

July 10, 2024

LETTER OF INTENT

**Re: 81.56 acres at former Point Molate Naval Facility**

In the years since the former Point Molate naval facility was closed by United States Navy and transferred to the City of Richmond ("**City**"), several development plans, with varied terms and a variety of partners, have been proposed for Point Molate. Pursuant to the terms of an Amended Judgment, issued by U.S. District Court Judge Yvonne Gonzalez Rogers on November 21, 2019 (Case No. CV 12-1326 YGR) ("**Amended Judgment**"), the City conveyed ownership of Point Molate to Point Molate Futures, LLC ("**PMF**") on August 29, 2022. PMF is wholly-owned by the Guidiville Rancheria of California ("**Tribe**"), and is the entity that now holds title in fee to the developable parcels of Point Molate ("**Developable Parcels**" or "**Property**") in accordance with the terms of the Amended Federal Judgment ("**Amended Judgment**"). The Developable Parcels are shown in Exhibit A attached hereto and incorporated herein. The East Bay Regional Park District ("**District**") believes that the terms outlined below provide a path forward for the creation of an important community amenity for the residents of the City and the greater Bay Area. The District is pleased to present this non-binding Letter of Intent to PMF and City for their consideration.

**1. Purchase and Sale Agreement.**

The proposed agreement between PMF and the District to sell the Property (defined below) would be set forth in a Purchase and Sale Agreement ("**PSA**" or "**Agreement**") to be executed on behalf of PMF and the District. The District requires an approved Agreement while the District completes its due diligence, satisfies funding conditions, and secures various State of California and District approvals.

**2. Property.**

The Property that will be the subject of the Agreement is approximately 81.56 acres of the Point Molate property, designated as Lots 1-44, including all buildings and improvements thereon, as shown on the map (Exhibit A) attached hereto. These are the "Development Parcels" per the Amended Judgment. Future use of the Property will be consistent with, and further the District's mission to preserve natural and cultural resources while also providing open space, parks, trails, safe and healthful recreation and environmental education. The portions of the property to be acquired with State Coastal Conservancy grant funds will be subject to an offer to dedicate (aka deed restriction) that will restrict the Property to only those uses that will protect and enhance the natural, cultural, historic and recreational resources of the Property. City wishes to have similar equitable enforcement rights subordinate to the State's rights.

### **3. Purchase Price and Terms of Payment.**

The purchase price for the Property will be a total of \$40 Million (“Purchase Price”). The District proposes that the “Net Revenues” (as defined in the Amended Judgment) generated from the purchase and sale transaction be distributed as follows: 100% to PMF and 0% to Defendant City of Richmond. Together, the Plaintiffs and Defendant shall work with the U.S. District Court to revise the Amended Judgment to reflect new Net Revenue distribution. The parties to the Amended Judgment shall begin the process to revise the Amended Judgment within fourteen (14) business days of an executed LOI. The revised Amended Judgment shall be filed with the U.S. District Court for approval prior to execution of the PSA. Notwithstanding the foregoing, it is expressly understood that any and all changes to the Amended Judgment, including changes to the distribution of Net Revenues, are contingent on Closing and shall be void if the transaction does not timely close. Moreover, concurrent with Closing and satisfaction of the Amended Judgment, as revised, the City and Tribe will work cooperatively to terminate the reporting requirements in the Amended Judgment and release all claims against each other as specified in the Amended Judgment.

### **4. Earnest Money Deposit.**

The District will deposit one million dollars (\$1,000,000.00) into escrow within ten (10) business days after execution of the Agreement. The Earnest Money Deposit will be creditable to purchase price. \$250,000 to be immediately released to PMF and become non-refundable except for breach by PMF. The remaining \$750,000 will be released and become non-refundable once CA Department of General Services approves the appraisal, the District waives its conditions, and the U.S. District Court has received the necessary motions to effectuate the modification of the Net Revenue split of the Amended Judgment to occur upon Closing.

### **5. Property Documents.**

Within fourteen (14) business days of the execution of the Agreement, PMF will deliver or otherwise make available to the District all material documents, contracts, agreements, and reports pertaining to the Property, except those documents, contracts, agreements, and reports subject to attorney-client and/or deliberative process and/or other legally-protectable privileges ("**Property Documents**") that are in the possession of PMF, its representatives, agents, employees, or contractors and the City shall deliver or otherwise make available to PMF and the District all Property Documents in the possession of City or its consultants, agents, employees or contractors.

