and regulations.

Tenant shall pay all costs for construction done or caused to be done by Tenant on the Premises as permitted or required by this Lease. Tenant shall keep the Premises free and clear of all claims and liens resulting from construction done by or for Tenant.

Tenant shall defend and indemnify CITY against all claims, liabilities and losses of any type arising out of work performed on the Premises by Tenant, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by CITY in negotiating, settling, defending or otherwise protecting against such claims.

XV. ASSURANCE OF COMPLETION

Prior to commencement of this Lease and any construction or alteration to the PREMISES, or any phase thereof, TENANT shall furnish the City Manager evidence that assures CITY that sufficient monies will be available to complete the proposed work. The amount of such assurance shall be at least the total estimated construction cost that was submitted to and approved by CITY in accordance with the Option Agreement. Evidence of such assurance shall take one of the forms set out below and shall guarantee TENANT'S full and faithful performance of all of the terms, covenants, and conditions of this Lease:

- A. Completion Bond;
- B. Performance, labor and material bonds, supplied by TENANT'S contractor or contractors, provided the bonds are issued jointly to TENANT and CITY;
- C. Irrevocable letter of credit from a financial institution; or
- D. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the City Manager. All bonds and letters of credit shall be in a form acceptable to the City Manager, and shall insure faithful and full observance and performance by TENANT of all of the terms, conditions, covenants, and agreements relating to the construction of improvements or alterations in accordance with this Lease. To the extent a letter of credit is utilized, the amount of the letter of credit shall be substantially equal to the estimated cost to complete all approved construction, and City shall cooperate with Tenant to structure the letter of credit so that its amount may be periodically reduced to reflect the remaining cost to complete all approved construction, to permit Tenant to recover from the issuer of the letter of credit any excess collateral.

XVI. AS BUILT PLANS

Upon completion of any (i) new construction, (ii) structural alterations or (iii) non-structural alterations costing more than \$25,000, TENANT shall provide the City Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the PREMISES.

XVII. UTILITIES

TENANT shall make all arrangements for and fully and promptly pay for all utilities and services furnished to the Premises or used by Tenant, including, without limitation, gas, electricity, water, sewer, telephone service, and trash collection, and for all connection charges.

XVIII. INSURANCE

Tenant's responsibility for the Property begins immediately on commencement and Tenant, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in an amount(s) and in a form acceptable to City as set forth in Exhibit E attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Tenant's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit E.

XIX. DAMAGE OR DESTRUCTION - LEASE TO GOVERN TENANT'S RIGHTS

Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease.

Tenant waives the provisions of any statutes that relate to termination of leases when leased property is destroyed, including Civil Code §1932(2) and Civil Code §1933(4), and agrees that Tenant's rights in case of damage or destruction shall be governed solely by the provisions of this Lease.

XX. RESTORATION BY TENANT

(A) Destruction Due to Risk Covered by Insurance.

If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section XVIII (INSURANCE), rendering the Premises totally or partially inaccessible or unusable, Tenant shall restore the Premises to substantially the same condition as they were in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. Notwithstanding the foregoing, in the event the insurance proceeds are not sufficient to cover ninety-five percent (95%) of the cost to restore all damage to the Premises and Tenant is not in default of its obligation to carry required insurance,

then Tenant shall have the option to terminate this Lease unless City agrees to pay the amount of restoration cost that is not covered by insurance proceeds actually recovered.

(B) Destruction Due to Risk Not Covered by Insurance.

If, during the term, the Premises are totally or partially destroyed from a risk not covered by the insurance described in Section XVIII (INSURANCE), rendering the Premises totally or partially inaccessible or unusable, Tenant shall restore the Premises to substantially the same condition as they were in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ninety-five percent (95%) of the then replacement value of the Premises destroyed, Tenant can elect to terminate this Lease by giving notice to CITY within sixty (60) days after determining the Restoration cost and replacement value. If Tenant elects to terminate this Lease, CITY, within thirty (30) days after receiving Tenant's notice to terminate, can elect to pay to Tenant, at the time CITY notifies Tenant of its election, the difference between ninety-five percent (95%) of the replacement value of the Premises and the actual cost of restoration, in which case Tenant shall restore the Premises. On CITY's making its election to contribute, each party shall deposit immediately the amount of its contribution with the Insurance Trustee provided for in Subsection (C). If the Destruction does not exceed ninety-five percent (95%) of the then replacement value of the Premises, Tenant shall immediately deposit the cost of restoration with the Insurance Trustee as provided in Subsection (c). If Tenant elects to terminate this Lease and CITY does not elect to contribute toward the cost of restoration as provided in this section, this Lease shall terminate.

(C) Restoration of Premises.

(1) Minor Loss.

If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section XVIII (INSURANCE), and the total amount of loss does not exceed ten percent (10%) of the replacement cost of the Premises. Tenant shall make the loss adjustment with the insurance company insuring the loss. The proceeds shall be paid directly to Tenant for the sole purpose of making the restoration of the Premises in accordance with this Lease

(2) Major Loss - Insurance Trustee.

If, during the term of this Lease, the Premises are destroyed from a risk covered by the insurance described in Section XVIII (INSURANCE), and the total amount of loss exceeds the amount set forth in paragraph (1), Tenant shall make the loss adjustment with the insurance company insuring the loss and on receipt of the proceeds shall immediately pay them to such institutional lender or title company as may be jointly selected by the parties ("the Insurance Trustee").

If the Premises are destroyed from a risk not covered by the insurance described in Section XVIII (INSURANCE), and Tenant has the obligation to restore the Premises as provided in subsection (B), both parties shall deposit with the Insurance Trustee their respective contributions toward the cost of restoration. All sums deposited with the Insurance Trustee shall be held for the following purposes and the Insurance Trustee shall have the following powers and duties:

The sums shall be paid in installments by the Insurance Trustee to the contractor retained by Tenant as construction progresses, for payment of the cost of Restoration. A 10% retention fund shall be established that will be paid to the contractor on completion of restoration, payment of all costs, expiration of all applicable lien periods, and proof that the Premises are free of all mechanics' liens and lienable claims.

Payments shall be made on presentation of certificates or vouchers from the architect or engineer retained by Tenant showing the amount due. If the Insurance Trustee, in its reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by Tenant, the Insurance Trustee shall have the right to appoint an architect or an engineer to supervise construction and to make payments on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the insurance trustee out of the trust fund.

If the sums held by the Insurance Trustee are not sufficient to pay the actual cost of restoration Tenant shall deposit the amount of the deficiency with the Insurance Trustee within fifteen (15) days after request by the Insurance Trustee indicating the amount of the deficiency.

Any undisbursed funds after compliance with the provisions of this section shall be delivered to CITY to the extent of CITY's contribution to the fund, and the balance, if any, shall be paid to Tenant.

All actual costs and charges of the Insurance Trustee shall be paid by Tenant.

If the Insurance Trustee resigns or for any reason is unwilling to act or continue to act, CITY shall substitute a new trustee in the place of the designated Insurance Trustee. The new trustee must be an institutional lender or title company.

Both parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee to perform its obligations under this section.

(3) Procedure for Restoring Premises.

Within sixty (60) days after the date that Tenant is obligated to restore the Premises, Tenant at its cost shall prepare final plans and specifications and working drawings complying with applicable Laws that will be necessary for Restoration of the Premises. The plans and specifications and working drawings must be approved by CITY. CITY shall have thirty (30) days after receipt of the plans and specifications and working drawings to either

approve or disapprove the plans and specifications and working drawings and return them to Tenant. If CITY disapproves the plans and specifications and working drawings, CITY shall notify Tenant of its objections and CITY's proposed solution to each objection. Tenant acknowledges that the plans and specifications and working drawings shall be subject to approval of the appropriate governmental bodies and that they will be prepared in such a manner as to obtain that approval.

The restoration shall be accomplished as follows:

(1) Tenant shall complete the restoration as soon as reasonably practicable after final plans and specifications and working drawings have been approved by the appropriate governmental bodies and all required permits have been obtained (subject to a reasonable extension for delays resulting from causes beyond Tenant's reasonable control).

(2) Tenant shall retain a licensed contractor that is bondable. The contractor shall be required to carry public liability and property damage insurance, standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction in accordance with Section XVIII (INSURANCE). Such insurance shall contain waiver of subrogation clauses in favor of CITY and Tenant in accordance with the Provisions of Exhibit B.

(3) Tenant shall notify CITY of the date of commencement of the restoration at least ten (10) days before commencement of the restoration to enable CITY to post and record notices of nonresponsibility. The contractor retained by Tenant shall not commence construction until a completion bond and a labor and materials bond have been delivered to CITY to insure completion of the construction.

(4) Tenant shall accomplish the restoration in a manner that will cause the least inconvenience, annoyance, and disruption at the Premises.

(5) On completion of the restoration Tenant shall immediately record a notice of completion in the county in which the Premises are located.

(6) The restoration shall not be commenced until sums sufficient to cover the cost of restoration are placed with the Insurance Trustee as provided in this section.

(7) If TENANT elects to terminate this lease and not rebuild or repair such damage, then if CITY so requires, TENANT shall demolish any remaining structures or portions of structures not desired by CITY and clean up any and all debris and shall pay to CITY a pro-rata portion of the proceeds of insurance required in accordance with Section ___ hereof. The pro-rata portion shall be based on the following formula:

$$L = P(R/T)$$

Where:

L = TENANT's portion of insurance proceeds.

P = Total insurance proceeds paid exclusive of demolition and debris removal expenses.

R = Remaining term of the Lease in months.

T = The total Lease term in months, including any extensions made in accordance with this Lease.

TENANT's liability for demolition and cleanup shall be limited to insured losses including any deductible amount.

XXI. ASSIGNING AND SUBLETTING PROHIBITED

The parties acknowledge that CITY has relied on the unique background, character and capabilities of TENANT in entering into this Lease or in establishing the rent payable under this Lease. Consequently, Tenant shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest herein, or any right or privilege appurtenant hereto, or allow any other person (the employees, agents and invitees of Tenant excepted) to occupy or use the Premises, or any portion thereof. Any purported assignment or subletting without such consent shall be void, and shall, at the option of the CITY, constitute a default under this Lease.

For purposes of this Section, each of the following shall also be deemed an assignment subject to the provisions hereof: (i) if Tenant is a partnership or joint venture, a withdrawal, addition, or change (voluntary, involuntary, by operation of law, or otherwise) of any of the partners or venturers thereof; (ii) if Tenant is a limited liability company, a withdrawal, addition, or change (voluntary, involuntary, by operation of law, or otherwise) of any of the members or managers thereof; (iii) if Tenant is composed of more than one person, a purported assignment or transfer (voluntary or involuntary, by operation of law, or otherwise) from one thereof to the other or others thereof; (iv) if Tenant is a corporation, a change in the ownership (voluntary or involuntary, by operation of law, or otherwise) of 25% or more of its capital stock or members (or, in the case of a nonprofit corporation without members, of 25% or more of its directors); or (v) a change in Tenant's status as a non-profit, charitable organization.

