STAFF REPORT
CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: David Ott, City Manager
MEETING DATE: July 8, 2009
ORIGINATING DEPT: Community Development Department
SUBJECT: Lease Amendment for the Sand Compatibility and Opportunistic Use Program (SCOUP)

BACKGROUND:
At the June 11, 2008 Council meeting the City approved the Sand Compatibility and Opportunistic Use Program (SCOUP) and certified the SCOUP Initial Study/Mitigated Negative Declaration (Resolution 2008-099) specifics of the Solana Beach SCOUP program which include:

- City would identify potential opportunities during project processing, and has full discretion about whether to perform a project or not (none are required);
- Maximum annual sand quantity of 125,000 cubic yards;
- Maximum sand quantity of 25,000 cubic yards for any one project (max of 4 truck trips per hour for 5 weeks);
- Must be at least 75% sand, and 25% of finer-grained particles would be acceptable;
- Placement in Fletcher Cove and south to 1,900 feet;
- Placement all year is acceptable, with restrictions for summer; and,
- Monitoring of beach profiles, surfing, turbidity, and biology to occur.

The City and the San Diego Association of Governments (SANDAG) have been working on the SCOUP for the past five years. SCOUP is a component of the California Coastal Sediment Management Master Plan (Sediment Master Plan). SCOUP was developed with significant input from appropriate staff at permitting and resource agencies and provides protocols and templates for a regional opportunistic sand program to streamline regulatory approval of small (less than 150,000 cubic yards) beach nourishment projects using opportunistic materials. An important goal of SCOUP is to make the processes associated with opportunistic nourishment projects and programs easier by developing statewide agreement and support among local, regional, state, and federal entities.

CITY COUNCIL ACTION:


AGENDA ITEM
A.6.
DISCUSSION:
Since the City Council approved the SCOUPT program in June 2008, City Staff have been working to obtain all necessary regulatory permits and approvals needed to implement the first SCOUPT project. To date, regulatory approvals/permits have been secured from the following regional, state and federal agencies:
- California Coastal Commission – November 2008;
- Regional Water Quality Control Board – April 2009; and,
- US Army Corps of Engineers (including the U.S. Fish and Wildlife Service, National Marine Fisheries Service and the California Department of Fish and Game) – May 2009.

The final remaining approval, from the California State Lands Commission (CSLC) is the subject of this report. Previously, the City has had a lease from the CSLC (PRC 7938.9) for placement of sand on the beach as part of the Lomas Santa Fe Grade Separation project. A copy of the original Lease is included as Attachment 1.

A draft Lease Amendment was received by the City on May 18, 2009 (Attachment 2). A review of the terms of the Lease Amendment by the City Attorney prompted negotiation of certain changes to the lease provisions as proposed, specifically the indemnification and waiver provisions. As drafted, these provisions are not mutual and strictly to the benefit of CSLC. Proposed language to make the provisions mutual was forwarded to CSLC for consideration. CSLC staff member later informed the City Attorney that such terms are standard for all Coastal Development Permits issued by the California Coastal Commission and CSLC leases and are not subject to modification. CSLC did agree to the change in Paragraph 17 regarding conflict of provisions between the lease and the amendment. Attachment 3 is the revised lease amendment. While the terms of the lease are not ideal, should the City desire to implement the SCOUPT project, it could only do so if it accepts the provisions as provided by the CSLC.

Obtaining this final approval is the critical next step in the process. The City may begin implementing a SCOUPT project as early as 2010. Candidate SCOUPT projects include the Solana Beach Self Storage Project (up to 80,000 cubic yards) and the Lomas Santa Fe Lifestyles project (up to 40,000 cubic yards). Staff, therefore, recommends approval of the proposed lease.

CEQA COMPLIANCE STATEMENT:
A Final Initial Study/Mitigated Negative Declaration has been prepared for the SCOUPT project pursuant to the 2008 State CEQA Guidelines §15063.