### **6. Due Diligence Terms to be Incorporated into the Agreement.**

Pursuant to terms to be incorporated into the Agreement, the District will have one hundred and twenty days (120) days from the date of the Agreement execution by all parties to perform any and all studies as the District may desire on the Property, including without limitation, Phase I and Phase II environmental assessments, including toxics tests, soils tests, building condition inspections, and any other related investigations the District elects to perform, provided that the

District shall provide ten (10) days advance written notice to PMF describing the proposed work to be performed, including, without limitation, what tests will be performed, the time of such tests, and the entity or entities that will perform the tests. Such reports and test results shall also be provided to PMF within ten (10) days after completion. The District will defend, hold harmless, and indemnify PMF and the City from and against any claims, demands, expenses, or liabilities which arise from the District's inspections and/or testing of the Property (other than claims related to the mere discovery of hazardous materials and except to the extent such claims are the result of the gross negligence or willful misconduct of the City or PMF or its or their representatives, agents, employees, or contractors), and will return the Property and the improvements thereon to substantially the condition that existed prior to the testing. The District's defense, hold harmless, and indemnity obligations shall survive the expiration or termination of the Agreement, even if no Closing occurs. Prior to expiration of the due diligence period, the District will approve or disapprove the condition and suitability of the Property for District's purposes.

#### **7. Additional District Conditions to be Incorporated into the Agreement.**

In addition to the District's other standard closing conditions, the District's obligation to close escrow (the "**Closing**") and purchase the Property will be subject to the satisfaction (or waiver by District) of the following additional conditions precedent to closing, which shall be set forth in the Agreement:

- A. The District shall be fully satisfied with the results of its inspections, including, without limitation, as to economic feasibility, siting, environmental condition, condition of title, and shall have approved the condition of the Property. The District will release its contingency for site inspections and environmental and other Property conditions by no later than one hundred and twenty (120) days from the date of the Agreement execution by all parties.
- B. There shall be no material adverse changes to the Property from the condition existing on the date District approved (assuming District has so approved) the condition of the Property.
- C. The title company selected by District shall be irrevocably committed to deliver an ALTA Owner's Extended Coverage Title Insurance Policy, insuring the District's right, title, and fee interest in the Property in the amount of the Purchase Price, subject only to exceptions approved by District.
- D. PMF has delivered or made available to the District, and PMF has requested that the City deliver or make available to District, all Property Documents under their respective possession or control.
- E. The California State Coastal Conservancy ("Conservancy"), on or before November 21, 2024, shall authorize the disbursement of thirty-six million dollars (\$36,000,000), which amount represents the Conservancy's portion of the purchase price funds pursuant to AB 179 (State Budget act of 2022).

- F. Plaintiffs PMF (on behalf of the Tribe) and Upstream, on one hand, and Defendants City, on the other hand, will have obtained Federal District Court approval to modify the Net Revenues split from 50/50 to the distribution of 100% of Net Revenues to PMF and 0% to City. This may require further formal amendment of the Amended Judgment (Case No. CV 12-1326 YGR) to modify the terms of the Amended Judgment to conform to the Agreement, and provide for City, PMF (on behalf of the Tribe) and Upstream Point Molate LLC ("Upstream") to each file a satisfaction of the Amended Judgment upon Closing of the purchase and sale of the Property in accordance with the Agreement.
- G. The District and City have entered, or are ready to enter into concurrently with the Closing, an operation and maintenance cost sharing agreement providing, among other things: (i) for the City, at its expense, to maintain and secure the Property for one (1) year from and after the Closing; and (ii) for the City to transfer to District any remaining funds that the Navy provided to the City or its agents for monitoring or remediation of Hazardous Materials. Prior to Closing, the City will make available to District, all Property Documents in its possession concerning the status of the environmental remediation. Further City will provide any documents that demonstrate remaining Navy funding is limited. City's obligation to manage the Property for one year shall be limited to property maintenance and security at a maximum cost to the City of \$400,000 and shall not include any environmental remediation that exists as of the date of Closing. City shall not be further responsible for remediating hazardous materials or for environmental conditions after District takes title to the Property. The District acknowledges that it is acquiring the Property in an "AS IS, WHERE IS, AND WITH ALL FAULTS" condition. The operation and maintenance agreement between the District and City will include appropriate indemnification language to address the parties' respective responsibilities during the one (1) year following Closing and thereafter, pursuant to the commitments contained herein.

## **8. Title Insurance.**

Upon the close of escrow, PMF (or, if required by Title Company to issue title insurance, PMF and the City) shall convey to the District by grant deed fee simple title to the Property, as evidenced by an ALTA owners title insurance policy issued by a title insurance company selected by District, with whom an escrow shall be opened upon execution of the Agreement by PMF and the District. The District shall pay the premium costs of the ALTA owners policy, including any endorsements or survey requested by the District.

