

## POST TRANSFER AGREEMENT

THIS POST TRANSFER AGREEMENT (“Post Transfer Agreement”), dated as of \_\_\_\_\_, 2020, is by and between the PENINSULA OPEN SPACE TRUST (“POST”), a California non-profit public benefit corporation, and the COUNTY OF SAN MATEO (the “COUNTY”), a political subdivision of the State of California (Collectively, POST and the COUNTY are referred to herein as the “Parties”). This Post Transfer Agreement is made with reference to the following facts and circumstances:

### RECITALS

WHEREAS, POST and the COUNTY entered into a Purchase and Sale Agreement, dated May 14, 2019, wherein POST agreed to sell to the COUNTY, and the COUNTY agreed to purchase from POST all of POST’s rights, title and interest in and to the real property described in the Purchase and Sale Agreement, Section 1 (A), and Exhibit A thereto, along with all easements, rights-of-way, privileges, licenses, appurtenances, improvements, fixtures, personal property and other rights and benefits of POST belonging to or in any way related thereto, as set forth in the Purchase and Sale Agreement Paragraph 1 (B) (all collectively referred to herein as the “Property”), and subject to the terms and conditions set forth in the Purchase and Sale Agreement;

WHEREAS, the closing on the Property was originally scheduled to occur on such date as POST and the COUNTY agreed in writing, but, in any event, no later than October 31, 2019 (Purchase and Sale Agreement, Section 3 (A)). By mutual agreement of the Parties, the closing date was thereafter extended: (1) to and including December 31, 2019, (First Amendment to Purchase and Sale Agreement); and (2) to and including March 31, 2020 (Second Amendment to Purchase and Sale Agreement).

WHEREAS, the closing on the Property is conditioned upon satisfaction of the requirements set forth in Section 4 of the Purchase and Sale Agreement, including, but not limited to, the execution of a mutually agreed upon Post Transfer Agreement, as set forth more fully below, and a Cowell-Purisima Trail Agreement for the management of the trail commonly known as the Cowell-Purisima Trail (See Purchase and Sale Agreement, Section 4 (B) (1) and (2));

WHEREAS, the Parties intend and agree that this Post Transfer Agreement satisfies and meets the conditions, terms and requirements of Section 4 (B) (1) (i) - (iv) of the Purchase and Sale Agreement.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Term. Subject to compliance with all terms and conditions contained herein, the term of this Post Transfer Agreement shall commence on the date this Post Transfer Agreement is duly executed by the Parties ("Commencement Date") and terminate after Full Public Access is provided (as defined in Paragraph 5(iii) below) and on either the date all funds raised for the benefit of the Property have been expended, or on the twentieth anniversary of the Commencement Date, whichever occurs sooner.
2. Restricted Funds. The COUNTY Board of Supervisors shall create a Trust Fund totaling no less than Two Million Dollars (\$2,000,000) of restricted funds to be expended exclusively for the benefit of the Property, consistent and in compliance with the terms of the Purchase and Sale Agreement, Section 4 (B) (1) (i) and this Post Transfer Agreement.

- i. Holding and Management of Restricted Funds. The COUNTY agrees to hold, manage, and use the Restricted Funds in such a way that they remain dedicated to the exclusive benefit of the Property, restricted to the specific purposes detailed herein, and not used for any other purpose, unless agreed to in writing by the Parties. The COUNTY shall report to POST on the Restricted Funds twice per calendar year as to the amount and purpose of expenditures.
  - ii. Use of Restricted Funds. The COUNTY agrees that the Restricted Funds shall be expended exclusively for the benefit of the Property and on such items as planning, permitting, designing, constructing, and managing Property infrastructure, improvements, and facilities. Restricted Funds may also be used for ongoing maintenance, repair, upgrade, and replacement of Property infrastructure, improvements, and facilities. The Restricted Funds may also be used to purchase equipment and supplies required to manage the Property as a County park, and conduct habitat restoration and preservation efforts consistent and in compliance with the terms of the Purchase and Sale Agreement, Section 4 (B) (1) (i). The COUNTY agrees that the Restricted Funds shall be fully expended, as per this section, prior to the request and approval for or expenditure of any funds in the Post Closing Funding, as defined and set forth in Section 2 below (Post Closing Funding) of this Post Transfer Agreement.
  - iii. Timeframe for Completion. Consistent with the Purchase and Sale Agreement, Section 4 (B) (1) (i), the COUNTY will set out, in consultation with and participation and agreement by POST, the timeframe for completion of projects funded with the Restricted Funds pursuant to the requirements of this Post Transfer Agreement.
3. Post Closing Fund. The Parties acknowledge that POST has raised and secured funds so the Parties may plan, permit, design, construct, maintain, operate, manage, upgrade, and repair facilities and