FISCAL IMPACT:
No direct fiscal impact associated with acceptance of the proposed Lease Agreement with the California State Lands Commission. Additional funding is anticipated to be needed in FY 2009-2010 and beyond to implement a SCOUPT project and conduct required mitigation and monitoring efforts. Future funding needs would be determined once all permits are secured and mitigation and monitoring obligations are known and costs quantified. The City has the option of using the CCC mitigation funds held by
SANDAG to help implement a SCOUP project and offset any costs that would otherwise be borne by the project developer.

**WORKPLAN:**
Ongoing implementation of a Sand Replenishment Program is identified as a Priority Project in the Council’s 2009-2010 Workplan.

**OPTIONS:**
- Approve staff recommendation;
- Approve staff recommendation with modifications; or
- Provide Staff with alternative direction.

**DEPARTMENT RECOMMENDATION:**
Staff recommends that the City Council:

1. Receive this report.
2. Authorize the City Manager to sign the Lease Amendment.

**CITY MANAGER’S RECOMMENDATION:**
Approve Department Recommendation

[Signature]

David Ott, City Manager

**Attachments:**
1. California State Lands Commission Lease PRC 7938.9
2. California State Lands Commission Lease Amendment PRC 7938.9 (dated May 13, 2009)
3. Revised (June 17, 2009) California State Lands Commission Lease Amendment PRC 7938.9
RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

A.P.N. Appurtenant to 298-010-65
County San Diego

LEASE PRC NO. 79389

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

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

SECTION 1
BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the STATE LANDS COMMISSION (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to:

CITY OF SOLANA BEACH
hereinafter referred to as Lessee:

WHOSE MAILING ADDRESS IS:
635 South Highway 101
Solana Beach, California 92075-2215

ATTACHMENT 1
those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

LEASE TYPE: General Lease - Public Agency

LAND TYPE: Sovereign tide and submerged

LOCATION: Pacific Ocean at Fletcher Cove, Solana Beach, San Diego County

LAND USE OR PURPOSE: Beach deposition of 44,000 cubic yards of sand

TERM: Two years; beginning September 1, 1997; ending August 31, 1999, unless sooner terminated as provided under this Lease.

CONSIDERATION: No rent shall be charged as the project is a public benefit.

AUTHORIZED IMPROVEMENTS:

N/A

EXISTING: N/A

TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY: N/A

AND BE COMPLETED BY: N/A

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

SECTION 2
SPECIAL PROVISIONS
BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:

1. LESSOR AND LESSEE AGREE THAT THE LOCATION OF THE MEAN HIGH TIDE LINE AS SHOWN ON THE OCTOBER 24, 1996 SITE SURVEY IS NOT INTENDED TO REPRESENT THE BOUNDARY OF THE STATE'S SOVEREIGN INTERESTS.

2. LESSEE WILL PROVIDE COPIES OF ANNUAL REPORTS OF THE BEACH MONITORING PROGRAM.
SECTION 3
LAND DESCRIPTION

A parcel of tide and submerged land 400 feet wide in the Pacific Ocean near Fletcher Cove Park in the City of Solana Beach, San Diego County, California, described as follows:

Bounded on the north by the westerly projection of Ocean Street; bounded on the east by the Ordinary High Water Mark of the Pacific Ocean; bounded on the south by the westerly projection of South Shore Drive; bounded on the west by a line measured 400 feet westerly of the Ordinary High Water Mark of the Pacific Ocean.

EXCEPTING THEREFROM any portion lying landward of the ordinary high water mark of the Pacific Ocean.
SECTION 4

GENERAL PROVISIONS

1. GENERAL

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

2. CONSIDERATION

(a) Categories

(1) Rental

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

(2) Non-Monetary Consideration

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

(b) Modification

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

(c) Penalty and Interest

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

3. BOUNDARIES

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

4. LAND USE

(a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements and

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

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

(c) Repairs and Maintenance

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

(d) Additions, Alterations and Removal

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

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

(e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

(f) Toxics

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

(g) Enjoyment

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

(b) Discrimination
Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

(i) Residential Use
No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

5. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY
(a) Reservations
(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances
This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances and claims and is made without warranty by Lessor of title, condition or fitness of the land for the stated or intended purpose.