## **9. Outside Date for Closing.**

The purchase and sale of the Property from PMF to the District shall close upon satisfaction or waiver of all conditions precedent to Closing, but in no event later than January 15, 2025.

## **10. No Brokers.**

Neither the District nor PMF are represented by any agent or real estate broker in connection with

the proposed purchase and sale of the Property. Tribe will indemnify and defend the District from any claims made for compensation arising from the purchase and sale transaction. All amounts payable to Upstream or Tribe for their release of claims against the City shall be paid by PMF out of the Purchase Price/Revenues.

### **11. Prorations/Closing Costs.**

The District and PMF shall prorate current taxes and assessments and any other items of income and expense as of close of escrow as are normally prorated in similar purchase and sale transactions. All usual closing costs, recording fees, and escrow fees shall be paid by the District.

### **12. Agreement Costs.**

The District shall pay its own legal, consulting, and administrative costs of preparing and negotiating the Agreement and any independent review or other due diligence related work the District chooses to incur. The District shall also reimburse PMF (on behalf of the Tribe) one million dollars (\$1,000,000.00) ("Tribal Fee Reimbursement") to compensate PMF (on behalf of Tribe) for reasonable legal fees incurred in connection with the negotiation and drafting of the Agreement and certain other out-of-pocket costs incurred by PMF (on behalf of Tribe). Except as expressly provided in the preceding sentence, any costs incurred by PMF (on behalf of the Tribe) in connection with ownership, operation, marketing, or management of the Property and/or the purchase and sale transaction, shall be borne by PMF (on behalf of the Tribe).

### **13. City-District Cooperation.**

The District and the City have a long history of working in partnership on Park District projects within the City. The District will also commit to the following: 1) engage on Equity outreach and planning; and 2) conduct community and stakeholder park planning outreach.

Specifically, the District commitment will include the following:

- During the initial project scoping and prior to initiating formal project planning, the District planning staff, including the District's dedicated Office of Equity, will commit to coordinate with the City's Community Development Director and community stakeholders to ensure a diverse and representative range of community voices are engaged throughout the process and advancing equitable park access.
- Such community stakeholders, along with City Community Development staff, will be invited to engage in project planning throughout the process, will be kept apprised at key milestones, and specifically invited to comment throughout EBRPD public meetings.
- Park District staff will commit to providing updates to the City of Richmond Recreation and Parks Commission, Planning Commission, a community advisory group formed by the City Council, and/or City Council at key milestones in the planning and development process.
- City staff having the option to participate in any project stakeholder groups.

**14. Letter of Intent.**

Notwithstanding anything to the contrary in this Letter of Intent, the District and PMF expressly acknowledge and agree that this Letter of Intent does not include all the material terms that would be included in the formal written Agreement and thus does not constitute a contract for the purchase and sale of the Property and only expresses the District's and PMF's mutual desire to negotiate in good faith and attempt to agree upon a formal written Agreement and using this Letter of Intent as the initial framework from which the District and PMF will later endeavor to reach the formal written Agreement.

This Letter of Intent is intended to be a precursor to the Agreement. The District and PMF will negotiate in good faith to execute the Agreement, incorporating the terms and conditions of this Letter of Intent and such other terms and provisions as may be negotiated and agreed to by PMF and the District.

These are the major business terms upon which the District, subject to approval by its Board of Directors, is prepared to enter into the Agreement described above. This Letter of Intent is not intended to be legally binding, and neither the District nor PMF shall be legally bound unless and until the Agreement is executed between the District and PMF.

If these major business terms are acceptable to PMF and City, please sign and date a copy of this Letter of Intent where indicated below, and return it to my attention. Once I receive PMF's and City's approval, I will instruct the District's legal counsel to prepare the formal Agreement and any other legal documents for the District's, PMF's and City's review.

Although neither the District nor PMF will be legally bound unless and until the District and PMF have each approved and executed the Agreement, please be assured that I will consider both parties informally committed to work together in good faith to attempt to reach formal documentation on these major business terms.

If we have not signed formal documents for any reason by December 31, 2024, however, neither the District nor PMF nor City will have any further obligation to proceed in good faith with these negotiations.

The terms and conditions of the foregoing Letter of Intent are hereby accepted by the undersigned.

**EAST BAY REGIONAL PARK DISTRICT**  
A California Special District

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**POINT MOLATE FUTURES, LLC**

On behalf of Guidiville Rancheria of California, a federally recognized Tribe

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF RICHMOND**

A Municipal Corporation

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_