XXII. NON-PROFIT COMMUNITY ORGANIZATION

For purposes of this Section, each of the following shall also be deemed an assignment subject to the provisions hereof: (i) any amendment, revision or repeal of Tenant's articles of incorporation or bylaws, unless approved by the City Manager before becoming effective, which approval shall not be unreasonably withheld; (ii) any change in the membership fees, if any, charged by Tenant, unless approved by the City Manager before becoming effective, which shall not be unreasonably withheld, provided however, that approval shall not be required if the increase in question is not more than five percent (5%) per year since the last time the membership fee in question was adjusted; (iii) any denial of membership in Tenant to any person meeting the requirements for membership described in Tenant's articles of incorporation or bylaws. Tenant shall at all times assure that the City Manager has on file copies of Tenant's then-current articles of incorporation, bylaws and fee schedules.

XXIII. RESERVATION OF AVIGATIONAL EASEMENT

CITY hereby reserves for the use and benefits of the public, a right of avigation, flight and resulting noise for the passage of aircraft landing at, taking off or operating from the adjacent airport operated by the County of Santa Clara.

XXIV. POST-ACQUISITION TENANCY

TENANT hereby acknowledges that TENANT was not an occupant of the PREMISES at the time the PREMISES were acquired by CITY. TENANT further understands and agrees that as a post-acquisition tenant, TENANT is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

XXV. BROKERS

Each party represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this Lease in any manner. Each Party ("Indemnifying Party") shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

XXVI. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and shall be deemed given as of the time of hand delivery to the addresses set forth below, or three (3) days after deposit into the United States mail, postage prepaid, by registered or certified mail, return receipt requested. Hand delivery includes, without limitation, delivery by a reputable commercial delivery service and delivery by facsimile transmission ("Fax") or internet electronic mail ("Email") (if the receiving party has designated a Fax number and/or a valid internet Email address); provided, however, that delivery by Fax or by Email shall not be effective unless (i) transmitted during normal business hours of the receiving party, and (ii) confirmed by delivering party within 24 hours by delivery of a physical copy of the material initially sent by Fax or Email. Unless notice of a different address has been given in accordance with this section, all such notices shall be addressed as follows:

TO: CITY

Real Property Manager
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 329-2468

TO: TENANT

Executive Director
Environmental Volunteers
3921 E. Bayshore Road
Palo Alto, CA 94303
(650) 961-0548

ATTACHMENT C

with a copy to:
City Clerk, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 328-3631

with a copy to:
Executive Director
Environmental Vounteers
2560 Embarcadero Road
Palo Alto, CA 94303
(650) 961-0548

and
City Attorney, City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto CA 94303
FAX: (650) 329-2646

Brad O'Brien, Esq
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
(650) 493-6811

XXVII. ATTACHMENTS TO LEASE

This Lease includes the following exhibits, which are attached hereto and by this reference incorporated into this Lease:

- Exhibit A - General Conditions
- Exhibit B – Description of Leased Premises
- Exhibit C – Description of the Project
- Exhibit D – Development Plans and Construction Drawings
- Exhibit E – Insurance Requirements
- Exhibit F – Long Term Maintenance Plan and Schedule for the Premises

The inclusion of Sections in Exhibit A (GENERAL CONDITIONS), Exhibit B (DESCRIPTION OF LEASED PREMISES), Exhibit C (DESCRIPTION OF THE PROJECT), Exhibit D (DEVELOPMENT PLANS AND CONSTRUCTION DRAWINGS), Exhibit E (INSURANCE REQUIREMENTS) or Exhibit F (LONG TERM MAINTENANCE PLAN AND SCHEDULE FOR PREMISES) is not in any way intended to lessen the importance of these Sections, but is merely done to enhance the organization of various Sections and this Lease.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY:
 CITY OF PALO ALTO (LESSOR)
 BY: _____
 City Manager

TENANT:
 ENVIRONMENTAL VOLUNTEERS
 BY: _____
 a California non-profit corporation

Its: _____

ATTEST:
 BY: _____
 City Clerk

By: _____
 Its: _____
 (Corporate Seal)

APPROVED AS TO FORM:
 By: _____
 Senior Asst. City Attorney

RECOMMENDED FOR APPROVAL:

By: _____
Assistant City Manager

By: _____
Director, Planning and Community Environment

By: _____
Director, Community Services

EXHIBIT A
GENERAL CONDITIONS

1. DEFINITION AND AUTHORITY OF CITY MANAGER

City Manager means the City Manager of the CITY, and the City Manager's designee or designees. The City Manager may establish different designees for different purposes. The City Manager may designate persons individually or by office or title. If a person is designated by office or title, and the position is eliminated or the title changed, the designation shall automatically apply to the position or title succeeding to the responsibilities of the former position or title.

Any consent or approval anticipated by, required under, or consistent with this Lease may be given on behalf of CITY by the City Manager. The City Manager is not authorized to enter into any amendment of this Lease without the approval of the City Council of CITY.

Notwithstanding any grant of authority to the City Manager under this Lease, the City Manager may in the City Manager's sole and absolute discretion waive the grant of authority in a specific matter, in which event the City Council of CITY shall retain the authority to act in that matter on behalf of CITY.

2. RENT PAYMENT PROCEDURES

- A. Rent includes all amounts payable by Tenant to City under this Lease, including but not limited to monthly rent, percentage rent, prepaid rent, security deposit, taxes and assessments, common area charges, operating costs, insurance, utilities, and other charges payable by Tenant (even if payable directly to someone other than CITY).
- B. TENANT'S obligation to pay rent shall commence upon the commencement of this Lease. If the term commences or terminates on a date other than the first of any month, monthly rent for the first and last month of this Lease shall be prorated based on a 30-day month.
- C. Rent (other than percentage rent, if applicable) payments shall be delivered to CITY's Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. The designated place of payment may be changed at any time by CITY upon ten (10) days' written notice to TENANT.
- D. TENANT specifically agrees that acceptance of any late or incorrect rentals submitted by TENANT shall not constitute an acquiescence or waiver by CITY and shall not prevent CITY from enforcing Section 3 (CHARGE FOR LATE PAYMENT) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any nonmonetary breach.

3. CHARGE FOR LATE PAYMENT

Tenant acknowledges that late payment of rent will cause CITY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Accordingly, if any payment of rent is not received by CITY within five (5) days after the due date, then, without any requirement for notice to Tenant, Tenant shall pay to CITY a late charge equal to the greater of (i) six percent (6%) of the amount of the overdue payment, and (ii) \$100.00. The parties agree that such late charge represents a fair and reasonable estimate of the costs CITY will incur by reason of late payment by Tenant. Acceptance of the late charge by CITY shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent CITY from exercising any of the other rights and remedies available to CITY.

4. PARTNERSHIP/CORPORATE AUTHORITY & LIABILITY

If TENANT is a partnership, each general partner:

- A. represents and warrants that the partnership is a duly qualified partnership authorized to do business in Santa Clara County; and
- B. shall be jointly and severally liable for performance of the terms and provisions of this Lease.

If TENANT is a limited liability company, each individual signing this Lease on behalf of TENANT represents and warrants that:

- A. he or she is duly authorized to do so in accordance with the Articles of Organization and Operating Agreement of TENANT; and
- B. TENANT is a duly qualified limited liability company authorized to do business in the State of California.

If TENANT is a corporation, each individual signing this Lease on behalf of TENANT represents and warrants that;

- A. he or she is duly authorized to do so in accordance with an adopted Resolution of TENANT'S Board of Directors or in accordance with the Bylaws of the corporation; and
- B. TENANT is a duly qualified corporation authorized to do business in State of California.

As used in this Lease, the term " TENANT'S AGENT" shall mean TENANT'S agents, employees, Board members, Project Management Group members, sublessees, concessionaires, or licensees, or any person acting under contract with TENANT; however, the definition of TENANT'S AGENTS used herein, shall not be construed to authorize or permit any sublease or

license not authorized or permitted elsewhere in this Lease. As used in this Lease, the term "CITY'S AGENTS" shall mean City officers, agents or employees

5. TIME

Time is of the essence of this Lease.

6. SIGNS

TENANT agrees not to construct, maintain, or allow any sign to be placed upon the PREMISES except as may be approved by CITY, which approval shall not be unreasonably withheld. Signs shall be allowed identifying the Environmental Volunteers as occupant. Unapproved signs, banners, etc., may be removed by CITY.

7. PERMITS AND LICENSES

Neither CITY's execution of this Lease nor any consent or approval given by or on behalf of CITY hereunder in its capacity as a party to this Lease shall waive, abridge, impair or otherwise affect CITY's powers and duties as a governmental body. Any requirements under this Lease that Tenant obtain consents or approvals of CITY are in addition to and not in lieu of any requirements of law that Tenant obtain approvals or permits. However, CITY shall attempt to coordinate its procedures for giving contractual and governmental approvals so that Tenant's requests and applications are not unreasonably denied or delayed. TENANT shall be solely responsible for obtaining any and all permits and/or licenses that may be required by law, including but not limited to building permits and business licenses.

8. MECHANICS LIENS

TENANT shall at all times indemnify and save CITY harmless from all claims for labor or materials supplied in connection with construction, repair, alteration, or installation of structures, improvements, equipment, or facilities within the PREMISES, and from the cost of defending against such claims, including attorney fees. TENANT shall provide CITY with at least ten (10) days written notice prior to commencement of any work that could give rise to a mechanics lien or stop notice. CITY reserves the right to enter upon PREMISES for the purposes of posting Notices of Non-Responsibility.

In the event a lien is imposed upon the PREMISES as a result of such construction, repair, alteration, or installation, TENANT shall either:

- A. Record a valid Release of Lien; or
- B. Deposit sufficient cash with CITY to cover the amount of the claim on the lien in question and authorize payment to the extent of said deposit to any subsequent judgment holder that may arise as a matter of public record from litigation with regard to lienholder claim; or

- C. Procure and record a bond in accordance with Section 3143 of the Civil Code, which releases the PREMISES from the claim of the lien from any action brought to foreclose the lien.

Should TENANT fail to accomplish one of the three optional actions within fifteen (15) days after the filing of such a lien, the Lease shall be in default and may be subject to immediate termination.

9. LEASE ORGANIZATION AND RULES OF CONSTRUCTION

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons.

The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this agreement, refer to this agreement.

All the terms and provisions hereof shall be construed to effectuate the purposes set forth herein, and to sustain the validity hereof.

The titles and headings of the sections of this agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall not in any way modify or restrict any of the terms of provisions hereof or be considered or given any effect in construing this agreement or any provision hereof in ascertaining intent, if any question of intent shall arise.

10. ENTIRE AGREEMENT

This Lease contains all of the agreements and understandings of the parties regarding the PREMISES, and supersedes any and all prior leases or agreements entered into by CITY for use of the PREMISES. All such prior leases or agreements are null and void.

11. AMENDMENTS

Any modifications or amendments of this Lease must be written, and shall not be effective unless executed by both parties.

12. UNLAWFUL USE

TENANT agrees that no improvements shall be erected, placed upon, operated, nor maintained within the PREMISES, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, or ordinance of a governmental agency having jurisdiction over TENANT'S use of the PREMISES.

