

COWELL-PURISIMA TRAIL AGREEMENT

THIS COWELL-PURISIMA TRAIL AGREEMENT (“**Trail Agreement**”), dated as of March _____, 2020, is by and between the PENINSULA OPEN SPACE TRUST (“**POST**”), a California non-profit public benefit corporation, the COUNTY OF SAN MATEO (the “**COUNTY**”), a political subdivision of the State of California, and the CALIFORNIA STATE COASTAL CONSERVANCY (the “**CONSERVANCY**”), an agency of the State of California charged with preserving, protecting and enhancing the coast of California (Collectively, POST, the COUNTY, and the CONSERVANCY are referred to herein as the “**Parties**”). This Trail Agreement is made with reference to the following facts and circumstances:

RECITALS

- A. WHEREAS, the Cowell-Purisima Trail (“Cowell-Purisima Trail” or “Trail”) is an approximately three-mile long public pedestrian and bicycle trail located in San Mateo County on property that is either owned by the CONSERVANCY, or over which the CONSERVANCY and/or POST hold conservation and trail easements (the “Trail Property”). POST and the CONSERVANCY’s interests in the Trail Property are defined in the following:
1. North Cowell Property
 - a. Grant of Conservation and Recreation Easement (North Cowell Property) between POST and the State of California dated July 28, 1989 Recorded in the Official Records of San Mateo County (“Official Records”) as Instrument Number [89131579].
 - b. Grant of Conservation Easement (North Cowell Property) between POST and the State of California dated July 28, 1989 Recorded in the Official Records as Instrument Number [89131580].
 - c. Grant Deed between POST and the State of California, dated November 5, 1992 Recorded in the Official Records as Instrument Number [92211407].
 - d. Grant of Easements and Agreement between Adjoining Landowners, between POST and the State of California, Dated November 5, 1992 Recorded in the Official Records as Instrument Number [92211408].
 - e. Grant Deed between POST and Aldo and Rose Giusti, dated December 23, 1992 Recorded in the Official Records as Instrument Number [92215282].
 - f. Grant of Easement between Aldo and Rose Giusti and POST, dated December 23, 1992 Recorded in the Official Records as Instrument Number [92215285].
 - g. Grant of Trail Easement (North Cowell Ranch) between Giusti Family, LLC and POST, dated April 20, 2009 Recorded in the Official Records as Instrument Number [2009046637].
 - h. First Amendment to Grant of Trail Easement (North Cowell Ranch) between Giusti Family, LLC and POST, dated June 15, 2012 Recorded in the Official Records as Instrument Number [2012086697].

2. Purisima Farms Property

- a. Grant of Conservation Easement (Purisima Farms Property) between POST and American Land Conservancy dated May 13, 2002 Recorded in the Official Records as Instrument Number [2002108440].
- b. Grant of Conservation and Trail Easement (Purisima Farms Property) between POST and American Land Conservancy dated May 13, 2002 Recorded in the Official Records as Instrument Number [2002108442].
- c. Quitclaim Deed for Grant of Conservation Easement (Purisima Farms) dated February 21, 2006 Recorded in the Official Records as Instrument Number [2006047131].
- d. Quitclaim Deed for Grant of Trail and Conservation Easement (Purisima Farms) dated February 21, 2006 Recorded in the Official Records as Instrument Number [2006047134].
- e. First Amendment to Grant of Trail and Conservation Easement (Purisima Farms Property) between John and Maureen Giusti and POST, dated March 15, 2006 Recorded in the Official Records as Instrument Number [2006059642].
- f. First Amendment to Grant of Conservation Easement (Purisima Farms Property) between John and Maureen Giusti and POST, dated March 15, 2006 Recorded in the Official Records as Instrument Number [2006059639].
- g. Irrevocable Offer to Dedicate Conservation Easement by the American Land Conservancy to the State of California dated May 29, 2002 Recorded in the Official Records as Instrument Number [2002108441].

3. South Cowell Property

- a. Grant of Trail and Conservation Easement (South Cowell Property) between POST and State of California dated July 29, 1989 Recorded in the Official Records as Instrument Number [89131581].
- b. Grant of Conservation Easement (South Cowell Property) between POST and State of California dated July 29, 1989 Recorded in the Official Records as Instrument Number [89131582].
- c. Grant of Conservation Easement (South Cowell Property) between Robert and Julia Marsh, Edward and Linda Andreini and POST dated July 26, 1991 Recorded in the Official Records as Instrument Number [91101296].
- d. Grant of Trail and Conservation Easement (South Cowell Property) between Robert and Julia Marsh, Edward and Linda Andreini and POST dated July 7 - 26, 1991 Recorded in the Official Records as Instrument Number [91101297].