improvements relating to public access and recreation and resource protection on the Property ("Post Closing Fund"). See Purchase and Sale Agreement, Section 4 (B) (1) (iii). The Post Closing Fund is separate and apart from the Restricted Funds. COUNTY agrees that in order to access the Post Closing Fund, COUNTY must be compliant with the terms and provisions of this Post Transfer Agreement. The Parties acknowledge and agree that any suspension of, termination of, or decision to not extend the Cowell-Purisima Trail Agreement shall have no impact on COUNTY's ability to access the Post Closing Fund.

- i. The Post Closing Fund is dedicated and restricted to the purposes of planning, permitting, designing, constructing, maintaining, managing, repairing, replacing, upgrading, and operating facilities and improvements relating to public access and recreation, education, and resource protection on the Property. COUNTY may also use the Post Closing Fund for part-time staffing on an ad hoc basis to assist in the protection of the Property and the Property's resources; however, the Post Closing Fund shall not be dedicated to full-time staffing. Upon closing of the COUNTY's acquisition of the Property, POST shall fund the Post Closing Fund with a minimum funding amount of \$3,245,000 to be tracked in a separate Board designated fund. POST has the option to increase or supplement amounts in the Post Closing Fund, but is under no obligation to do so.
- ii. The Post Closing Fund is available both to the COUNTY and POST for dedicated restricted expenditures as defined herein; however, prior to POST expending funds for projects on or purposes related to the Property, COUNTY must authorize in writing the project and the manner in which the project will be implemented.
- iii. Application for Funding. The COUNTY shall apply for funds from the Post Closing Fund on a yearly basis via advance

written notice to POST. Provided that the expenses for which COUNTY seeks funding are consistent with the provisions of this Post Transfer Agreement, POST shall not deny or delay the disbursement of funds. POST may use funds from the Post Closing Fund for dedicated restricted expenditures at any time, provided that the project is first agreed to and approved by the COUNTY as set forth in the preceding Subsection (ii), and shall provide the COUNTY with an accounting of said expenditures on a yearly basis in writing.

- iv. Planning and construction of facilities and other projects. The Parties shall jointly consult and participate in the planning and construction of facilities and improvements and other Property projects funded by the Post Closing Fund, pursuant to the Project Meeting requirements of Section 5 of this Post Transfer Agreement.

#### 4. Cowell Purisima Trail Operation and Maintenance Fund

- i. The Cowell-Purisima Trail Operation and Maintenance Fund is dedicated and restricted to the purposes of County's operation and maintenance of the Cowell-Purisima Trail during the second five-year term of the Cowell-Purisima Trail Agreement as further described in said agreement. POST shall fund the Cowell-Purisima Trail Operation and Maintenance Fund with a minimum funding amount of \$1,000,000 to be tracked in a separate Board designated fund]. POST has the option to increase or supplement amounts in the Cowell-Purisima Trail Operation and Maintenance Fund, but is under no obligation to do so. Any funds in the Cowell-Purisima Trail Operation and Maintenance Fund not used for the purposes of operating and managing the Cowell-Purisima Trail during the second term – or by mutual agreement of the Parties, any subsequent terms – pursuant to the Cowell-Purisima Trail Agreement, shall be transferred to the Post Transfer Fund.