6. RULES, REGULATIONS AND TAXES
(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtain and maintain all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

7. INDEMNITY
(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee’s use of the Lease Premises except for any such liability, claims, damages or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury or casualty on the Lease Premises.

8. INSURANCE
(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured’s coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the
policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

9. SURETY BOND

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

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

10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

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

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

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

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

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

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

(1) Give prior written notice to Lessor;

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

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

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

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

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

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

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

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of
11. DEFAULT AND REMEDIES

(a) Default
The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

1. Lessee’s failure to make any payment of rental, royalty, or other consideration as required under this Lease;

2. Lessee’s failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;

3. Lessee’s vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;

4. Lessee’s failure to obtain and maintain all necessary governmental permits or other entitlements;

5. Lessee’s failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;

6. Lessee’s failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or

7. Lessee’s failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee’s failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor’s giving written notice; however, if the nature of Lessee’s default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Remedies
In the event of a default or breach by Lessee and Lessee’s failure to cure such default or breach, Lessor may, at any time and with or without notice do any one or more of the following:

1. Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;

2. Terminate this Lease and Lessee’s right of possession of the Lease Premises. Such termination shall be effective upon Lessor’s giving written notice and upon receipt of such notice Lessee shall immediately surrender possession of the Lease Premises to Lessor;

3. Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee’s right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or

4. Exercise any other right or remedy which Lessor may have at law or equity.

12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee’s sole expense. Lessor shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.

(c) All plans for and subsequent removal and restoration
shall be to the satisfaction of Lessor and shall be completed within ninety (90) days after the expiration or sooner termination of this Lease or after compliance with paragraph 12(d), whichever is the lesser.

(d) In removing any or all the improvements Lessee shall be required to obtain any permits or other governmental approvals as may then be required by lawful authority.

(e) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency(ies) and shall further be responsible for removing or taking other appropriate remedial action regarding such wastes, substances or materials in accordance with applicable federal, state or local law regulation or ordinance.

13. QUITCLAIM
Lessor shall, within ninety (90) days of the expiration or sooner termination of this Lease, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, a written notice by Lessor reciting such failure or refusal shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

14. HOLDING-OVER
Any holding-over by Lessee after the expiration of the Lease term, with or without the express or implied consent of Lessor, shall constitute a tenancy from month to month and not an extension of the Lease term and shall be on the terms, covenants, and conditions of this Lease, except that the annual rental then in effect shall be increased by twenty-five percent (25%).

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

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

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

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

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

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

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

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

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

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

LEASE P.R.C. NO. 79389

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

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

LESSEE  CITY OF SOLANA BEACH

Robert W. Semple, City Manager

January 16, 1997

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: Jane Secretary
Title: Chief Division of Land Management
Date: Feb 24, 1997

ACKNOWLEDGEMENT

This Lease was authorized by the California State Lands Commission on
February 12, 1997
(Month Day Year)
May 13, 2009

Leslea Meyerhoff  
City of Solana Beach  
635 South Highway 101  
Solana Beach, CA 92075

Dear Ms. Meyerhoff:

SUBJECT: Amendment of Lease No. PRC 7938.9 for the City of Solana Beach Opportunistic Beach Fill Program at Fletcher Cove, City of Solana Beach, San Diego County

Enclosed are three copies of the draft amendment for the above referenced lease, which was approved for issuance by the California State Lands Commission (CSLC) at its regularly scheduled meeting on October 16, 2008. If you find the document to be in order, please arrange to have two copies duly signed and notarized, and returned to me as soon as possible, along with a resolution issued by your governing board authorizing its execution, or other document(s) granting signatory authority to the individual signing the Lease on behalf of the City. A fully executed copy will be returned to you upon CSLC approval.

If you have any questions regarding the terms and conditions of this lease, please contact me immediately at (916) 574-2555.