Lessee further agrees not to use Premises for any purpose not expressly permitted hereunder. Lessee shall not (i) create, cause, maintain or permit any nuisance or waste in, on or about the Premises or permit or allow the Premises to be used for any unlawful or immoral purpose, and (ii) do or permit to be done anything in any manner which unreasonably disturbs the users of the City Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odors, noise, vibration, power emissions or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises.

13. NONDISCRIMINATION

TENANT and its employees shall not discriminate against any person because of race, color, religion, ancestry, age, sex, national origin, disability, sexual preference, housing status, marital status, familial status, weight or height of such person. TENANT shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, disability, sexual preference, housing status, marital status, familial status, weight or height of such person. TENANT covenants that in all of the activities TENANT conducts or allows to be conducted on the leased PREMISES, TENANT shall accept and enforce the statements of the policy set forth in Palo Alto Municipal Code Section 9.73.010 regarding human rights and nondiscrimination. If TENANT is found in violation of Palo Alto Municipal Code Section 9.73.010 by a court or administrative body of competent jurisdiction or in violation of the nondiscrimination provision of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the conduct of its activities under this Lease by the State of California Fair Employment Practices Commission or the equivalent federal agency or officer, it shall thereby be found in default under this Lease, and such default shall constitute a material breach of this Lease. CITY shall then have the power to cancel or suspend this Lease in whole or in part

14. INSPECTION

CITY'S employees and agents shall have the right at all reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, determining if the provisions of this Lease are being complied with, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements or additions to the Premises as City may deem necessary.

15. HOLD HARMLESS

TENANT hereby waives all claims, liability and recourse against CITY including the right of contribution, to the extent growing out of or arising from Tenant's use or occupancy of the Premises or from any activity undertaken by Tenant or Tenant's Agents which is related to this Lease for loss or damage of or to persons or property arising from, growing out of or in any way connected with or related to this Lease. CITY and its elected and appointed officials, officers, agents, employees and volunteers (individually and collectively "Indemnitees") shall have no liability to TENANT or to any other person or entity for, and to the fullest extent permitted by law, TENANT shall indemnify, hold harmless and defend the Indemnitees against, any and all

claims, liability, demands, damages, losses, attorneys' fees, defense costs including expert witness fees, court costs, and any other costs or expenses, arising out of or in any manner related to the operation or maintenance of the property described herein or TENANT'S performance or non performance of the terms of this Lease, except to the extent caused by the active negligence, willful misconduct, or breach of this Lease by CITY or CITY's agents. In the event CITY or another Indemnitee are named as co-defendant, TENANT shall notify CITY of such fact and shall represent the Indemnitees in such legal action unless CITY undertakes to represent the Indemnitees as co-defendants in such legal action, in which event TENANT shall pay to CITY its litigation costs, expenses and attorneys' fees. CITY shall be entitled to recover its attorney fees and costs in any action against TENANT to enforce the terms of this Section 15.

16. TAXES AND ASSESSMENTS

This Lease may create a possessory interest that is subject to the payment of taxes levied on such interest. Lessee specifically acknowledges it is familiar with §107.6 of the California Revenue and Taxation Code, realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code §107.6. It is understood and agreed that all taxes and assessments (including but not limited to the possessory interest tax) which become due and payable upon the PREMISES or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT and TENANT shall pay the taxes and assessments prior to delinquency.

17. SUCCESSORS IN INTEREST

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

18. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (FORCE MAJEURE)

If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy, or hostile governmental actions, civil commotion, fire or other casualty, and other causes without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

19. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Lease is determined to be invalid, void, or unenforceable in full or in part, by a court of competent jurisdiction, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

20. WAIVER OF RIGHTS

The failure of CITY or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that CITY or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease.

21. DEFAULT BY TENANT

A. Default Defined. The occurrence of any of the following events shall constitute a material default or breach of this lease by TENANT:

1. TENANT's failure to pay all or any portion of rent or any other payment due CITY at the times and in the manner provided in this Lease, if the failure continues for three (3) days after notice has been given to TENANT;
2. TENANT's a.) abandonment or vacation the PREMISES (absence from the PREMISES for thirty (30) days or more shall conclusively be deemed an abandonment of the PREMISES), b.) violation of the provisions of Section XXI (ASSIGNING, SUBLETTING, and ENCUMBERING), or c.) failure to provide evidence of insurance coverage throughout the term of this Lease in accordance with Section XVIII (INSURANCE) where such failure is not cured within five (5) days after written notice thereof is given by City to Tenant; and
3. TENANT's violation of any other provision of this Lease, if the violation is not cured within thirty (30) days after written notice of such violation by CITY to TENANT. However, if the violation cannot reasonably be cured within thirty (30) days, TENANT shall have a reasonable period of time (as determined by the City Manager) to cure such violation so long as Tenant commences to cure the default within the thirty-day period and thereafter diligently and in good faith continues to cure the default.
4. TENANT's:
 - a. filing of a voluntary petition or having an involuntary petition filed against it in bankruptcy or under any insolvency act or law;
 - b. adjudication as a bankrupt; or
 - c. attempt to make a general assignment for the benefit of its creditors.

B. Rights and Remedies of CITY. If TENANT commits a default, as defined in Subparagraph A. of this Section, CITY shall have the following rights and remedies, which rights and remedies shall not be exclusive, but which shall be

cumulative and in addition to any and all rights and remedies now or hereafter allowed by law or otherwise specifically provided in other Sections in this Lease:

1. CITY may continue this Lease in full force and effect and not terminate TENANT'S right to possession of the PREMISES, in which event CITY shall have the right to collect rent and other payments when due;
2. CITY may terminate this Lease and TENANT'S right to possession of the PREMISES;
3. CITY may have a receiver appointed to collect rentals and conduct TENANT'S business;
4. CITY may cure the default for the account and at the expense of TENANT. If CITY, by reason of an act of default by TENANT, is compelled to pay, or elect to pay, any sum of money or do any act that will require the payment of any sum of money, the sum or sums paid by CITY, together with an administrative charge equal to fifteen percent (15%) of said sum or sums, shall be deemed to be additional rent due CITY under this Lease and shall be due immediately from TENANT at the time the sum is paid, and if repaid at a later date shall bear interest at the rate of 10% per annum from the date the sum is paid by CITY until CITY is reimbursed by TENANT;
5. CITY may seek an action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of CITY;
6. CITY may seek a mandamus or other suit, action of proceeding at law or in equity to enforce its right against TENANT and any of its officers, agents, employees, assigns or subtenants, and to compel it to perform and carry out its duties and obligations under the law and this Lease.

C. Termination and Damages

1. CITY and TENANT specifically agree that acts of maintenance or preservation or efforts to relet the PREMISES (including the making of alterations and/or improvements to the PREMISES in connection with any reletting), and/or the appointment of a receiver upon initiative of CITY to protect CITY'S interests under this Lease will not constitute a termination of TENANT'S right to possession. CITY'S efforts to mitigate the damages caused by TENANT'S default shall not constitute a waiver of CITY'S right to recover damages under this Section.
2. Upon a termination of TENANT'S right to possession, CITY shall have the right to recover from TENANT:

- a. The worth, at the time of award, of the unpaid rental which had been earned at the time of termination of this Lease; and
- b. The worth, at the time of award, of the amount by which the unpaid rent which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided; and
- c. The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided; and
- d. Any other amount necessary to compensate CITY for all detriment approximately caused by TENANT'S default or which in the ordinary course of things would be likely to result therefrom, including, without limitation, all costs incurred by CITY in connection with reletting the PREMISES, court costs and reasonable attorney's fees.

"The worth, at the time of the award," as used in paragraphs (a) and (b) of this section is to be computed by allowing interest at the rate of 10% per annum. "The worth, at the time of the award," as used in paragraph (c) of this section, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

Nothing in this Section shall affect CITY'S right to indemnification for liability arising prior to termination of this Lease for personal injury or property damage pursuant to other provisions of this Lease.

- D. Appointment of Receiver. If a receiver is appointed at the request of CITY in any action against TENANT to take possession of the PREMISES and/or to collect the rents or profits derived therefrom, the receiver may, if it is necessary or convenient in order to collect such rents from profits, conduct the business of TENANT then being carried on in the PREMISES, and may take possession of any personal property belonging to TENANT and used in the conduct of such business and may be used by the appointed receiver in conducting such business on behalf of CITY and TENANT. Neither the application for the appointment of such receiver nor the appointment of such receiver shall be construed as an election by CITY to terminate this Lease unless a notice of such intention is given to TENANT. TENANT agrees to indemnify and hold CITY harmless from any liability arising out of the entry by any such receiver and the taking of possession of the PREMISES and/or use of personal property.

22. DEFAULT BY CITY

CITY shall be in default of this Lease if CITY fails or refuses to perform any provision of this Lease that CITY is obligated to perform if the failure to perform is not cured within thirty (30) days after notice of the default has been given by Tenant to CITY. If the default cannot reasonably be cured within thirty days, CITY shall not be in default of this Lease if CITY

commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default.

23. COSTS OF SUSTAINING AN ACTION FOR BREACH OR DEFAULT (RL 27.20) S

In the event either CITY or TENANT commences legal action against the other claiming a breach or default of this Lease, the prevailing party in such litigation shall be entitled to recover from the other cost of sustaining such action, including reasonable attorney fees, as may be fixed by the Court.

24. RESERVATIONS TO CITY

The PREMISES are accepted "as is" and "where is" by TENANT subject to any and all existing easements, and encumbrances. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is and has ascertained that it can be used for the limited purposes specified in Sections VII and IX. CITY reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the PREMISES or any part thereof, and to enter the PREMISES for any and all such purposes. CITY also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the PREMISES. No right reserved by CITY in this Section shall be so exercised as to interfere unreasonably with TENANT'S operation hereunder. CITY agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to the original condition upon the completion of any construction.

25. SURRENDER OF PREMISES

Upon expiration or termination of this Lease TENANT shall redeliver possession of the PREMISES to CITY in substantially the same condition that existed immediately prior to TENANT'S occupancy, reasonable wear and tear and damage by, flood, earthquake and act of war excepted.

26. OWNERSHIP OF IMPROVEMENTS

All improvements constructed, erected or installed upon the PREMISES must be free and clear of all liens, claims, or liability for labor or material and shall become the property of CITY, at its election, upon expiration or earlier termination of this lease and, upon City's election, shall remain upon the PREMISES upon termination of this Lease.

Title to all equipment, furniture, furnishings and trade fixtures placed by TENANT upon the PREMISES shall remain in TENANT, and replacements, substitutions and modifications thereof may be made by TENANT throughout the term of this Lease. TENANT may remove such fixtures and furnishings upon termination of this Lease, provided that TENANT shall repair to the satisfaction of CITY any damage to the PREMISES and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the PREMISES upon termination of this Lease.

27. DISPOSITION OF ABANDONED PERSONAL PROPERTY

If upon expiration or termination of this Lease TENANT fails to remove any personal property belonging to TENANT from the PREMISES, such property shall at the option of CITY at any time after forty-five (45) days after the date of expiration or termination be deemed to have been transferred to CITY. CITY shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor.