- ii. Application for Funding. The COUNTY shall apply for reimbursement of funds from the Cowell-Purissima Trail Operation and Maintenance Fund on a bi-annual basis via written notice to POST. Provided that the expenses for which the COUNTY seeks reimbursement are consistent with the provisions of this Post Transfer Agreement and the Cowell-Purissima Trail Agreement, POST shall not deny or delay the disbursement of funds.
  
- 5. Parties' Project Meetings. The Parties currently meet generally on a bi-weekly basis to consult and coordinate regarding various aspects and matters related to the Property, including the Improvement Project to plan and implement visitor serving amenities necessary to convert the Property into a County park. To the extent deemed appropriate by the Parties, the Parties may include in these bi-weekly meetings or the meetings outlined in the Cowell-Purissima Trail Agreement (Agreement, Section 10, the matters set out in this Post Transfer Agreement, or may schedule separate regular Project Meetings to address some or all of the matters set out in this Post Transfer Agreement. There is no commitment on behalf of the Parties that all identified improvements or projects will be implemented. Each Party agrees to designate a point of contact who will be responsible for coordinating Project Meetings and dispersing information. During the design process for any improvements or projects, all Parties shall be given the opportunity for input and feedback; however, all improvements shall be designed in accordance with COUNTY policies and pertinent engineering standards or other applicable regulations and standards.
  
- 6. Public Access.
  - i. Initial Public Access. The COUNTY acknowledges that POST is selling the Property to the COUNTY with the understanding that the Property shall be made open to public access by a date no later than November 15, 2020, except that the Initial Public Access and on-going public access to the Property through this

period may be delayed or restricted beyond said date in the event of unsafe site conditions, including but not limited to those resulting from (a) the active construction of improvements required to convert the Property into a County park for recreation, open space, and preservation purposes, or (b) damages caused by a natural disaster, including, but not limited to, a landslide or significant coastal erosion.

- ii. **Limitations on Initial Public Access.** The Parties agree that during the period of Initial Public Access, said access may be limited in nature, be comprised of any format approved by both COUNTY and POST, and which satisfies the following requirements: (1) grants secured access to the Property while avoiding damage to any sensitive resources and active construction areas and (2) is managed by individuals authorized by COUNTY.
- iii. **Full Public Access.** The Parties agree that Initial Public Access to the Property, as set forth above, shall continue only until September 30, 2021, at which time, full public access, consistent with the environmental and recreational values of the Property and any funding from the State of California, shall be permitted, unless on that date the COUNTY has commenced construction of park facilities or visitor serving amenities and the Property is inaccessible to the public due to construction activities and public safety concerns. In the event that the Property is not fully open to the public on June 1, 2021, the Parties agree to expedite completion of the construction activities to ensure that the Property will be fully open to the public as soon as possible after June 1, 2021.

7. **Non-Exclusive License.** The COUNTY agrees that POST (including staff, board, contractors, consultants, and their invitees) has a non-exclusive license to enter the Property during regular park hours of operations, on a limited basis, and in non-sensitive areas for passive recreational purposes such as hiking and donor engagement purposes. Should POST desire to make improvements or conduct

habitat restoration work at the Property, the Parties shall memorialize the terms of the project in a separate agreement executed at that time.

- i. Notice. POST agrees to use reasonable efforts to provide the COUNTY at least two (2) business days' written notice for such a request to enter and use the Property. The COUNTY agrees to use reasonable efforts to inform POST on a regular basis of any activities that might interfere with a planned entrance to the Property.

## 8. Miscellaneous Provisions.

8.1 Invalidity. If any term or provision of this Post Transfer Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Post Transfer Agreement, or the application of such term or provision to persons whose circumstances other those as to which it is held invalid or unenforceable, shall not be affected.

8.2 Successors and Assigns. Subject to the limitations set forth above, the terms and conditions and covenants of this Post Transfer Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their respective heirs, personal representatives, successors or assigns, and shall run with the land.