Sincerely,

Kenneth Foster  
Public Land Management Specialist

Enclosures

Cc: Brian Leslie – Moffat & Nichol (without enclosures)
WHEREAS, the State of California, acting through the State Lands Commission, hereinafter called Lessor, and, the city of Solana Beach, hereinafter called the Lessee, have heretofore entered into an agreement designated as Lease No. PRC 7938.9, authorized by the State Lands Commission on February 12, 1997 and executed February 24, 1997, whereby the Lessor granted to said Lessee a General Lease - Public Agency Use covering certain State Land situated in San Diego County; and

WHEREAS, Section 4, Paragraph 15(e) provides that the Lease may be terminated and its terms, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties; and

WHEREAS, said Lessee desires to amend the Lease to allow for implementation of the City of Solana Beach Opportunistic Beach Fill Program, which is intended to take advantage of opportunities to obtain suitable beach fill material generated from construction, development, or dredging projects occurring periodically within the City; and

WHEREAS, by reason of the foregoing, it is now the desire of the parties to amend the foregoing Agreement.

NOW THEREFORE, the parties hereto agree as follows:

The expiration date of Lease No. PRC 7938.9 is extended to October 15, 2013.

The Lessee is authorized to place up to a maximum of 150,000 cubic yards of beach quality sand annually at Fletcher Cove in the city of Solana Beach as shown on Exhibit A attached and by this reference made a part hereof.
All beach replenishment activities under the City of Solana Beach Opportunistic Beach Fill Program (OBFP) will be conditioned upon the following provisions:

1. At least 30 days prior to the start of the first beach replenishment activity performed under the OBFP at the receiver site, Lessee shall submit a mean high tide line survey for Lessor’s review and approval. The following is required:
   a. The survey must be based on the California Coordinate System 1983 and must include a control scheme showing found monuments and coordinates referencing the epoch date.
   b. The survey must locate a minimum of two property monuments shown on an official record map.
   c. The vertical datum must be shown on the map with the benchmark location and elevation.
   d. The mean high tide elevation and tidal epoch must be noted on the survey and Lessor’s staff must approve the elevation prior to the fieldwork.
   e. Stations used to locate the mean high tide line must be at intervals of 50’ ±.
   f. The survey must be performed by or under the supervision of a Licensed Land Surveyor.
   g. Lessee will provide Lessor with a hardcopy map and Autocad drawing file on disc within 30 days of survey fieldwork completion.

2. Lessee will undertake the Program pursuant to:
   a. The Mitigation Monitoring Program contained in Final Mitigated Negative Declaration SCH#2008021047 prepared and adopted by Lessee on June 11, 2008;
   b. Coastal Development Permit (CPD) 6-08-38 approved by the California Coastal Commission on November 13, 2008; and,
   c. The requirements of all other agencies having approval authority over the Program.

4. At least 30 days prior to the start of beach replenishment activities as described herein, Lessee shall provide the name and telephone number of the Lessee’s representative responsible for maintaining the beach replenishment database for the site within the Lease Premises.

5. At least 30 days prior to the start of beach replenishment activities as described herein, Lessee shall provide Lessor with copies of all final permits and approvals from all other agencies with jurisdiction over the Program.

6. At least 30 days prior to the start of beach replenishment activities as described herein, Lessee shall provide written notification to Lessor and all other regulatory agencies having approval authority for the OBFP. Written notification shall include a Project Notification Report approving sand for placement, substantially in the form of the draft outline attached hereto as Exhibit B. Lessee shall not proceed with a beach replenishment project until the staff of each of the agencies has provided written concurrence that the material meets the criteria for placement. Lessee shall provide Lessor with all copies of public notification that are issued prior to the commencement of beach replenishment activities.

7. Prior to the start of beach replenishment activities as described herein, Lessee shall provide Lessor with the name, address, telephone number and contractor’s license number of the contractor(s) selected to implement the beach replenishment program. Should Lessee change contractors, Lessee shall provide Lessor with all pertinent information, as described above.
8. Lessee shall provide pre-project biological survey information of the beach replenishment site prior to commencement of beach replenishment activities within the Lease Premises. Lessee shall provide to Lessor copies of all annual mitigation monitoring compliance reports for replenishment activities within the Lease Premises.