28. QUITCLAIM OF TENANT'S INTEREST

Upon expiration or termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall, at CITY'S request execute, acknowledge and deliver to CITY within five (5) days after receipt of written demand thereof, a good and sufficient deed whereby all rights, title, and interest of TENANT in the PREMISES are quitclaimed to CITY. Should TENANT fail or refuse to deliver the required deed to CITY, CITY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge and deliver such deed and the notice shall be conclusive evidence of the termination of this Lease, and of all right of TENANT or those claiming under TENANT in and to the PREMISES.

29. HOLDING OVER

After the term of this lease has expired, and until the Parties execute a written extension to the Lease, or Lessee surrenders the Property to the City, this Lease shall continue on a month-to-month basis subject to all terms and conditions of this lease, at City's then prevailing monthly rate of rent for the Property. The rent under a month- to-month tenancy shall be payable in advance of each month due and payable in full by the first day of each successive month of the Lease, subject to the provisions for late fees in Section 3 of this lease. The rent under a month-to-month tenancy is subject to increase on thirty (30) days prior written notice from City. Lessee shall be liable for such other damages incurred through the loss of a prospective tenant, or other expenses incurred due to its breach of this condition of the Lease. Nothing contained in this Lease shall give to Lessee the right to occupy the Property after the expiration of the term, or upon an earlier termination for breach.

30. CONFLICT OF INTEREST

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. TENANT warrants and covenants that no official or employee

of CITY nor any business entity in which any official or employee of CITY is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to CITY. In the event that CITY determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of CITY, TENANT upon request of CITY shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and CITY may terminate this Lease as a result of such violation.

31. EMINENT DOMAIN

If all or any part of the PREMISES (or the building in which the PREMISES are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the PREMISES by the condemning public entity.

If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, TENANT shall continue to be bound by the terms, covenants and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the PREMISES. If the condemnation of a part of the PREMISES substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, TENANT may:

- A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or
- B. Continue to occupy the remaining PREMISES and thereby continue to be bound by the terms, covenants and conditions of this Lease. If TENANT elects to continue in possession of the remainder of the PREMISES, the monthly rent shall be reduced in proportion to the reduced in proportion to the diminution in value of the PREMISES.

TENANT shall provide CITY with written notice advising CITY of TENANT'S choice within thirty (30) days of possession of the part condemned by the condemning public entity.

CITY shall be entitled to and shall receive all compensation related to the condemnation, except that TENANT shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any TENANT-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach, and (b) any amount specifically designated as a moving allowance or as compensation for Tenant's personal property. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

32. CPI

CPI means Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose CSMA published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is not published for a specific month, any reference to the CPI for that month shall be deemed to refer to the CPI for the last month prior to that month for which the CPI was published. (For example, if the CPI is published for the month of January 2002 but is not published for the month of February 2002, any reference to the CPI for February 2002 shall be deemed to refer to the CPI for January 2002.)

If the CPI is changed so that the base year differs from that used for the month in which the Term commences, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

33. HAZARDOUS SUBSTANCES

- A. Compliance with Laws. TENANT shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Premises or Project by TENANT, its agents, employees, contractors or invitees except ordinary and customary cleaning supplies and office supplies.
- B. Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that (i) any use of the Premises by TENANT involves the generation or storage, use, treatment, disposal or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials Laws; (ii) TENANT has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from TENANT's action or use of the Premises; or (iii) Tenant is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Premises caused by Tenant or Tenant's Agents.
- C. Assignment and Subletting. If (i) any anticipated use of the Premises by any proposed assignee or sublessee involves the generation or storage, use, treatment or disposal or release of Hazardous Material in a manner or for any purpose, (ii) the proposed assignee or sublessee has been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property, if the contamination resulted from such party's action or use of the property in question, or (iii) the proposed assignee or sublessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material, then it shall not be unreasonable for City to withhold its consent to an assignment or subletting to such proposed assignee or sublessee.
- D. Hazardous Materials Defined. The term Hazardous "Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances,

materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of “hazardous substances,” “hazardous waste,” “hazardous chemical substance or mixture,” “imminently hazardous chemical substance or mixture,” “toxic substances,” “hazardous air pollutant,” “toxic pollutant” or “solid waste” in the (a) “CERCLA” or “Superfund” as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) “Proposition 65,” Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof, (iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

- E. City's Right to Perform Tests. At any time prior to the expiration of the Lease Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil and to deliver to Tenant the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Tenant’s use of the Premises. Tenant shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys’ fees and costs arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to comply with all applicable legal or other regulatory requirements related to the investigation or remediation of Hazardous Materials released upon the Premises as a result of Tenant’s use of the

Premises. The testing shall be at Tenant's expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the Premises or the Project, which has been caused by or resulted from the activities of Tenant, its agents, employees, contractors or invitees.

- F. Hazardous Materials Indemnity. TENANT shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold Landlord harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses, including, without limitation, diminution in value of the Premises or Project, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises or Project, damages arising from any adverse impact or marketing of the Premises or Project and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Premises or Project by TENANT, TENANT'S Agents, licensees or invitees or at TENANT'S direction, of Hazardous Material, or by TENANT'S failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. TENANT'S indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term. For purposes of the indemnity provided herein, any acts or omissions of TENANT or its employees, agents, customers, sublessees, assignees, contractors or subcontractors of TENANT (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to TENANT.

B. TENANT'S USE OF PREMISES.

- i. TENANT shall comply with all laws now or hereafter in effect relating to the use of Hazardous Materials on, under or about the PREMISES, and TENANT shall not contaminate the PREMISES, or its subsurfaces, with any Hazardous Materials.
- ii. TENANT shall not cause or permit any Hazardous Materials to be used, stored, generated, or disposed of on or in the PREMISES by TENANT, TENANT'S agents, employees, contractors, or invitees without first obtaining the written consent of the CITY'S Fire Chief and the City Manager.

- iii. TENANT shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from TENANT'S activities on the PREMISES. TENANT shall immediately inform CITY of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to a public agency.
- iv. TENANT shall be solely and fully responsible and liable for such releases at the Premises, or into CITY'S sewage or storm drainage systems caused by Tenant or Tenant's Agents. TENANT shall take all necessary precautions to prevent any of its Hazardous Materials from entering into any storm or sewage drain system or from being released on the Premises. TENANT shall remove releases of its Hazardous Materials caused by Tenant or Tenant's Agents in accordance with all laws. In addition to all other rights and remedies of CITY hereunder, if the release of Hazardous Materials caused by TENANT is not removed by TENANT within a reasonable period of time (taking into account any threat to health and safety, the time to obtain appropriate permits and clearances from regulatory authorities, and the time to obtain competitive bids from contractors), CITY or any other third party, CITY may pay to have the same removed and TENANT shall reimburse CITY for such costs within five (5) days of CITY'S demand for payment.
- vi. TENANT'S obligations under this Section shall survive the expiration or earlier termination of this Lease.

34. ALL COVENANTS ARE CONDITIONS

All provisions of the Lease are expressly made conditions.

35. PARTIES OF INTEREST

Nothing in this agreement, expressed or implied, is intended to, or shall be construed to, confer upon or to give to any person or party other than CITY and TENANT the covenants, condition or stipulations hereof. All covenants, stipulations, promises and agreements in this Lease shall be for the sole and exclusive benefit of CITY and TENANT.

36. RECORDATION OF LEASE

Neither CITY nor TENANT shall record this Lease; however, a short-form memorandum of Lease may be recorded at CITY'S request.

EXHIBIT B
(page 1 of 2)

DESCRIPTION OF LEASED PREMISES
LEASE BETWEEN CITY OF PALO ALTO AND
ENVIRONMENTAL VOLUNTEERS

PARCEL 3

Beginning at a point North 45° 49' 01" East 104.46 feet from a 3/4 inch iron pipe with plug stamped CPA LS5223 said 3/4 inch iron pipe being North 53° 44' 04" East 1492.79 feet, from a monument in the centerline of Embarcadero Road. Said Monument being North 51° 37' 00" East 1558.72 feet, from the intersections of the centerlines of Embarcadero Road and Faber Place;

Thence South 45° 08' 45" East 83.68 feet;

Thence North 42° 52' 45" East 108.00 feet to a nail;

Thence North 45° 08' 45" West 78.14 feet to a 3/4 inch iron pipe with plug stamped CPA LS5223;

Thence South 45° 49' 01" West 107.95 feet to **point of beginning**.

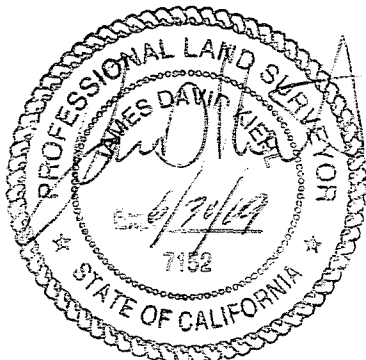
Being part of that certain 29.66 acre parcel recorded January 14, 1921 in Volume 532 of deeds at page 59 of Santa Clara County Official Records.

Parcel 3 containing 8,733 square feet (0.20 acres) more or less

Parcel 3 shown on Exhibit B and made a part hereof.

James Kiehl, LS 7152
Expires 6-30-2009

EXHIBIT B



SEA SCOUT LEASE

DRAWN BY: JAMES D. KIEHL
 DRAWNING: SEA SCOUT 2007.DWG
 DESC: SC062507.DOC
 COGO: SC062507.IOB REV (5) 6-28-07
 CITY OF PALO ALTO, CALIFORNIA

LEGEND / NOTES

- () SEA SCOUT LEASE APPROVED BY: J. REMLEY 10-14-1988
- (2) GPS-NAD83 (92) - PER ROS 663-26 / 31
- SET CARSONITE PLACARD NEXT TO FOUND I.P. & NAIL

PLAT TO ACCOMPANY DESCRIPTION

GOOD SOUNDING UNDER ASPHALT

P.O.B.

