

FUNDING AND TRANSFER AGREEMENT

This Agreement (“Agreement”) is made and entered into as of _____, 201_, by and between PENINSULA OPEN SPACE TRUST, a California non-profit public benefit corporation, hereinafter referred to as “POST” and the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter referred to as the “County”. POST and COUNTY are hereinafter collectively referred to as the “Parties” and each a “Party”.

RECITALS

WHEREAS, POST was organized as a non-profit, charitable corporation to solicit, receive and hold gifts, legacies, devices and conveyances of real and personal property for public park, conservation and open space purposes, all in a manner complementary to parkland in the County; and

WHEREAS, the property and assets of POST are irrevocably dedicated to said purposes and no part of the property and assets of POST shall ever inure to the benefit of any individual; and

WHEREAS, the County desires to acquire fee title to that certain 174-acre real property (as defined below, the Loma Mar Property) located within an unincorporated area of the County, that has open space and recreational value and that is currently owned by the San Mateo County Office of Education (“SMCOE”), for purposes of environmental preservation, recreation, scenic and open space purposes; and

WHEREAS, in connection with the County’s acquisition of fee title to the Loma Mar Property from the SMCOE, POST is willing to provide to the County one hundred percent (100%) of the funding for the purchase price of the Property by the County, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, in consideration for the provision of said POST funding, and for other good and valuable consideration, the County is willing to take fee title to the Loma Mar Property subject to the deed restriction and the other terms and conditions of this Agreement, and in addition, but in all cases subject to the terms and conditions of this Agreement as well as the terms and conditions of purchase and sale agreements to be entered into between POST and the County, the County is willing no later than June 30, 2014 to take fee title to the Butano Crest East Property (as defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein contained, the Parties hereto agree as follows:

1. Property. Subject to the terms and conditions of this Agreement, POST agrees to provide to the County, and County agrees to accept from POST, as further detailed in Section 2 below, funding in connection with County’s purchase of all of SMCOE’s right, title and interest in and to the following real property (the “Loma Mar Property”): that certain real property located within an unincorporated area of the County of San Mateo, State of California, that is described as San Mateo County Assessor’s Parcel Numbers 084-101-010, 084-101-020, 084-102-010, 084-102-020, 084-102-030, & 084-102-040, and that contains in the aggregate approximately 174 acres, more or less, and that is further described in Exhibit A attached hereto. The foregoing transfer shall be subject to the rights expressly reserved by POST in this Agreement,

which rights shall be included and reserved in the Loma Mar Deed Restriction (as defined in Section 5 below). The County shall notify POST in writing when the County enters into a purchase and sale agreement with the SMCOE for the Loma Mar Property (the "SMCOE-County PSA"), shall promptly provide a copy of such signed SMCOE-County PSA to POST, and shall coordinate with POST regarding the the Closing (as defined in Section 4 below) of such acquisition and POST's funding thereof as provided in this Agreement.

2. POST Acquisition Funding and Other Funding. The board of the SMCOE has approved the sale of the Loma Mar Property at a purchase price of Three Million Nine Hundred Thousand Dollars (\$3,900,000) (the "Purchase Price"), which is equal to the current fair market value of the Property as determined by land and timber appraisals commissioned by SMCOE. Subject to POST's review and acceptance of the SMCOE appraisals, POST shall provide one hundred percent (100%) of the funding to the County for the Purchase Price (the "POST Acquisition Funding"), provided that the total amount of the POST Acquisition Funding shall be offset and reduced by the full amount of any outside funding obtained by County from the Priority Conservation Area program or any other source in connection with the transfer of fee title to the Loma Mar Property to the County ("Other Funding"). POST will notify the County in writing when POST's review and acceptance of the SMCOE appraisals has been completed.

The County understands that POST may seek private foundation or other third party funds in order to offset all or any part of the POST Acquisition Funding, and POST understands that the County plans to seek all or any portion of the Other Funding from the Priority Conservation Area program or other sources. Each Party agrees to cooperate with the other as reasonably requested regarding funding application(s) for the POST Acquisition Funding or Other Funding. The County shall notify POST in writing regarding the County's receipt of any Other Funding and the amount thereof. The POST Acquisition Funding shall not cover or be used to pay for Miscellaneous Transfer Costs and Expenses covered by Section 3 below.

