

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is made and entered into by and between CuriOdyssey (formerly Coyote Point Museum Association), a California non-profit corporation, ("CuriOdyssey") and the County of San Mateo, a political subdivision of the State of California ("County") as of October 23, 2012.

### **RECITALS**

A. The County owns certain real property commonly known as Coyote Point Park, 1701 Coyote Point Dr, San Mateo, 94401 and more particularly shown in Exhibit A (the "Property").

B. The County and CuriOdyssey entered into and currently operate under a certain Coyote Point Museum Agreement on June 6, 1978 and six (6) Amendments thereto (collectively the "Agreement"), which Agreement expires in 2024, whereby CuriOdyssey leases a museum structure and other improvements at the Property for the operation of a regionally focused science museum and wildlife center.

C. Among other things, the Agreement provides that the County is responsible for exterior maintenance and utilities (sewer, water, electricity) on the Property and CuriOdyssey is responsible for interior maintenance and utilities (gas).

D. CuriOdyssey currently reimburses the County for its share of general liability insurance for the wildlife habitats, keeper building and pavilion.

E. The parties agree that, as partners in the use of the Property, a cooperative and coordinated effort could provide a unique opportunity for the parties to make improvements to the Property that would benefit both parties.

F. CuriOdyssey is currently involved in a design process and capital campaign to renovate the museum and improvements located at the Property, which may include the demolition of all or a portion of the existing facility, construction of all or a portion of a new building, improvements around the perimeter of the building (including a possible new entry sequence) and an outdoor play area/classroom space (collectively referred to as the "Improvements").

G. The County wishes to cooperate with CuriOdyssey to process the entitlements for the Improvements and ensure proper CEQA analysis is conducted.

H. The County is exploring its ability to reduce the fees associated with the entitlement and permitting process.

I. During fundraising and entitlements, the County and CuriOdyssey will continue to operate pursuant to the terms of the Agreement.

J. Given the substantial costs of the intended Improvements and the impact on the parties' respective interests, the parties wish to delineate the terms of the business arrangement by which the parties agree to negotiate and cooperate in good faith and in a timely manner.

## **AGREEMENT**

In consideration of the mutual benefits contained in this Memorandum of Understanding, CuriOdyssey and County hereby agree as follows:

### **I. Design and Approval Phase.**

1. CuriOdyssey will take a lead role and engage third party consultants to develop plans for the Improvements, such that an application can be submitted to the County for entitlements.

2. CuriOdyssey will use its best efforts to seek out financing necessary to build the Improvements.

3. The County will act in good faith to assist in expediting the processing of entitlements for the Improvements and explore reducing the fees associated with such entitlements.

**II. Proposed Ground Lease.** CuriOdyssey and the County will endeavor, in good faith, to negotiate a ground lease whereby CuriOdyssey will lease the real property shown in Exhibit B (the "Premises") attached hereto, which ground lease shall take effect upon the issuance of a building permit for the Improvements (the "Ground Lease"). Until the effective date of the Ground Lease, the parties will continue to operate under the terms and conditions of the Agreement. The parties shall use good faith to negotiate a Ground Lease and make reasonable efforts to include terms which may include, but shall not be limited to, the following terms:

1. **Term; Extensions.** The lease term shall be thirty (30) years from the receipt of a certificate of occupancy for the Improvements with the potential for two (2), fifteen (15) year extension. The parameters for the extensions shall be further negotiated.

2. **Use.** CuriOdyssey shall use the Improvements for its operations and certain public events, which public events shall be coordinated with the County and are subject to prior approval by the County, if they are not "mission compatible" with that of the County or CuriOdyssey. CuriOdyssey and its guests shall have the ability to access the Property and use the Improvements after regular park hours, at CuriOdyssey's sole cost and expense, and in coordination with the County.

3. Member Access to County Park. Members of CuriOdyssey may enter the Property without paying the County Park entrance fee when visiting CuriOdyssey. Non-members must pay the County Park entrance fee.