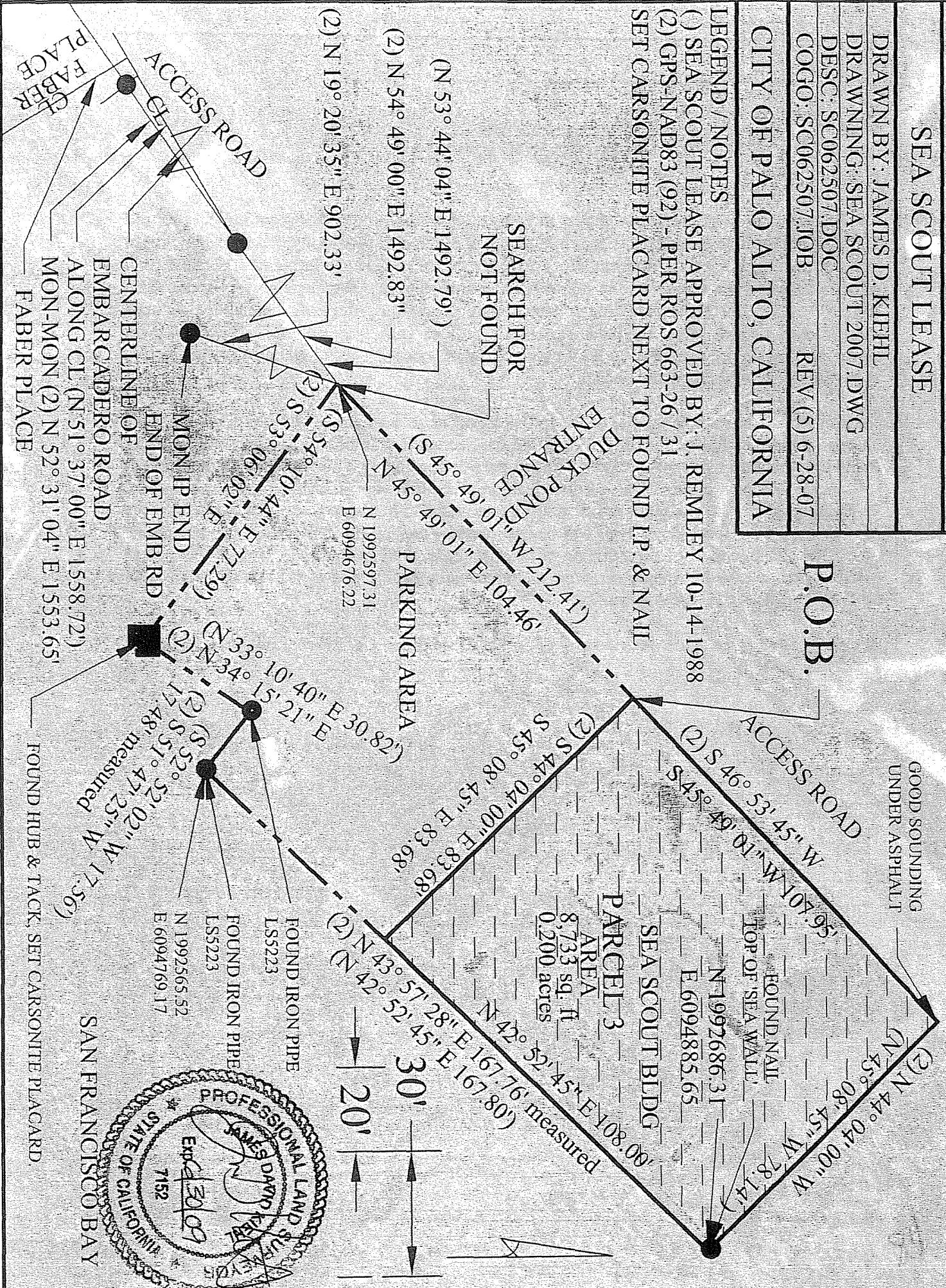


EXHIBIT C
PROJECT DESCRIPTION

The Project consists of the rehabilitation and relocation of the former Sea Scout building for use as TENANT's office headquarters for conducting its mission of promoting the understanding of and responsibility for the environment through hands-on-science education. TENANT will provide 50 hours per year of public information and education to Baylands visitors and/or Palo Alto community members including environmental education programs, community lectures, open houses, nature walks, Baylands restoration project, and camp programs. TENANT will create and display for the public at least two permanent, exterior educational exhibits which will be periodically re-designed and updated.

Rehabilitation and adaptive re-use of the building will be in accordance with the findings of the Historic Resources Report for the building and the Secretary of Interior's Standards for Historic Rehabilitation. Improvements include seismic upgrading including a new foundation, addition of sustainable and environmentally sensitive features and improvement of the site with a natural landscaping plan. The existing seawall will be removed and the waterfront bank returned to its natural state. The Marsh Front Trail will be improved by closing the gap in the multi-use public trail. The rehabilitation of the building will incorporate numerous "Green" design features to make it a more environmentally sensitive and responsive facility and to provide an example to other organizations and the community.

A public restroom near the duck pond will be constructed and CITY will reimburse TENANT for costs over \$75,000

EXHIBIT D
DEVELOPMENT PLANS AND CONSTRUCTION DRAWINGS

**EXHIBIT E
INSURANCE REQUIREMENTS**

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for leasees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by TENANT shall provide the following limits and coverages:

<u>POLICY</u>	MINIMUM LIMITS OF LIABILITY
(1) Commercial General Liability	\$1,000,000 per each occurrence for bodily injury, personal injury and property damage
(2) Automobile Liability Including Owned, Hired and Non-Owned Automobiles	\$ 1,000,000 Combined Single Limit
(3) Workers' Compensation Employers Liability	Statutory \$1,000,000 per accident for bodily injury or disease
(4) Tenant's Property Insurance Tenant shall procure and maintain property insurance coverage for: (a) all office furniture, trade fixture, office equipment, merchandise,	

and all other items of Tenant's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Tenant;

(b) all other improvements, betterments, alterations, and additions to the premises.

Tenant's property insurance must fulfill the following requirements:

(a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable City of Palo Alto, including earthquake sprinkler leakage.

(b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and

(c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the TENANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
2. Include a waiver of all rights of subrogation against the CITY and the members of the City Council and elective or appointive officers or employees, and each party shall indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.
3. Name the CITY OF PALO ALTO as a loss payee on the property policy.
4. Provide that the CITY, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the TENANT; products and completed operations of the TENANT; premises owned, occupied or used by the TENANT; or automobiles owned, leased, hired or borrowed by the TENANT. The coverage shall contain

- no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the TENANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents or volunteers shall be excess of the TENANT's insurance and shall not contribute with it.
 6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees, agents or volunteers.
 7. Provide that TENANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 8. TENANT agrees to promptly pay to CITY as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of TENANT's act(s) or TENANT's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-:VII.

Other Insurance Requirements

TENANT shall deposit with the City Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy CITY that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefor on deposit with CITY during the entire term of this Lease. Should TENANT not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, CITY may purchase such insurance, on behalf of and at the expense of TENANT to provide six months of coverage.

CITY shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the CITY's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for CITY and for members of the public using the PREMISES, the City Manager may require TENANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. CITY'S requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The City Manager shall notify TENANT in writing of changes in the insurance requirements. If TENANT does not deposit copies of acceptable insurance policies with CITY incorporating such changes within sixty (60) days of receipt of such notice, or in the event TENANT fails to maintain in effect any required insurance coverage, TENANT shall be in default under this lease without further notice to TENANT. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of CITY.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT'S liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, TENANT shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the PREMISES.

EXHIBIT F
LONG TERM MAINTENANCE PLAN AND SCHEDULE FOR THE PREMISES

EXHIBIT II
(to Option Agreement)

Secretary of the Interior's Standards for Rehabilitation*

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of the property shall be retained and preserved. The removal of historic material or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time: Those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

*Guidelines for these Standards are available for public review in the Palo Alto Planning Department, or they may be reviewed on the Internet at www2.cr.nps.gov/tps/tax/rhb/stand.htm. Click on "Guidelines."

ATTACHMENT D

SUMMARY OF OPTION TO LEASE

between the City of Palo Alto and the Environmental Volunteers (EV)
for the Sea Scout building at the Palo Alto Baylands

Conditions of the Option

Prior to exercising its option to lease the property, the EV (Optionee) must satisfy the following conditions:

1. Pay the Purchase Price of the Option.
2. Submit schematic plans for the project within twelve (12) months of the commencement of the option;
3. Receive approval of its development plan for the entire project from the Historic Resources Board, Architectural Review Board, Planning & Transportation Commission and City Council;
4. Receive approval from the City Engineer and Chief Building Official of construction drawings, including the construction contract form and proposed construction schedule. If property is phased, this requirement shall apply only to Phase I improvements.
5. Comply with all requirements of the California Environmental Quality Act (CEQA);
6. Receive approval from the City Manager of a long-term maintenance plan and schedule for the building during the Lease term.
7. Provide evidence to the Real Property Manager that any and all permits from any agencies having pre-construction jurisdiction over the proposed development have been authorized and are available.
8. Satisfy the Director of Administrative Services that the EV has sufficient finances or financial commitments to implement the project as approved by the City and furnish to the Director of Administrative Services evidence that sufficient financial security will be available to construct the project.
9. Submit to the Real Property Manager a security deposit as required by the Lease.

Terms of the Lease

LESSOR:

City of Palo Alto

TENANT:

The Environmental Volunteers, a non-profit corporation

PREMISES:

Sea Scout building at Palo Alto Baylands, 2560 Embarcadero Road

PURPOSE:

The purpose of the lease is to allow the EV to perform the project as described in Exhibit C to the lease by developing and operating a facility to house EV's offices and programs and to provide various educational and training programs to the public according to the terms and conditions of this Lease.

TERM:

The term of the lease is 40 years.

REQUIRED AND PERMITTED USES AND SERVICES:

Required Uses:

1. Rehabilitate, adaptively re-use and improve and maintain the Sea Scout Building.
2. Construct a public restroom near the duck pond at the Baylands Park. City to reimburse EV for any cost over \$75,000 and be responsible for the maintenance of the restroom.
3. Improve Marsh Front Trail access by constructing accessible connections between the promenade deck of the building and the two adjacent termini of the trail in order to close the gap. The trail connections and promenade deck to be open to the public during park hours and EV shall maintain the trail along the promenade deck.
4. Create at least two permanent, exterior educational displays for the public highlighting the historical background and former uses of the building and another dealing with Bayland Ecology related to the flora and fauna of the Bay.
5. Remove the existing seawall which will allow the waterfront bank to return to its natural state.
6. Restore the natural area around the building to create an opportunity for public education and study of natural area restoration.
7. Provide 50 hours annually of information and education to the public, including but not limited to environmental education programs, community lectures, open houses, nature walks, Baylands restoration projects, and camp programs.
8. Provide public benefits through fulfillment of the EV mission.
9. Enhance the public's environmental awareness and sensitivity to natural science issues through activities which may include classes, displays, and exhibits, provided that EV may charge an admission fee and establish specific attendance times. Fee schedules shall be subject to approval by the City Manager or designee.
10. Incorporate numerous "green" design features in the rehabilitation of the building to make a more environmentally sensitive and responsive facility and, additionally, to provide an example for other organizations and the community.
11. Meet with City every five (5) years to confer and review the effectiveness and relevance of the above listed Required Uses. Upon mutual agreement, the parties may substitute, modify, add or eliminate Required Uses to reflect current and projected community interest, need or preference. Any change to the Required Uses shall be reflected in a written modification to this Lease.

Permitted Uses:

1. Administrative offices and storage.
2. Workshops, classes and lectures associated with EV mission and operations.
3. Fundraising activities to support the required and permitted services including but limited to sales of goods and gifts related to EV's use and programs and hosting of benefits and programs.
4. Periodic rental of space for fundraising purposes as long as it is not for commercial purposes and does not interfere with or limit required services. Rental fee charges shall be subject to approval by City Manager.