3. Miscellaneous Transfer Costs and Expenses. All hard costs and expenses payable in connection with the Closing (as defined in Section 4 below) and/or incurred in connection with the transfer of the Loma Mar Property from the SMCOE to the County, including without limitation transfer taxes (if any), escrow fees, recording costs and title insurance premiums (the "Miscellaneous Transfer Costs and Expenses"), shall be the responsibility of the SMCOE and/or the County as provided in the SMCOE-County PSA, and POST shall not be liable to fund any of such Miscellaneous Transfer Costs and Expenses, nor shall the POST Acquisition Funding be used to pay for or reimburse any of such costs and expenses.

4. Deposit, Escrow & Closing. After the execution of this Agreement by both Parties, upon written request by the County, POST agrees to fund to the County a portion of the POST Acquisition Funding in the form of a deposit (the "Deposit") as required by the SMCOE to accompany the County's offer to SMCOE to purchase the Loma Mar Property. The amount of the Deposit shall equal ten percent (10%) of the Purchase Price. The County agrees that the Deposit shall be deposited into an escrow (the "Escrow") when established between SMCOE and the County in connection with the closing of the transfer of the Loma Mar Property from the SMCOE to the County pursuant to the SMCOE-County PSA (the "Closing"). Promptly upon written request by the County, POST shall fund the remainder of the POST Acquisition Funding (less any Other Funding), as provided in Section 2 above, into Escrow in connection with the Closing.

5. Deed Restriction and Rights to POST. In exchange for POST's provision of the POST Acquisition Funding for the County's acquisition of the Loma Mar Property, the County agrees to record a deed restriction on the Loma Mar Property (the "Loma Mar Deed Restriction") as shown in Exhibit B, that restricts the Loma Mar Property to open space and recreation purposes and gives POST certain rights related

to trail and redwood grove naming and signage on the Loma Mar Property, all as provided therein. The Loma Mar Deed Restriction shall be recorded in the Office of the County Recorder of San Mateo County simultaneously with the Closing described in Section 4 above. The County understands that its agreement to record the Loma Mar Deed Restriction is an express condition to the receipt of the POST Acquisition Funding pursuant to this Agreement, and the County agrees to ensure that the SMCOE-County PSA shall contemplate and require the recordation of the Loma Mar Deed Restriction at Closing.

6. Attribution, Announcements Etc. In addition to the signage rights set forth in the Loma Mar Deed Restriction, in connection with all public announcements relating to the transfer of the Loma Mar Property to the County or to matters pertinent to the Loma Mar Deed Restriction, the County shall recognize the cooperative nature of POST's funding of the Property, and shall provide credit to POST related to open space preservation, public access and recreation in connection with any public announcements, promotional materials, advertisements, publications or exhibits. The County agrees to provide drafts of the foregoing materials to POST prior to first announcement or usage, for POST's review and approval (not to be unreasonably withheld).

7. Additional County Commitments. In addition to the Loma Mar Deed Restriction, in consideration for the agreement to provide the POST Acquisition Funding, the County hereby agrees as follows:

- A. Trails on the Loma Mar Property. The County commits to open trails for public access and use on the Loma Mar Property within one (1) year of the Closing.
- B. Transfer of Butano Crest East Property. Subject to real property due diligence and review and approval (if any) by the County's board of supervisors, and subject to the terms and condition of a purchase and sale agreement to be entered into between POST and the County, the County commits to acquire on an "as is" basis no later than June 30, 2014, at no cost to the County (other than the payment of miscellaneous hard costs of transfer and closing as provided in said purchase and sale agreement), all of POST's right, title and interest in and to that certain real property consisting of approximately 160 acres, more or less, that is located within an unincorporated area of the County, has San Mateo County Assessor Parcel Number 089-140-040, and has open space and recreational value (the "Butano Crest East Property"), with the transfer of the Butano Crest East Property to be subject to a deed restriction for open space, recreational and related uses similar to the Loma Mar Deed Restriction.

8. POST's Representations and Warranties. For purposes of this Agreement, POST makes the following representations and warranties to the County, each of which is material and is being relied upon by the County in executing this Agreement:

A. Authority. POST has the full right, power and authority to enter into this Agreement and to perform the transactions contemplated hereunder.

B. Valid and Binding Agreements. This Agreement and all other documents delivered by POST to County now or at the Closing have been or will be duly authorized and executed and delivered by POST and are legal, valid and binding obligations of POST, and are enforceable in accordance with their respective terms and do not violate any articles, bylaws or corporate resolutions of POST, if any.

9. County's Representations and Warranties. For purposes of this Agreement, the County

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A. Authority. POST has the full right, power and authority to enter into this Agreement and to perform the transactions contemplated hereunder.

