



February 25, 2010

Mr. Bill Lindsay, City Manager  
Ms. Janet Schneider, Assistant City Manager  
Richmond City Hall  
1401 Marina Way South  
Richmond, CA 94804

RE: Point Molate LDA Status Report

Dear Bill and Janet:

This letter is intended to satisfy our requirement to provide a semi-annual status report on our progress under the Land Disposition Agreement dated November 9, 2004, as amended, between the City of Richmond and Upstream Point Molate LLC.

### **EIS/EIR**

The Draft EIS/EIR was made available for public comment on July 20, 2009. At the City Council Meeting on September 22, 2009, the Council extended the comment period from September 23 until October 23. Since being made public, public hearings to receive verbal and written comments were held before the Design Review Board on August 12, 2009 and before the Planning Commission on September 17, 2009. In addition, public workshops with technical experts were held on August 10, 2009 and August 27, 2009 at the Richmond Memorial Auditorium. Although very marginally attended, the workshops provided an opportunity for the public to learn about the proposed project, the environmental review process and the analysis presented in the DEIS/R. Written comments were also accepted at the workshops and hundreds of written comments were received during the comment period.

Due to the extension of the EIR comment period, we understand the City is now reviewing a new schedule that would provide for City Council consideration of the EIR and other approvals. Since the City's CEQA review has been delayed, this necessarily delays the Closing Date for Upstream to acquire the property. We are discussing possible LDA Amendment strategies with the City to accommodate the need for the City to complete CEQA prior to selling the land.

### **Federal Approvals**

Guidiville has filed all necessary applications with the National Indian Gaming Commission and the United States Department of the Interior to have Point Molate declared

(510) 596-9501  
1900 Powell Street, 12<sup>th</sup> Floor  
Emeryville, CA 94608

“restored Indian lands” eligible for gaming under the provisions of the Indian Gaming Regulatory Act. This is a legal determination that the Department of Interior will make based on its review of historical information concerning the Tribe. The federal government is under no deadline to make such an administrative determination. We are hopeful that we will be advised of their decision shortly.

### **Early Transfer with the Navy**

Upstream, with its environmental and insurance consultants, has substantially completed its work with the City staff and its consultants in negotiations with the U.S Navy leading to the conveyance of the remainder of the property to the City pursuant to an Early Transfer Cooperative Agreement (“ETCA”) and a Finding of Suitability for Early Transfer (“FOSET”). The Navy has deposited \$28.5 Million in escrow and Governor Schwarzenegger approved the early transfer. We anticipate that the Early Transfer will close in the next few weeks (subject to issuance of a final environmental insurance policy) and the City will then own all property to be transferred to Upstream under the LDA. Upstream’s obligations to begin the remediation are governed by the Remediation Agreement dated September 9, 2008 and the LDA. It is important to note that had the Early Transfer not been achieved, the Navy’s proposed approach to monitor and remediate Site 3 would have taken many years (or possibly even decades) to complete, so this is truly an important milestone. We must acknowledge the professionalism and dedication of those who led this process for the Navy and the City, as successful conclusion of these ETCA agreements are rare around the country.

On behalf of the City, we have already assumed responsibility to maintain the ground water treatment system and various site monitoring programs that the Navy was operating, in order to prevent any gaps in fulfillment of ongoing maintenance and monitoring responsibilities under existing orders from the Regional Water Quality Control Board.

### **Project Financing**

During the last nine months, we have undertaken a comprehensive cost analysis of the proposed project, using independent consultants and contractors. The results of that work indicate that projected costs to construct the project are within the ranges previously estimated and within the financing capabilities of the team. Specific information to support this analysis will be submitted to the City with the financing plan required under the LDA.