CONSIDERATION/RENT:

1. Monetary: One Dollar (\$1.00) per year rent and up to \$75,000 of the construction cost of the public restroom.
2. Non-monetary: Development and operation of a non-profit environmental organization headquarters consistent with the purpose and clauses of the Lease, at no cost to the City.

SECURITY DEPOSIT:

A \$5,000 security deposit which can be cash, assignment of savings account, certificate of deposit or letter of credit.

REQUIRED IMPROVEMENTS:

Required improvements are those improvements which are identified and shown in the plans approved by the City during the option period. All improvements to be at no cost to City.

MAINTENANCE AND REPAIRS:

EV shall be responsible for all maintenance and repairs in accordance with the City-approved maintenance program approved during the option period.

ASSIGNMENT AND SUBLETTING:

Any assignment, subletting or encumbrance of the lease is prohibited.

TAXES, ASSESSMENTS AND UTILITIES:

EV shall be responsible for all costs for utilities, taxes and assessments for the premises.

INSURANCE:

The EV shall maintain insurance meeting the City's standard requirements for insurance protection.

ATTACHMENT E

Permit/Planning Fees To Be Waived
Environmental Volunteers

Building permit fee	\$12,958
Building plan check	\$10,366
Planning plan check	\$ 3,886
Fire plan check	\$ 5,829
PW plan check	\$ 1,554
SMIP	\$ 420
Elec/Mech/Plumbing	<u>\$ 1,026</u>
Planning Fees	<u>\$15,000*</u>
TOTAL	\$51,000

*Planning fees are estimated because some are cost recovery and charged on an hourly basis.

ATTACHMENT D

**Building Permit ID:
07000-00000-03210**

**Address: 2560
Embarcadero Road, Palo
Alto CA**

**Description of Work:
Rehabilitation of the Sea
Scout Building**

List of Fees that were waved for the
Building Permit

Period	Subgroup	Fee Code	Fee Item	Assess Date	Priority	Quantity	Unit	Fee	Adjusted
PERMIT	General	000001BBPAAA	Permit Automation Fee Comprehensive Plan	9/29/2008		1		\$2.00	
PERMIT	General	11	Maintenance Fee	9/29/2008		1		\$168.52	
PERMIT	Building	000004BBPAAAB	Building Plan Check Fee	12/28/2007		1		\$2,884.66	
PERMIT	Building Code Strong Motion Instrumentation Surcharge	000002BBPAAA	Building Permit Fee	9/16/2008		1		\$4,038.24	
PERMIT	Public Works	000012BBPAAA	SMIP - Commercial C & D Ordinance	9/16/2008		1		\$80.29	
PERMIT	Public Works	000001CNDFEE	Recycling Microfilm Copy/Print	9/29/2008		1		\$225.00	
PERMIT	General	800000BBPAAA	Enter number of Sheets	9/29/2008		61		\$183.00	
PERMIT	Electric	000000BEPAAA	Elect Base fee	9/18/2008		1		\$80.00	
PERMIT	Electric	000002BEPAAA	New or Remodeled Square Footage - Enter Sq Ft	9/18/2008		2858		\$285.80	
PERMIT	Mechanical	000000BMPAAA	Mech Base Fee	9/18/2008		1		\$80.00	
PERMIT	Mechanical	000002BMPAAA	New or Remodeled Square Footage - Enter Sq Ft	9/18/2008		2858		\$285.80	
PERMIT	Plumbing	000100BPPAAA	Plbg Base Fee	9/18/2008		1		\$80.00	
PERMIT	Plumbing	000102BPPAAA	Plbg New or Remodeled Square Footage - Enter Sq Ft	9/18/2008		2858		\$285.80	
							Total Fee:	\$8,679.11	

ATTACHMENT D

ENVIRONMENTAL VOLUNTEERS
EcoCenter Expenses Related to Palo Alto Requirements

<u>Item</u>		<u>Amount</u>
1. Utilities and Engineering hook-ups billed by City		
	Phase One	32,933
	Phase Two	2,602
2. City dump fees		1,525
3. Plan Checks		
	Phase One	801
	Phase Two	173
4. City of Palo Alto Development Impact Fee		2,300
	TOTAL PALO ALTO FEES	\$40,334



Environmental Volunteers

October 29, 2012

James Keene
City Manager
250 Hamilton Avenue
Palo Alto, California 94301

Dear Jim,

As you know, the Environmental Volunteers recently completed the \$3.8 million restoration of the city's historic resource formerly known as the Sea Scout Building. We are excited to restore this iconic building that will benefit the city, our organization and the community. This project truly was a win-win-win.

As part of the restoration project, the City of Palo Alto charged us fees totaling \$40,334 (Attachment A). In three prior communications dating back to 2008 we requested that these fees be reimbursed or waived or an appropriate accommodation be found. No action was taken on that request any of those times. In a meeting with Steve Emslie in spring 2012 it was recommended that we seek a creative solution to this issue of the fees charged by the city for restoring the city's own property. We believe the appropriate solution is to amend our lease as explained below.

Under the current terms of our lease and quoting from that lease: Tenant shall arrange for the construction of a public restroom facility in the vicinity of the existing porta-potty at the duck pond at the Baylands Park. To the extent the cost of this restroom exceeds \$75,000, the City shall reimburse Tenant for the additional cost. The City shall be responsible for the maintenance of the restroom.

Following our discussions with Steve Emslie, by this letter we formally request that City Council amend our lease to reduce the maximum portion of the restroom expense to be taken on by the Environmental Volunteers to \$35,000.

Upon signing an amended lease, we are prepared to immediately coordinate with the City on the construction of this restroom.

Why are we making this request?

- The EcoCenter was, is, and will continue to be a City of Palo Alto resource. It is unfair that we endured over \$40,000 in city fees to restore the city's own property.


- Through our hard work and capital investment, the City of Palo Alto has realized a multi-million dollar increase in the value of its real estate portfolio.
- Given the hazardous state of the building prior to our involvement, we removed a safety and security hazard with which the City long contended. The Baylands is a much safer place now.
- Through the new educational programs we are developing at the EcoCenter, visitors to the city's preserve enjoy an enriched educational experience.

For the duration of this project we enjoyed a positive and productive working relationship with the City and its representatives. This truly has been a public-private partnership in the best senses of that term. In a spirit of fairness, we respectfully request that City Council amend our lease capping our restroom contribution at \$35,000.

Sincerely,

Allan Berkowitz
Executive Director

Municipal Code Sections: 18.18.060, 18.18.070, 18.18.080

 18.18.060 Development Standards

(a) Exclusively Non-Residential Use

Table 2 specifies the development standards for new exclusively non-residential uses and alterations to non-residential uses or structures in the CD district, including the CD-C, CD-S, and CD-N subdistricts. These developments shall be designed and constructed in compliance with the following requirements and the context-based design criteria outlined in Section [18.18.110](#), provided that more restrictive regulations may be recommended by the architectural review board and approved by the director of planning and community environment, pursuant to Section [18.76.020](#):

Table 2				
Exclusively Non-Residential Development Standards				
	CD-C	CD-S	CD-N	Subject to regulations in Section:
Minimum Setbacks				
Front Yard (ft)		None required		10 ⁽¹⁾
Rear Yard (ft)		None required		
Interior Side Yard (ft)		None required		
Street Side Yard (ft)		None required		20 ⁽¹⁾
Minimum street setback for sites sharing a common block face with any abutting residential zone district				Setback lines imposed by a special setback map pursuant to Chapter 20.08 of this code may apply
Minimum yard (ft) for lot lines abutting or opposite residential zone districts	10 ⁽¹⁾	10 ⁽¹⁾	10 ⁽¹⁾	
Maximum Site Coverage		None required		50%
Maximum Height (ft)				
Standard	50	50	25	
Within 150 ft. of an	— ⁽³⁾	— ⁽³⁾	— ⁽³⁾	

ATTACHMENT G

abutting residential zone district				
Maximum Floor Area Ratio (FAR)	1.0:1 (5)	0.4:1 (5)	0.4:1 (5)	18.18.060(e) 18.18.070
Maximum Floor Area Ratio (FAR) for Hotels	2.0:1	2.0:1	N/A	18.18.060(d)
Maximum Size of New Non-Residential Construction or Expansion Projects	25,00 square feet of gross floor area or 15,00 square feet above the existing floor area, whichever is greater, provided the floor area limits set forth elsewhere in this chapter are not exceeded			
Daylight Plane for lot lines abutting one or more residential zone districts				
Initial Height at side or rear lot line	– ⁽²⁾	10	10	
Slope	– ⁽²⁾	1:2	1:2	
The yard shall be planted and maintained as a landscaped screen, excluding area required for site access.				
The initial height and slope shall be identical to those of the residential zone abutting the site line in question.				
The maximum height within 150 feet of any abutting residential zone district shall not exceed the height limit of the abutting residential district.				
The minimum street setback shall be equal to the residentially zoned setback for 150 feet from the abutting single-family or multiple family development.				
FAR may be increased with transfers of development and/or bonuses for seismic and historic rehabilitation upgrades, not to exceed a total site FAR of 3.0:1 in the CD-C subdistrict or 2.0:1 in the CD-S or CD-N subdistricts.				

(b) Mixed Use

Table 3 specifies the development standards for new residential mixed use developments. These developments shall be designed and constructed in compliance with the following requirements and the context-based design criteria outlines in Section [18.18.110](#), provided that more restrictive regulations may be recommended by the architectural review board and

ATTACHMENT G

approved by the director of planning and community environment, pursuant to Section [18.76.020](#):

**TABLE 3
MIXED USE DEVELOPMENT STANDARDS**

CD-C	CD-S	CD-N	Subject to regulations in Section:	
Minimum Setbacks				Setback lines imposed by a special setback map pursuant to Chapter 20.08 of this code may apply
Front Yard (ft)		None required		10'
Rear Yard (ft)		10' for residential portion; no requirement for commercial portion		
Interior Side Yard (ft)		No requirement	10' if abutting residential zone	10' if abutting residential zone
Street Side Yard (ft)		No requirement	5'	5'
Permitted Setback Encroachments		Balconies, awnings, porches, stairways, and similar elements may extend up to 6' into the setback. Cornices, eaves, fireplaces, and similar architectural features (excluding flat or continuous walls or enclosures of interior space) may extend up to 4' into the front and rear setbacks and up to 3' into interior side setbacks		
Maximum Site Coverage		No requirement	50%	50%
Landscape Open Space		20%	30%	35%

ATTACHMENT G

Coverage				
Usable Open Space	200 sq ft per unit for 5 or fewer units ⁽¹⁾ ; 150 sq ft per unit for 6 units or more ⁽¹⁾			
	CD-C	CD-S	CD-N	Subject to regulations in Section:
Maximum Height (ft)				
Standard	50'	50'	35'	
Within 150 ft. of an abutting residential zone	40 ⁽⁴⁾	40 ⁽⁴⁾	35 ⁽⁴⁾	
Daylight Plane for lot lines abutting one or more residential zoning districts or a residential PC district	Daylight plane height and slope identical to those of the most restrictive residential zone abutting the lot line			
Residential Density (net)⁽²⁾	40	30	30	
Maximum Residential Floor Area Ratio (FAR)	1.0:1 ⁽³⁾	0.6:1 ⁽³⁾	0.5:1 ⁽³⁾	
Maximum Nonresidential Floor Area Ratio (FAR)	1.0:1 ⁽³⁾	0.4:1	0.4:1	
Total Floor Area Ratio (FAR)⁽³⁾	2.0:1 ⁽³⁾	1.0:1 ⁽³⁾	0.9:1 ⁽³⁾	18.18.070
Parking Requirement	See Chapters 18.52 and 18.54			Chs. 18.52, 18.54

ATTACHMENT G

(1) Required usable open space: (1) may be any combination of private and common open spaces; (2) does not need to be located on the ground (but rooftop gardens are not included as open space); (3) minimum private open space dimension 6'; and (4) minimum common open space dimension 12'.