4. Utilities, Insurance, Maintenance. CuriOdyssey shall be liable for any and all utilities; property, liability and workers compensation insurance; and, maintenance fees associated with the Premises and Improvements. The County will continue to be responsible for maintaining and insuring the Property outside of the Premises, including but not limited to the access road(s) and the shared parking lots.

5. User Fee. As consideration for the use of the Premises and to offset the County's provision of utilities and maintenance at the Property, CuriOdyssey shall contribute one percent (1%) of its earned revenue, based upon its independent audited financial statements, to the County, which revenue shall consist explicitly of admissions, facility rentals, retail sales, membership and on-site program fees.

6. Parking; Access. CuriOdyssey will cooperate with County parking needs/requirements, based upon usage. CuriOdyssey and the County shall cooperate in the shared use of the parking lots and spaces. The County shall cooperate with CuriOdyssey to provide adequate physical access, including access after regular park hours or for special events, and a minimum number of shared parking spaces throughout the lease term, or any extensions thereof. Any after-hours access or additional services necessary for special events shall be provided to CuriOdyssey at CuriOdyssey's sole cost and expense.

7. Sale of Park. In the event extenuating circumstances require that the County sell the Property, the new owner shall assume the terms and conditions of the Ground Lease. In the event of this action, CuriOdyssey shall have the first right of refusal to purchase the Property at fair market value.

8. Permanent Park Closure. In the event extenuating circumstances require that the County close the Property or cease to use the Property as a County park, the County will guarantee access to the Premises throughout the Term of the Ground Lease and all terms of the Ground Lease shall remain in full force and effect.

9. Surrender Provisions. Upon the expiration or earlier termination of the Ground Lease, including the extensions, if applicable, CuriOdyssey shall surrender to the County the improvements and Premises in good condition, reasonable wear and tear excepted, or, at County's sole discretion, remove all improvements and demolish any Improvements at the Premises, at CuriOdyssey's sole cost and expense.

10. Sale/Lease of Improvements; Sub-Lease/Assignment of Ground Lease. CuriOdyssey may sell or lease the Improvements to a non-profit user, subject to County's prior approval, which approval shall not be unreasonably withheld, and only to be used for a similar purpose. CuriOdyssey may sub-lease and/or assign the ground

lease to a non-profit user, subject to County's prior approval, which approval shall not be unreasonably withheld, and only to be used for a similar purpose. (The parameters and conditions for a sale, lease, sub-lease and/or assignment shall be further negotiated with the County).

11. View Corridor. The County shall use reasonable efforts to not impair or impede the view corridor enjoyed by CuriOdyssey. Specifically, the North and East views should not be obstructed with buildings or other permanent structures.

### **III. Dispute Resolution.**

1. Any claim or dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party.

2. The County and CuriOdyssey shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Mediation Rules of the American Arbitration Association, currently in effect.

### **IV. Miscellaneous.**

1. Amendment. This MOU may be modified at any time by the mutual agreement of CuriOdyssey and the County. No amendment to this MOU shall be effective unless it is made in writing and signed by both parties. Any portion of this MOU which is not specifically amended shall remain unchanged. The parties acknowledge that this MOU contemplates further amendments and refinements and that written amendments signed by both parties are for the protection of both parties. Such amendments may be in the form of written instruments which are dated, signed and expressly state that it amends, clarifies, supplements, is to become a part of, or otherwise references this MOU.

2. Notices. Either party may give notice to the other party by facsimile transmission with a confirmation telephone call, first class mail postage prepaid, personal delivery or express delivery by a delivery service such as Federal Express. Notice shall be deemed accomplished upon receipt, provided however that notice given by first class mail shall be deemed received two (2) days after deposit in the US mail, first class postage prepaid to addresses set forth below:

CuriOdyssey  
c/o Rachel Meyer, Executive Director  
1651 Coyote Point Drive  
San Mateo, CA 94401

County of San Mateo  
c/o Real Property Services  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

In reliance on each other's good faith cooperation, the parties have entered into this MOU, as of the date stated above.