B. Valid and Binding Agreements. This Agreement and all other documents delivered by POST to County now or at the Closing have been or will be duly authorized and executed and delivered by POST and are legal, valid and binding obligations of POST, and are enforceable in accordance with their respective terms and do not violate any articles, bylaws or corporate resolutions of POST, if any.

C. No Proceedings. To the County's best knowledge, there is no litigation or proceeding pending, or threatened, nor is there any unsatisfied judgement against or involving the County, or the Loma Mar Property, which might materially and adversely affect said property or the County's ability to consummate the transactions contemplated by this Agreement.

10. County Indemnification of POST. County hereby agrees to indemnify, defend, protect and hold harmless POST from and against any and all claims, demands, liabilities, losses, costs and damages resulting from any misrepresentations or breach of warranty or covenant made by the County in this Agreement or in any document, certificate, or exhibit given or delivered to POST pursuant to or in connection with this Agreement. All of the indemnifications set forth in this Section 10 shall survive the Closing and conveyance of the applicable property, except that the obligation to indemnify for breaches of representation or warranty shall survive only to the extent that a claim is made by POST with respect to such breach within three (3) months after the conveyance of fee title to the County.

11. POST Indemnification of County. POST hereby agrees to indemnify, defend, protect and hold harmless the County from and against any and all claims, demands, liabilities, losses, costs and damages resulting from any misrepresentations or breach of warranty or covenant made by POST in this Agreement or in any document, certificate, or exhibit given or delivered to the County pursuant to or in connection with this Agreement. All of the indemnifications set forth in this Section 11 shall survive the Closing and conveyance of the applicable property, except that the obligation to indemnify for breaches of representation or warranty shall survive only to the extent that a claim is made by the County with respect to such breach within three (3) months after the conveyance of fee title to the County.

12. Miscellaneous Provisions.

A. Choice of Law. The internal laws of the State of California, regardless of any choice of law principles, shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the Parties. Any disputes regarding this Agreement shall be resolved in the Courts of San Mateo County, California.

B. Amendment and Waiver. The Parties hereto may by mutual written agreement amend this Agreement in any respect. Any Party may in writing: (i) extend the time for the performance of any of the obligations of the other Party; (ii) waive any inaccuracies in representations and warranties made by the other Party contained in this Agreement or in any documents delivered pursuant hereto; (iii) waive compliance by the other Party with any of the covenants contained in this Agreement or the performance of any obligations of the other Party; or (iv) waive the fulfillment of any condition of the other Party that is precedent to the performance by such Party of any of its obligations under this Agreement. Any agreement on the part of any Party for any such amendment, extension or waiver must be in writing.

C. Rights Cumulative. Each and all of the various rights, powers and remedies of the Parties shall be considered to be cumulative with and in addition to any other rights, powers and remedies which the Parties may have at law or in equity in the event of the breach of any of the terms of this Agreement. The exercise or partial exercise of any right, power or remedy shall constitute neither the exclusive election thereof nor the waiver of any other right, power or remedy available to such Party.

D. Notices. Whenever any Party desires or is required to give any notice, demand, or request with respect to this Agreement (or any Exhibit hereto), each such communication shall be in writing and shall be deemed to have been validly served, given or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or if delivered by Federal Express or other private messenger, courier or other delivery service or sent by facsimile transmission by telex, telecopy, telegraph or cable or other similar electronic medium, and addressed as follows:

If to POST, to: Peninsula Open Space Trust
222 High Street
Palo Alto, CA 94301
Attn: Walter Moore, President
Telephone: (650) 854-7696
Facsimile: (650) 854-7703

If to County Parks, to: San Mateo County Parks
555 County Center, 5th Floor
Redwood City, CA. 94063
Attn: Parks Director
Telephone: (650) 363-4020
Facsimile: (650) 599-1721

If sent by telegraph, facsimile copy or cable, a confirmed copy of such telegraphic, facsimile or cabled notice shall promptly be sent by United States mail (in the manner provided above) to the addressee. Service of any such communication made only by United States mail shall be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either Party hereto may from time to time, by notice in writing served upon the other as aforesaid, designate a different mailing address or a different person to which such notices or demands are thereafter to be addressed or delivered. Nothing contained in this Agreement shall excuse either Party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirement of written notice as provided in this Agreement.

E. Severability. If any of the provisions of this Agreement are held to be void or unenforceable by or as a result of a determination of any court of competent jurisdiction, the decision of which is binding upon the Parties, the Parties agree that such determination shall not result in the nullity or unenforceability of the remaining portions of this Agreement. The Parties further agree to replace such void or unenforceable provisions which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.

F. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed as an original, and when executed, separately or together, shall constitute a single

original instrument, effective in the same manner as if the Parties had executed one and the same instrument.

G. Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

H. Entire Agreement. This Agreement is intended by the Parties to be the final expression of their agreement; it embodies the entire agreement and understanding between the Parties hereto; it constitutes a complete and exclusive statement of the terms and conditions thereof, and it supersedes any and all prior correspondence, conversations, negotiations, agreements or understandings relating to the same subject matter.

I. Time of Essence. Time is of the essence of each provision of this Agreement in which time is an element. However, whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time (or by a particular date) that ends (or occurs) on a non business day, then such period (or date) shall be extended until the immediately following business day. As used herein, "business day" means any day other than a Saturday, Sunday or federal, California state, or San Mateo County holiday.

J. Survival of Covenants. All covenants of the County or POST which are expressly intended hereunder to be performed in whole or in part after the Closing, and all representations and warranties by either Party to the other, shall survive the Closing and be binding upon and inure to the benefit of the respective Parties hereto and their respective heirs, successors and permitted assigns to the extent provided in this Agreement.

K. Assignment. Except as expressly permitted herein, neither Party shall assign its rights or obligations under this Agreement to any party or individual without the prior written approval of the other Party.

L. Further Documents and Acts. Each of the Parties hereto agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions described and contemplated under this Agreement.

O. Binding on Successors and Assigns. This Agreement and all of its terms, conditions and covenants are intended to be fully effective and binding, to the extent permitted by law, on the successors, heirs and permitted assigns of the Parties hereto.

P. Captions. Captions are provided herein for convenience only and they form no part of this Agreement and are not to serve as a basis for interpretation or construction of this Agreement, or as evidence of the intention of the Parties hereto.

Q. Pronoun References. In this Agreement, if it be appropriate, the use of the singular shall include the plural, and the plural shall include the singular, and the use of any gender shall include all other genders as appropriate.

R. Interpretation. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party

shall not be employed in interpreting this Agreement. Whenever the term "days" is used in this Agreement, it shall mean calendar days unless specifically provided otherwise. Whenever the term "including" is used in this Agreement, it shall mean "including, but not limited to," the items thereafter enumerated.

S. Compliance With Laws. Each Party shall comply with all applicable laws, rules, regulations, orders, consents and permits in the performance of all of their obligations under this Agreement.

T. Exhibits; Recitals. All Recitals and Exhibits referred to in this Agreement are incorporated herein by reference and shall be deemed part of this Agreement.

U. No Recordation. In no event shall this Agreement be recorded without the consent of POST.

W. Partial Invalidity. If any term, covenant or condition of this Agreement or its application to any person or circumstances shall be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provisions to other persons or circumstances shall not be affected, and each term hereof shall be valid and enforceable to the fullest extent permitted by law.

X. Contingency to Effectiveness of this Agreement. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, POST ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF COUNTY HAS AUTHORITY TO COMMIT COUNTY HERETO UNLESS AND UNTIL THE COUNTY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION AUTHORIZING EXECUTION OF THIS AGREEMENT. ANY OBLIGATIONS OR LIABILITIES OF COUNTY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID UNLESS COUNTY'S BOARD OF SUPERVISORS AUTHORIZES EXECUTION OF THIS AGREEMENT. APPROVAL OF THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF COUNTY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON COUNTY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers to be effective as of the date of final execution by County in accordance with the terms hereof.

COUNTY OF SAN MATEO

PENINSULA OPEN SPACE TRUST,
a California non-profit, public benefit
corporation

By: _____
Don Horsley, President
County of San Mateo, Board of Supervisors

By: _____
Walter T. Moore, President

Date: _____

Date: _____

ATTEST:

By: _____
Clerk of Said Board

EXHIBIT A

LOMA MAR LEGAL DESCRIPTION

That certain real property in the unincorporated area of the County of San Mateo, State of California, described as follows:

EXHIBIT B

LOMA MAR DEED RESTRICTION

Recorded at the Request of and
When Recorded, Return and
Mail Tax Statements to:

Peninsula Open Space Trust
222 High Street
Palo Alto, CA 94025

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

APN: 084-101-010, 084-101-020, 084-102-010, 084-102-020, 084-102-030, & 084-102-040

DEED RESTRICTION

THIS DEED RESTRICTION is granted this ____ day of _____, 201_ by the COUNTY OF SAN MATEO, a political subdivision of the State of California ("Grantor") to PENINSULA OPEN SPACE TRUST, a California non-profit public benefit corporation ("Grantee").