(2) Residential density shall be computed based upon the total site area, irrespective of the percent of the site devoted to commercial use. There shall be no deduction for that portion of the site area in nonresidential use.

(3) FAR may be increased with transfers of development and/or bonuses for seismic and historic rehabilitation upgrades, not to exceed a total site FAR of 3.0:1 in the CD-C subdistrict or 2.0:1 in the CD-S or CD-N subdistrict.

(4) For sites abutting an RM-40 zoned residential district or a residential Planned Community (PC) district, maximum height may be increased to 50 feet.

(1) Residential and nonresidential mixed use projects shall be subject to site and design review in accord with [Chapter 18.30\(G\)](#), except that mixed use projects with four or fewer units shall only require review and approval by the architectural review board.

(2) Nonresidential uses that involve the use or storage of hazardous materials in excess of the exempt quantities prescribed in Title 15 of the Municipal Code, including but not limited to dry cleaning plants and auto repair, are prohibited in a mixed use development with residential uses.

(c) Exclusively Residential Uses

Exclusively residential uses are generally prohibited in the CD district and subdistricts. Such uses are allowed, however, where a site is designated as a Housing Opportunity Site in the Housing Element of the Comprehensive Plan. Such sites shall be developed pursuant to the regulations for the multi-family zone designation (RM-15, RM-30, or RM-40) identified for the site in the Housing Element.

(d) Hotel Regulations

(1) The purpose of these regulations is to allow floor area for development of hotels in excess of floor area limitations for other commercial uses, in order to provide a visitor-serving use that results in an enhanced business climate, increased transient occupancy tax and sales tax revenue, and other community and economic benefits to the city.

(2) Hotels, where they are a permitted use, may develop to a maximum FAR of 2.0:1, subject to the following limitations:

(A) The hotel use must generate transient occupancy tax (TOT) as provided in Chapter 2.33 of the Palo Alto Municipal Code; and

(B) No room stays in excess of thirty days are permitted, except where the city council approves longer stays through an enforceable agreement with the applicant to provide for compensating revenues.

(3) Hotels may include residential condominium use, subject to:

(A) No more than twenty-five percent of the floor area shall be devoted to condominium use; and

(B) No more than twenty-five percent of the total number of lodging units shall be devoted to condominium use; and

(C) A minimum FAR of 1.0 shall be provided for the hotel/condominium building(s); and

(D) Where residential condominium use is proposed, room stays for other hotel rooms shall not exceed thirty days.

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(4) Violation of this chapter is subject to enforcement action for stays in excess of thirty days not permitted under the provisions of this chapter, in which case each day of room stay in excess of thirty days shall constitute a separate violation and administrative penalties shall be assessed pursuant to Chapters 1.12 and 1.16.

(e) Exempt Floor Area

When a building is being expanded, square footage which, in the judgement of the chief building official, does not increase the usable floor area, and is either necessary to conform the building to Title 24 of the California Code of Regulations, regarding handicapped access, or is necessary to implement the historic rehabilitation of the building, shall not be counted as floor area.

(f) Restrictions on Office Uses

(1) New construction and alterations in the CD-C zoning district shall be required to design ground floor space to accommodate retail use and shall comply with the provisions of the Pedestrian (P) combining district.

(2) In the CD-S and CD-N subdistricts, the following requirements shall apply to office uses:

(A) No new gross square footage of a medical, professional, general business, or administrative office use shall be allowed, once the gross square footage of such office uses, or any combination of such uses, on a site has reached 5,000 square feet.

(B) No conversion of gross square footage from any other use to a medical, professional, general business, or administrative office use shall be allowed once the gross square footage of such office uses, or any combination of such uses, on a site has reached 5,000 square feet.

(g) Restrictions on Size of Commercial Establishments in CD-N Subdistrict

In the CD-N subdistrict, permitted commercial uses shall not exceed the floor area per individual use or business establishment shown in Table 4. Such uses may be allowed to exceed the maximum establishment size, subject to the issuance of a conditional use permit in accordance with [Chapter 18.76](#). The maximum establishment size for any conditional use shall be established by the director and specified in the conditional use permit for such use.

**TABLE 4
MAXIMUM SIZE OF ESTABLISHMENT**

Type of Establishment	Maximum Size (ft ²)
Personal Services	2,500
Retail services, except grocery stores	15,000
Grocery stores	20,000
Eating and drinking services	5,000

(h) Outdoor Sales and Storage.

The following regulations shall apply to outdoor sales and storage in the CD district:

(1) CD-C Subdistrict

In the CD-C subdistrict, the following regulations apply:

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(A) Except in shopping centers, all permitted office and commercial activities shall be conducted within a building, except for:

- (i) Incidental sales and display of plant materials and garden supplies occupying no more than 2,000 square feet of exterior sales and display area,
- (ii) Outdoor eating areas operated incidental to permitted eating and drinking services,
- (iii) Farmers' markets which have obtained a conditional use permit, and
- (iv) Recycling centers that have obtained a conditional use permit.

(B) Any permitted outdoor activity in excess of 2,000 square feet shall be subject to a conditional use permit.

(C) Exterior storage shall be prohibited, except recycling centers which have obtained a conditional use permit.

(2) CD-S Subdistrict

In the CD-S subdistrict, outdoor sales and display of merchandise, and outdoor eating areas operated incidental to permitted eating and drinking services shall be permitted subject to the following regulations:

(A) Outdoor sales and display shall not occupy a total site area exceeding the gross building floor area on the site, except as authorized by a conditional use permit.

(B) Areas used for outdoor sales and display of motor vehicles, boats, campers, camp trailers, trailers, trailer coaches, house cars, or similar conveyances shall meet the minimum design standards applicable to off-street parking facilities with respect to paving, grading, drainage, access to public streets and alleys, safety and protective features, lighting, landscaping, and screening.

(C) Exterior storage shall be prohibited, unless screened by a solid wall or fence of between 5 and 8 feet in height.

(3) CD-N Subdistrict

In the CD-N subdistrict, all permitted office and commercial activities shall be conducted within a building, except for:

(A) Incidental sales and display of plant materials and garden supplies occupying not more than 500 square feet of exterior sales and display area, and

(B) Farmers' markets that have obtained conditional use permits.

(i) Employee Showers

Employee shower facilities shall be provided for any new building constructed or for any addition to or enlargement of any existing building as specified in Table 5.

**TABLE 5
EMPLOYEE SHOWERS REQUIRED**

Uses	Gross Floor Area of New Construction (ft ²)	Showers Required
Medical, Professional, and General Business Offices, Financial Services, Business and Trade Schools, General Business Services	0-9,999	No requirement
	10,000-19,999	1
	20,000-49,999	2

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	50,000 and up	4
Retail Services, Personal Services, and Eating and Drinking Services	0-24,999	No requirement
	25,000-49,999	1
	50,000-99,999	2
	100,000 and up	4

(j) Nuisances Prohibited

All uses, whether permitted or conditional, shall be conducted in such a manner as to preclude nuisance, hazard, or commonly recognized offensive conditions or characteristics, including creation or emission of dust, gas, smoke, noise, fumes, odors, vibrations, particulate matter, chemical compounds, electrical disturbance, humidity, heat, cold, glare, or night illuminations. Prior to issuance of a building permit, or occupancy permit, or at any other time, the building inspector may require evidence that adequate controls, measures, or devices have been provided to ensure and protect the public interest, health, comfort, convenience, safety, and general welfare from such nuisance, hazard, or offensive condition.

(k) Recycling Storage

All new development, including approved modifications that add thirty percent or more floor area to existing uses, shall provide adequate and accessible interior areas or exterior enclosures for the storage of recyclable materials in appropriate containers. The design, construction and accessibility of recycling areas and enclosures shall be subject to approval by the architectural review board, in accordance with design guidelines adopted by that board and approved by the city council pursuant to Section 16.48.070.

(Ord. 5065 § 4, 2009: Ord. 5035 § 3, 2009: Ord. 4923 § 4 (part), 2006)

 **18.18.070 Floor Area Bonuses**

(a) Available Floor Area Bonuses

(1) Minor Bonus for Buildings Not Eligible for Historic or Seismic Bonus

A building that is neither in Historic Category 1 or 2 nor in Seismic Category I, II, or III shall be allowed to increase its floor area by 200 square feet without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts. This bonus is not subject to transfer and must be fully parked. In addition to any applicable parking provisions, this bonus may be parked by the payment of in lieu parking fees under Section 18.18.090.

(2) Seismic Rehabilitation Bonus

A building that is in Seismic Category I, II, or III, and is undergoing seismic rehabilitation, but is not in Historic Category 1 or 2, shall be allowed to increase its floor area by 2,500 square feet or 25% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not

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be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts.

(3) Historic Rehabilitation Bonus

A building that is in Historic Category 1 or 2, and is undergoing historic rehabilitation, but is not in Seismic Category I, II, or III, shall be allowed to increase its floor area by 2,500 square feet or 25% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts, except as provided in subsection (5).

(4) Combined Historic and Seismic Rehabilitation Bonus

A building that is in Historic Category 1 or 2, and is undergoing historic rehabilitation, and is also in Seismic Category I, II, or III, and is undergoing seismic rehabilitation, shall be allowed to increase its floor area by 5,000 square feet or 50% of the existing building, whichever is greater, without having this increase count toward the FAR, subject to the restrictions in subsection (b). Such increase in floor area shall not be permitted for buildings that exceed a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-N or CD-S subdistricts, except as provided in subsection (5).

(5) Historic Bonus for Over-Sized buildings

A building in Historic Category 1 or 2 that is undergoing historic rehabilitation and that currently exceeds a FAR of 3.0:1 if located in the CD-C subdistrict or 2.0:1 if located in the CD-S or CD-N subdistricts shall nevertheless be allowed to obtain a floor area bonus of 50% of the maximum allowable floor area for the site of the building, based upon a FAR of 3.0:1 in the CD-C subdistrict and a FAR of 2.0:1 in the CD-S and CD-N subdistricts, subject to the restrictions in subsection (b) and the following limitation:

(A) The floor area bonus shall not be used on the site of the Historic Category 1 or 2 building, but instead may be transferred to another property or properties under the provisions of Section 18.18.080.