CURIODYSSEY:

(formerly COYOTE POINT MUSEUM  
ASSOCIATION) a California  
non-profit corporation

THE COUNTY OF SAN MATEO, a political  
subdivision of the State of California

\_\_\_\_\_  
By: Rachel Meyer  
Its: Executive Director

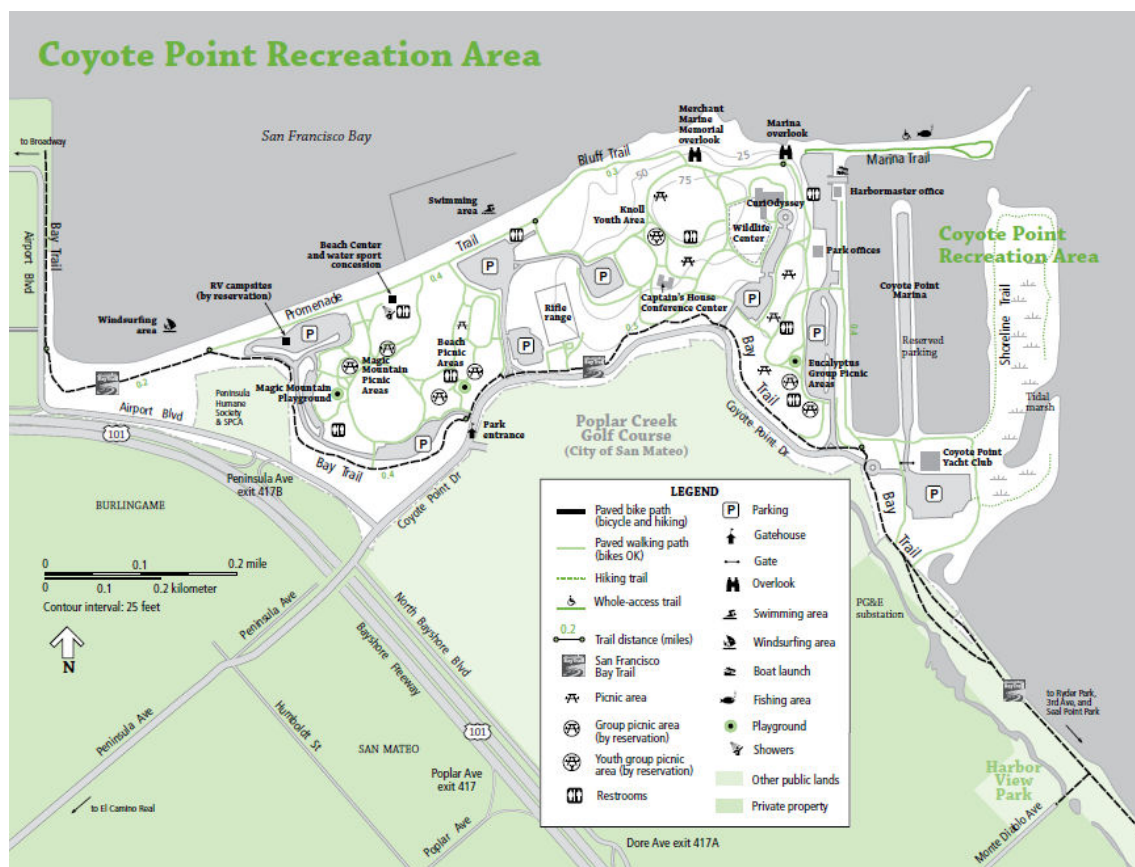
\_\_\_\_\_  
By: Adrienne J. Tissier  
Its: President, Board of Supervisors

ATTEST:

Resolution No.: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Board

## Exhibit A Property Map



## Site Plan of Premises