8.3 Assignability and Subcontracting. POST shall not assign to a third party this Post Transfer Agreement or any portion of it, or the Post Closing Funds or any portion thereof, or subcontract with a third party to provide services required by POST under this Post Transfer Agreement, without the prior written consent of COUNTY. Any such assignment or subcontract without COUNTY's prior written consent shall give COUNTY the right to automatically and immediately terminate this Post Transfer Agreement without penalty or advance notice.



8.4 Merger Clause; Amendments. This Post Transfer Agreement, including the Exhibits and Attachments attached to this Post Transfer Agreement and incorporated by reference, constitutes the sole Post Transfer Agreement of the parties to this Post Transfer Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Post Transfer Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Post Transfer Agreement, the provisions of the body of the Post Transfer Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications, amendments, or waivers shall be in writing and signed by the parties.

8.5 Construction. The captions appearing in this Post Transfer Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Post Transfer Agreement or in any way affect this Post Transfer Agreement. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

8.6. Notices. Any notice, demand, or request required hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) telephonic facsimile transmission; (c) nationally recognized overnight commercial mail service; (d) registered or certified, first class U.S. mail, return receipt requested; or (e) electronic mail, in each case, addressed as provided below.

IF intended for the COUNTY, addressed as follows:

COUNTY OF SAN MATEO  
455 County Center, Redwood City, CA 94063  
Attn: Nicholas J. Calderon, Parks Director

TEL: 650-599-1386  
Email: Ncalderon@smcgov.org

IF intended for POST, addressed as follows:

Peninsula Open Space Trust  
222 High Street  
Palo Alto, CA 94301  
Attn: Walter T. Moore, President  
TEL: (650) 853-7696  
FAX: (650) 854-7703

Such addresses may be changed by any Party by notice to the other Parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic transmission (provided, however, that a dispatch by facsimile transmission that occurs on any day other than a business day or after 5:00 p.m. Pacific time shall not be deemed received until 9:00 a.m. Pacific time on the next business day). Any notice, demand, or request sent pursuant to clause (c) above shall be deemed received on the business day immediately following deposit with the commercial mail service and, if sent pursuant to clause (d) above shall be deemed received forty-eight (48) hours following deposit in the U.S. mail.

8.6 Authority to Sign. The Parties executing this Post Transfer Agreement on behalf of POST and the COUNTY represent that they have authority and power to sign this Post Transfer Agreement on behalf of POST and the COUNTY, respectively.

8.7 Choice of Laws and Venue. This Post Transfer Agreement shall be governed by and construed pursuant to the laws of the State of California, without regard to choice of law rules, and any suit arising out of this Post Transfer Agreement shall be venued in the County of San Mateo.

8.8 Waiver. The waiver by any Party of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained nor shall any custom or practice that may arise between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of POST or the COUNTY to insist upon the performance by POST or the COUNTY in accordance with said terms.

8.9 Time. Time is of the essence with respect to the performance of every provision of this Post Transfer Agreement in which time of performance is a factor.

8.10 Dispute Resolution. Should any dispute arise out of this Post Transfer Agreement, authorized representatives from the COUNTY and POST agree to meet and confer in person to negotiate a resolution of the dispute.

Should such meet and confer discussions not resolve the dispute, the parties agree to meet in mediation and attempt to reach a resolution with the assistance of a mutually agreed upon mediator. The mediation process shall provide for the selection, within fifteen (15) days of either party notifying the other of the existence of a dispute, by both parties of a disinterested third person as mediator and shall be concluded within forty-five (45) days from the commencement of the mediation unless a time requirement is extended by stipulation of both parties.

If a mediated settlement is reached, neither party shall be the prevailing party for the purposes of the mediated settlement. Each party agrees to bear an equal quota of the expenses of the mediator.

A party that refuses to participate in mediation or refuses to participate in the selection of a mediator cannot file a legal action. The non-refusing party shall be permitted to file a legal action immediately upon the other party's refusal to participate in mediation or the selection of a mediator.

POST and the COUNTY, by their execution below, hereby indicate their consent to the terms of this Post Transfer Agreement.

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Nicholas J. Calderon, Director  
San Mateo County Parks Department

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Walter T. Moore, President  
Peninsula Open Space Trust