RECITALS

A. Grantor is the owner in fee simple of certain real property in San Mateo County, California, consisting of approximately 174 acres as more particularly described in Exhibit "I" attached hereto and incorporated herein by this reference (the "Property"), which shall be subject to the terms of this restriction;

B. The parties desire that the Property be used and maintained in perpetuity in its open space and recreational use condition, and that there will be no use of the Property that will significantly impair or interfere with its conservation and recreation values;

C. Grantor intends, as owner of the Property, by this instrument, to convey a deed restriction to Grantee over the Property, including the right to preserve and protect in perpetuity the open space and recreation values of the Property, subject to the restrictions contained herein; and

D. Grantee is authorized to acquire and hold title to interests in real property and is responsible for implementing programs of open space conservation and protection of natural resources.

AGREEMENT

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California, Grantor hereby grants to Grantee a deed restriction (the "Restriction") in perpetuity over the Property as follows.

1. Limitation on Environmental Use: The use of the Property shall be limited to active and passive recreational activities, open space, and related uses and structures. No industrial or residential use of or activity on the Property shall be permitted. Limited commercial activity directly related to the permitted use of the Property (e.g., small-scale snack bars, information booth) shall be permitted. Any and all use of the Property shall be consistent with the preservation of the Property's recreation and open space character. No activity or use that degrades this character shall be permitted.

2. Restrictions Binding on Successors and Assigns: The foregoing restrictions shall be binding on any and all grantees of any interest in the Property. Neither Grantee nor any successor in interest shall have the right to amend the limitations or the restrictions herein.

3. Rights of Grantee: Grantor conveys to Grantee the following rights:

(a) Enforcement. Grantor expressly agrees on behalf of itself and its successors in interest that Grantee shall have the right to enjoin any use or conveyance in violation of such restrictions and/or pursue any other remedy that may be available at law or in equity.

(b) Trail and Redwood Grove Naming. Grantee shall have the right to specially recognize donors by the naming of trails and/or redwood groves on the Property in a manner desired by a donor and acceptable to Grantee and Grantor, Grantor's consent not to be unreasonably withheld. Grantee may exercise this right by stating in writing to Grantor its request for such naming recognition. Said naming recognition shall be on plaques or small signs, which shall be unobtrusive and consistent with the preservation of public open space and natural habitat, and shall be subject to Grantor's then applicable regulations and requirements in connection therewith. Any and all costs associated with the installation, repair, and maintenance of such recognition plaques or signs shall be borne by POST.

(c) Grantee Signage. Grantor shall allow Grantee to install and maintain signage on the Property, and Grantee hereby reserves for itself and its successors and assigns a perpetual easement, running with the land, over and across the Property for such purposes. Grantee's signage shall be for the purpose of indicating Grantee's participation in funding the recreational and public access nature of the Property and may include attribution to one or more major donors to Grantee; provided, however, that the precise locations and dimensions of any such signage shall be subject to Grantor's prior approval, which shall not be unreasonably withheld, and the requirement that any such signage and benches shall be reasonably compatible with the other uses of the Property, and shall not interfere with future improvements on the Property. Grantee shall maintain, and replace as necessary, all such signage at Grantee's sole expense, and Grantor shall

not alter, remove or relocate the same without Grantee's prior written approval, which may be withheld in Grantee's sole and absolute discretion.

(d) Grantor Signage. Grantor signage on the Property shall, subject to the mutual agreement of Grantor and Grantee regarding text, design and location, may include Grantee's logo (as provided by Grantee to Grantor) and wording for purposes of indicating Grantee's participation in funding the recreation and public access nature of the Property; provided, however, that the precise locations and dimensions of any such signage shall be subject to Grantor's prior approval, which shall not be unreasonably withheld, and the requirement that any such signage shall be reasonably compatible with the other uses of the Property, and shall not interfere with future improvements on the Property. Grantor shall maintain, and replace as necessary, all such signage at Grantor's sole expense.

IN WITNESS WHEREOF, Grantor has executed this Deed Restriction as of _____, 201_.

GRANTOR:

COUNTY OF SAN MATEO

By: _____
Don Horsley, President
County of San Mateo, Board of Supervisors

Date: _____

EXHIBIT I

Legal Description

[see attached]

COUNTY OF _____

On _____, before me, _____, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)