Payments to the City of Richmond under the LDA, together with all other predevelopment expenditures that Upstream has made since the LDA was executed in November 2004, now approach \$25 Million (\$15.5 Million of which was paid to the City under the LDA or the prior Exclusive Right to Negotiate). All of these funds have been spent to advance the redevelopment of Point Molate. Our project budget for the period March 1, 2010

through February 28, 2011 is approximately \$8.8 million, assuming that we close the purchase of the property during 2010, as follows:

Project Entitlements including EIR/EIS processing, legal expenses and reimbursements to the City	\$2,060,000
Engineering and Architecture	300,000
Extension Payments to the City under the existing Tolling Provisions of the LDA or pursuant to Extension of the LDA	840,000
Closing expenses and payment of Principal on the Purchase Price pursuant to LDA, if closing occurs in 2010	5,100,000
Other Administrative Costs	250,000
Contingency	250,000
<b>Total</b>	<b>8,800,000</b>

Pursuant to our existing financial arrangements with our partners, we continue to have adequate resources available to fund these costs as they are incurred. We attach a letter dated February 23, 2010 to you from Mem Sah Corporation, a company wholly owned by the Yocha Dehe Band of Wintun Indians, owner of the Cache Creek Casino Resort, confirming the availability of these funds and the availability of the requisite collateral security necessary to be provided to the City under the LDA for the balance of the Purchase Price at the time of Closing.

### **Jobs and Economic Development for Richmond**

While site engineering analyses have consumed significant time and expense by our project team, we have continued our work with various Richmond groups to prepare to meet the hiring goals outlined in the LDA. The bulk of that work has been to collaborate with community and church groups to identify what now numbers over fifty community partner organizations that will each function in some capacity as part of a fabric of programs and resources to identify, steer, prepare and train Richmond applicants into employment opportunities created by the Project. We believe that our community-based approach is one of the most exciting aspects of the Project and will provide the mechanism and capabilities allowing the Project to meet and exceed its local hiring goals. As we approach the final approval process, we will continue to work with Sal Vaca, labor unions, churches, community groups and others to organize programs together into as seamless a process as can be designed.

It is clear that once approved, the project will be one of the largest economic and job development opportunities ever in Richmond and will be implemented in a way that will enhance the environment. We look forward to the City completing its review of the Project and working with you to deliver the immense array of project benefits to Richmond.

Please call me if you have any questions or comments.

Sincerely,  
Upstream Point Molate LLC



James D. Levine  
Managing Member

CC: John F. Salmon  
Merlene Sanchez, Guidiville Band of Pomo Indians  
Walter Gray, Guidiville Band of Pomo Indians  
Michael Derry, Black Oak Development

MEM SAH CORPORATION

PO Box 18  
Brooks, CA 95606  
p) 530.796.3400  
f) 530.796.2143

February 23, 2010

**CONFIDENTIAL**

Mr. Bill Lindsay, City Manager  
Ms. Janet Schneider, Assistant City Manager  
Richmond City Hall  
1401 Marina Way South  
Richmond, CA 94804

Re: Pointe Molate Annual Report

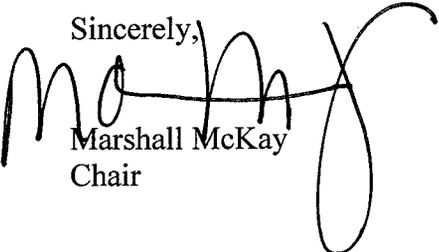
Dear Mr. Lindsay and Ms. Schneider:

Mem Sah Corporation ("Mem Sah") is a tribal corporation wholly owned by the Yocha Dehe Band of Wintun Indians. Mem Sah is a member of Winehaven Partners LLC ("Winehaven") along with The Guidiville Band of Pomo Indians and Upstream Point Molate, LLC. We bring resort development and operations experience to the team, and through Winehaven, are providing financial support to the project.

Pursuant to section 9(b) of the First Amendment of the LDA, Mem Sah represents to the City of Richmond that it will contribute up to \$3.8 million to Winehaven as necessary between March 1, 2010, and February 28, 2011, to fund the project expenses of Winehaven respecting Point Molate.

Furthermore, if the conditions set forth in section 7.1(a) and (c)-(j) of the LDA are satisfied during this period, Mem Sah will advance the \$5 million due the City of Richmond under section 1.4(b) of the LDA, and Mem Sah will post a letter of credit to secure the \$30 million Note described in section 1.4(c) of the LDA.

Sincerely,



Marshall McKay  
Chair

cc: Upstream Point Molate LLC  
Guidiville Band of Pomo Indians