9. Lessee agrees that printed material, such as handouts and signs or other types of printed notices installed to provide notification of the public use and benefit of the project as set forth herein shall contain and reasonably display a statement acknowledging the California State Lands Commission as having contributed lands for the project. The statement may read as follows: “A portion of the land required for the City of Solana Beach Opportunistic Beach Fill Program was contributed by the California State Lands Commission.”

10. Lessee acknowledges and agrees:
   a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to, waves, storm waves, tsunamis, earthquakes, flooding and erosion.
   b. To assume the risks of injury and damage to Lessee, its agents, employees, contractors, permittees, invitees and guests and the Leased Lands from such hazards in connection with the development and use of the Leased Lands subject to any Coastal Development Permit.
   c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury and/or damage from such hazards to Lessee, its agents, employees, contractors, permittees, invitees and guests.
   d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injuries, or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any Coastal Development Permit involving the Leased Lands, except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

11. Any vehicles, equipment, or machinery to be used on the Lease Premises are limited to those which are directly required to perform the authorized use and shall not include any vehicles, equipment, or machinery that may cause damage to the Lease Premises or lands subject to Lessor’s jurisdiction.

12. All vehicles, equipment, machinery, tools or other property taken onto or placed within the Lease Premises or lands subject to Lessor’s jurisdiction shall remain the property of the Lessee and/or its authorized contractors (collectively, Lessee). Such property shall be promptly and properly removed by Lessee, at its sole risk and expense.

13. Lessor does not accept any responsibility for any damages to any property, including any vehicles, equipment, machinery, or tools within the Lease Premises or lands subject to Lessor’s jurisdiction.

14. No vehicle or equipment refueling, maintenance, or repairs will be permitted within the Lease Premises or lands subject to Lessor’s jurisdiction.
15. All waste material and debris created by Lessee shall be entirely removed from the Lease Premises and lands subject to Lessor’s jurisdiction.

16. The State of California’s sovereign ownership claim of the lands underlying the Pacific Ocean extends to the ordinary high water mark. The description in Section 3 contained herein is not to be deemed an admission by Lessor, Lessee, or the DPR as to the boundary between private, City-owned and State-owned lands.

17. In the event of any conflict between the provisions of this Amendment and Section 4 of the Lease, the provisions of this Amendment shall prevail.

The effective date of this Amendment to the aforesaid Agreement shall be October 16, 2008.

This Second Amendment is a portion of document number PRC 7938.9, with a beginning date of September 1, 1997, consisting of four (4) sections with a total of (9) pages, and one amendment with a beginning date of June 1, 2000, consisting of one (1) section with a total of (2) pages.

All other terms and conditions of the lease and amendment shall remain in full force and effect.

This Agreement will become binding on the Lessor only when duly executed on behalf of the State Lands Commission of the State of California.

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

LESSEE:
CITY OF SOLANA BEACH

By: ____________________________

Title: __________________________

Date: __________________________

LESSOR:
STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: ____________________________

Title: __________________________

Execution of this document was authorized by the State Lands Commission on: October 16, 2008

ATTACH ACKNOWLEDGMENT(S)
STATE OF CALIFORNIA
STATE LANDS COMMISSION

SECOND AMENDMENT OF LEASE NO. PRC 7938.9

WHEREAS, the State of California, acting through the State Lands Commission, hereinafter called Lessor, and, the city of Solana Beach, hereinafter called the Lessee, have heretofore entered into an agreement designated as Lease No. PRC 7938.9, authorized by the State Lands Commission on February 12, 1997 and executed February 24, 1997, whereby the Lessor granted to said Lessee a General Lease - Public Agency Use covering certain State Land situated in San Diego County; and

WHEREAS, Section 4, Paragraph 15(e) provides that the Lease may be terminated and its terms, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties; and

WHEREAS, said Lessee desires to amend the Lease to allow for implementation of the City of Solana Beach Opportunistic Beach Fill Program, which is intended to take advantage of opportunities to obtain suitable beach fill material generated from construction, development, or dredging projects occurring periodically within the City; and

WHEREAS, by reason of the foregoing, it is now the desire of the parties to amend the foregoing Agreement.