(b) Restrictions on Floor Area Bonuses

The floor area bonuses in subsection (a) shall be subject to the following restrictions:

(1) All bonus square footage shall be counted as square footage for the purposes of the 350,000 square foot limit on development specified in Section 18.18.040.

(2) All bonus square footage shall be counted as square footage for the purposes of the project size limit specified in Section 18.18.060 (a).

(3) In no event shall a building expand beyond a FAR of 3.0:1 in the CD-C subdistrict or a FAR of 2.0:1 in the CD-S or CD-N subdistrict.

(4) The bonus shall be allowed on a site only once.

(5) For sites in Seismic Category I, II, or III, seismic rehabilitation shall conform to the analysis standards referenced in Chapter 16.42 of this code.

(6) For sites in Historic Category 1 or 2, historic rehabilitation shall conform to the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (36 CFR §67,7).

(7) For sites in both Seismic Category I, II, or III and Historic Category 1 or 2, no bonus shall be granted unless the project includes both seismic and historic rehabilitation conforming to the standards in subsections (5) and (6).

(8) For sites in both Seismic Category I, II, or III and Historic Category 1 or 2, a bonus granted under this section that will be used on-site is subject to the following requirements:

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(A) The city council must approve on-site use of such a FAR bonus. Such approval is discretionary, and may be granted only upon making both of the following findings:

(i) The exterior modifications for the entire project comply with the U.S. Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (36 CFR §67,7); and

(ii) The on-site use of the FAR bonus would not otherwise be inconsistent with the historic character of the interior and exterior of the building and site.

(B) The applicant for on-site use of a cumulative floor area bonus shall have the burden of demonstrating the facts necessary to support the findings required for council approval.

(c) Transfer of Floor Area Bonuses

The floor area bonuses described in subsection (a), except the floor area bonus in subsection (a)(1), may be transferred to a non-historic receiver site as described in Section 18.18.080. Such transfer shall not be subject to the discretionary council approval set forth in subsection (b)(8).

(d) Procedure for Granting of Floor Area Bonuses

The floor area bonuses described in subsection (a), except the bonus described in subsection (a)(1), shall be granted in accordance with the following requirements:

(1) An application for such floor area bonus(es) must be filed with the director of planning and community environment in the form prescribed by the director, stating the amount of such bonus(es) applied for, the basis therefor under this section, and the extent to which such bonus(es) are proposed to be used on-site and/or for transfer. An application for floor area bonus for rehabilitation of a Category 1 or 2 historic building shall include a historic structure report, prepared by a qualified expert, retained by the city, at the applicant's expense, in accordance with the standards and guidelines of the California State Office of Historic Preservation. It shall also include a plan for rehabilitation; if any part of the existing building is proposed to be removed or replaced, the historic rehabilitation project plans submitted for review shall clearly show and identify any and all material proposed for removal or replacement.

(2) The city may retain an expert in historic rehabilitation or preservation, at the applicant's expense, to provide the city with an independent evaluation of the project's conformity with the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings."

(3) The historic resources board shall review the historic structure report, the historic rehabilitation project plans, and, if required, the expert independent evaluation of the project, and make a recommendation to the director of planning and community environment on the project's conformity with the Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings."

(4) Upon completion of such an application, written determination of the sender site's eligibility for bonus(es) shall be issued by the director of planning and community environment or the director's designee, based upon the following:

(A) In the case of a floor area bonus for seismic rehabilitation, the chief building official has made a determination that the project complies with or exceeds the analysis standards referenced in Chapter 16.42 of this code;

(B) In the case of the floor area bonus for historic rehabilitation of a building in Historic Category 1 or 2, the director, taking into consideration the recommendations of the historic resources board, has found that the project complies with the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (36 CFR §67,7); and

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(C) In the case of a bonus for both seismic and historic rehabilitation that is proposed to be use on-site, the city council has made the findings set forth in subsection (b)(8) of this section.

(e) **Certification of FAR Bonuses**

The floor area bonuses described in subsection (a), except the bonus described in subsection (a)(1), may be used on the site of the proposed seismic and/or historic rehabilitation project and a building permit issued therefor only upon satisfaction of all the requirements in subsection (d) above. Upon determining that the project has been completed as approved, or in the case of city-owned buildings upon completion of all of the requirements of Chapter 18.28, the director or director's designee shall issue a written certification which shall state the total floor area bonus utilized at the site (in the case of buildings in the CD-Commercial Downtown District), and the amount (if any) of remaining floor area bonus which is eligible for transfer to another site pursuant to the provisions of this chapter. The certification shall be recorded in the office of the county recorder and a copy shall be provided to the applicant.

As a condition precedent to being credited with a historic rehabilitation floor area bonus whether for use on-site or for transfer, the owner of the site shall enter into an unsubordinated protective covenant running with the land in favor of the city (or, if the city is the owner, in favor of a qualified and disinterested third party if the property is to be rehabilitated after the sale of the transfer of development rights), in a form satisfactory to the city attorney, to assure that the property will be rehabilitated and maintained in accordance with the Secretary of Interior's *Standards for Rehabilitation of Historic Buildings*, together with the accompanying interpretive *Guidelines for Rehabilitation of Historic Buildings*, as they may be amended from time to time. For city owned buildings subject to a long term lease of ten or more years where the rehabilitation work is to be performed by the lessee, this protective covenant shall be in favor of the city.

(Ord. 5214 § 2, 2013: Ord. 5038 § 1, 2009: Ord. 4964 § 15, 2007: Ord. 4923 § 4 (part), 2006)

18.18.080 Transfer of Development Rights

(a) Purpose

The purpose of this section is to implement the Comprehensive Plan by encouraging seismic rehabilitation of buildings in Seismic Categories I, II, and III, and encouraging historic rehabilitation of buildings or sites in Historic Category 1 and 2, and by establishing standards and procedures for the transfer of specified development rights from such sites to other eligible sites. Except as provided in subsection (e)(1) and for city-owned properties as provided in Chapter 18.28, this section is applicable only to properties located in the CD district, and is the exclusive procedure for transfer of development rights for properties so zoned.

(b) Establishment of Forms

The city may from time to time establish application forms, submittal requirements, fees and such other requirements and guidelines as will aid in the efficient implementation of this chapter.

(c) Eligibility for Transfer of Development Rights

Transferable development rights may be transferred to an eligible receiver site upon:

(1) Certification by the city pursuant to Section [18.18.070](#) of the floor area from the sender site which is eligible for transfer; and

(2) Compliance with the transfer procedures set forth in subsection (h).

(d) Availability of Receiver Sites

The city does not guarantee that at all times in the future there will be sufficient eligible receiver sites to receive such transferable development rights.

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(e) Eligible Receiver Sites

A site is eligible to be a receiver site only if it meets all of the following criteria:

(1) It is located in the CD commercial downtown district, or is located in a planned community (PC) district if the property was formerly located in the CD commercial downtown district and the ordinance rezoning the property to planned community (PC) approves the use of transferable development rights on the site.

(2) It is neither an historic site, nor a site containing a historic structure, as those terms are defined in Section [16.49.020\(e\)](#) of [Chapter 16.49](#) of this code; and

(3) The site is either:

(A) Located at least 150 feet from any property zoned for residential use, not including property in planned community zones or in commercial zones within the downtown boundaries where mixed use projects are.

(B) Separated from residentially zoned property by a city street with a width of at least 50 feet, and separated from residentially zoned property by an intervening property zoned CD-C, CD-S, or CD-N, which intervening property has a width of not less than 50 feet.

(f) Limitations On Usage of Transferable Development Rights

No otherwise eligible receiver site shall be allowed to utilize transferable development rights under this chapter to the extent such transfer would:

(1) Be outside the boundaries of the downtown parking assessment district, result in a maximum floor area ratio of 0.5 to 1 above what exists or would otherwise be permitted for that site under Section [18.18.060](#), whichever is greater, or result in total additional floor area of more than 10,000 square feet.

(2) Be within the boundaries of the downtown parking assessment district, result in a maximum floor area ratio of 1.0 to 1 above what exists, or would otherwise be permitted for that site under Section [18.18.060](#), whichever is greater, or result in total additional floor area of more than 10,000 square feet.

(3) Cause the development limitation or project size limitation set forth in Section [18.18.040](#) to be exceeded.

(4) Cause the site to exceed 3.0 to 1 FAR in the CD-C subdistrict or 2.0 to 1 FAR in the CD-S or CD-N subdistricts.

(g) Parking Requirements

Any square footage allowed to be transferred to a receiver site pursuant to this chapter shall be subject to the parking regulations applicable to the district in which the receiver site is located.

(h) Transfer Procedure

Transferable development rights may be transferred from a sender site (or sites) to a receiver site only in accordance with all of the following requirements:

(1) An application pursuant to [Chapter 16.48](#) of this code for major ARB review of the project proposed for the receiver site must be filed. The application shall include:

(A) A statement that the applicant intends to use transferable development rights for the project;

(B) Identification of the sender site(s) and the amount of TDRs proposed to be transferred; and

(C) Evidence that the applicant owns the transferable development rights or a signed statement from any other owner(s) of the TDRs that the specified amount of floor area is available for the proposed project and will be assigned for its use.

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(2) The application shall not be deemed complete unless and until the city determines that the TDRs proposed to be used for the project are available for that purpose.

(3) In reviewing a project proposed for a receiver site pursuant to this section, the architectural review board shall review the project in accordance with Section 16.48.120 of this code; however, the project may not be required to be modified for the sole purpose of reducing square footage unless necessary in order to satisfy the criteria for approval under [Chapter 16.48](#) or any specific requirement of the municipal code.

(4) Following ARB approval of the project on the receiver site, and prior to issuance of building permits, the director of planning and community environment or the director's designee shall issue written confirmation of the transfer, which identifies both the sender and receiver sites and the amount of TDRs which have been transferred. This confirmation shall be recorded in the office of the county recorder prior to the issuance of building permits and shall include the written consent or assignment by the owner(s) of the TDRs where such owner(s) are other than the applicant.

(i) Purchase or Conveyance of TDRs - Documentation

(1) Transferable development rights may be sold or otherwise conveyed by their owner(s) to another party. However, no such sale or conveyance shall be effective unless evidenced by a recorded document, signed by the transferor and transferee and in a form designed to run with the land and satisfactory to the city attorney. The document shall clearly identify the sender site and the amount of floor area transferred and shall also be filed with the department of planning and community environment.

(2) Where transfer of TDRs is made directly to a receiver site, the recorded confirmation of transfer described in subsection (h)(4) shall satisfy the requirements of this section.

(Ord. 5214 § 3, 2013; Ord. 4923 § 4 (part), 2006)

ATTACHMENT H

2015 PRESERVATION DESIGN AWARDS



CALIFORNIA
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OCTOBER 2, 2015

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- The Sea Scout Building**, Palo Alto

ATTACHMENT H

*The Board of Trustees of the California Preservation Foundation
cordially invite you to attend the presentation of the 32nd Annual*

Preservation Design Awards

Friday, October 2, 2015

The Merchants Exchange Building, Julia Morgan Ballroom
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7:45–8:45 pm Presentation of the 32nd Annual
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