NOW THEREFORE, the parties hereto agree as follows:

The expiration date of Lease No. PRC 7938.9 is extended to October 15, 2013.

The Lessee is authorized to place up to a maximum of 150,000 cubic yards of beach quality sand annually at Fletcher Cove in the city of Solana Beach as shown on Exhibit A attached and by this reference made a part hereof.
All beach replenishment activities under the City of Solana Beach Opportunistic Beach Fill Program (OBFP) will be conditioned upon the following provisions:

1. At least 30 days prior to the start of the first beach replenishment activity performed under the OBFP at the receiver site, Lessee shall submit a mean high tide line survey for Lessor’s review and approval. The following is required:
   a. The survey must be based on the California Coordinate System 1983 and must include a control scheme showing found monuments and coordinates referencing the epoch date.
   b. The survey must locate a minimum of two property monuments shown on an official record map.
   c. The vertical datum must be shown on the map with the benchmark location and elevation.
   d. The mean high tide elevation and tidal epoch must be noted on the survey and Lessor’s staff must approve the elevation prior to the fieldwork.
   e. Stations used to locate the mean high tide line must be at intervals of 50′±.
   f. The survey must be performed by or under the supervision of a Licensed Land Surveyor.
   g. Lessee will provide Lessor with a hardcopy map and Autocad drawing file on disc within 30 days of survey fieldwork completion.

2. Lessee will undertake the Program pursuant to:
   a. The Mitigation Monitoring Program contained in Final Mitigated Negative Declaration SCH#2008021047 prepared and adopted by Lessee on June 11, 2008;
   b. Coastal Development Permit (CDP) 6-08-38 approved by the California Coastal Commission on November 13, 2008; and,
   c. The requirements of all other agencies having approval authority over the Program.

4. At least 30 days prior to the start of beach replenishment activities as described herein, Lessee shall provide the name and telephone number of the Lessee’s representative responsible for maintaining the beach replenishment database for the site within the Lease Premises.

5. At least 30 days prior to the start of beach replenishment activities as described herein, Lessee shall provide Lessor with copies of all final permits and approvals from all other agencies with jurisdiction over the Program.

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9. Lessee agrees that printed material, such as handouts and signs or other types of printed notices installed to provide notification of the public use and benefit of the project as set forth herein shall contain and reasonably display a statement acknowledging the California State Lands Commission as having contributed lands for the project. The statement may read as follows: “A portion of the land required for the City of Solana Beach Opportunistic Beach Fill Program was contributed by the California State Lands Commission.”

10. Lessee acknowledges and agrees:
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    c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury and/or damage from such hazards to Lessee, its agents, employees, contractors, permittees, invitees and guests.
    d. To indemnify, hold harmless and, at the option of Lessor, defend the State of California, its agencies, officers, agents, and employees, against and for any and all liability, claims, demands, damages, injures, or costs of any kind and from any cause (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any alleged or actual injury, damage or claim due to site hazards or connected in any way with respect to the approval of any Coastal Development Permit involving the Leased Lands, except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

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The effective date of this Amendment to the aforesaid Agreement shall be October 16, 2008.

This Second Amendment is a portion of document number PRC 7938.9, with a beginning date of September 1, 1997, consisting of four (4) sections with a total of (9) pages, and one amendment with a beginning date of June 1, 2000, consisting of one (1) section with a total of (2) pages.

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This Agreement will become binding on the Lessor only when duly executed on behalf of the State Lands Commission of the State of California.

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LESSEE: 
CITY OF SOLANA BEACH

By: __________________________
Title: __________________________
Date: __________________________

LESSOR: 
STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: __________________________
Title: __________________________
Date: __________________________

Execution of this document was authorized by the State Lands Commission on: October 16, 2008

ATTACH ACKNOWLEDGMENT(S)