B. WHEREAS, some portions of the Trail Property are owned in fee by the Giusti Family, LLC and some portions are owned in fee by John Giusti and Maureen Giusti; and the CONSERVANCY, POST, the Giusti Family, LLC, and John Giusti and Maureen Giusti, have entered into the following agreements that more specifically address

operation of, and communication regarding, the Trail (collectively the “**Landowner Operating Agreements**”):

1. Memorandum of Agreement between POST and John Giusti, dated June 3, 2011 (the “**John Giusti MOU**”), attached as Exhibit [A]
2. Memorandum of Agreement between POST and Bob Marsh, dated August 1, 2011 (the “**Bob Marsh MOU**”), attached as Exhibit [B]
3. Agreement Among Adjoining Landowners (North Cowell Ranch/Purisima Farms) between the CONSERVANCY, POST, the Giusti Family LLC, and John and Maureen Giusti re the North Cowell Ranch/Purisima Farms California Coastal Trail, dated and executed variously in February 2009 (the “**Adjoining Landowners Agreement**”), Recorded in the Official Records as Instrument Number [2009022807], attached as Exhibit [C].

- C. WHEREAS, POST currently owns the property commonly referred to as the Tunitas Creek Beach property (the “**Tunitas Property**”), which is located in San Mateo County and has open space and recreational value.
- D. WHEREAS, pursuant to the Purchase and Sale Agreement between POST and COUNTY dated May 14, 2019 (“PSA”) and attached as Exhibit [D], the COUNTY intends to acquire the Tunitas Property from POST for environmental preservation, public recreation, scenic and open space purposes.
- E. WHEREAS, the COUNTY performs certain management responsibilities with respect to the Tunitas Property pursuant to the License and Management Agreement between POST and the COUNTY, dated September 12, 2017 (the “LMA”), which LMA terminates by its terms upon the sale and transfer of the Tunitas Property to the COUNTY. Likewise, POST, as holder of the subject trail and conservation easements, currently has certain responsibilities regarding the management of the Cowell-Purisima Trail.
- F. WHEREAS, as a condition precedent of the PSA, prior to closing, there shall have been negotiated and executed two agreements that outline POST’s and COUNTY’s respective roles and responsibilities pertaining to the management of the Cowell-Purisima Trail and the Tunitas Property (respectively). POST AND COUNTY intend that the Post Transfer Agreement satisfy the condition precedent set forth in Section 4 (B) (1) (i) – (iv) of the PSA. POST and COUNTY intend that this Trail Agreement satisfy the condition precedent set forth in Paragraph 4 (B) (2) of the PSA.
- G. WHEREAS, through Grant Agreement No. 18-132 between the CONSERVANCY and COUNTY (“Conservancy Grant”), the CONSERVANCY granted \$3,200,000 to the COUNTY to acquire the Tunitas Property subject to a requirement that the COUNTY enter into an agreement with POST and CONSERVANCY for operation and management of the Trail. CONSERVANCY and COUNTY intend that this Trail

Agreement satisfy the requirement set forth in Paragraph 4 of the "Conditions Precedent to Acquisition and Disbursement" section of the CONSERVANCY Grant.

H. WHEREAS, operation and maintenance of the Trail benefits the COUNTY's residents, visitors, and businesses.

AGREEMENT

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

1. The Cowell-Purisima Trail. The Cowell-Purisima Trail is shown in Exhibit [E] to this Trail Agreement. The Trail Property is shown in Exhibit [E] to this Trail Agreement.
2. Term.
 - a) Duration of Agreement. The Parties agree that the duration of this Trail Agreement shall be a minimum of five (5) years, subject to the terms and conditions of this Trail Agreement ("First Term"). At the conclusion of the First Term, this Trail Agreement shall renew for a Second Term totaling five (5) additional years, during which all of COUNTY's Management Responsibilities identified herein shall be funded by the funds held by POST for the Tunitas Property in accordance with Section 2 (d) below.
 - b) Commencement Date. The date the duties, responsibilities and obligations under this Trail Agreement will commence is the "Commencement Date". The Commencement Date is sixty (60) days after this Agreement is duly executed by the Parties unless, prior to such date, the Parties mutually agree in writing upon a different date.
 - c) First Term. The First Term commences on the Commencement Date and expires five (5) years thereafter unless a portion or portions of the First Term have been suspended in accordance with Section 8(a) herein. During the First Term, as a condition precedent to the COUNTY seeking to suspend its COUNTY's Management Responsibilities and other obligations and duties under this Trail Agreement pursuant to Paragraph 8 below, the COUNTY shall first have expended a minimum of four hundred and fifty thousand dollars (\$450,000) (including COUNTY staffing) on its COUNTY's Management Responsibilities and other obligations and duties under this Trail Agreement.

- d) Second Term. The Second Term shall immediately follow the First Term and be for a five (5) year period, provided that COUNTY has access to funds held by POST in accordance with the Post Transfer Agreement or other external funds, in an amount sufficient to fund COUNTY's Management Responsibilities during the Second Term up to \$200,000 per year. If the COUNTY projects that its expenses will exceed \$200,000 per year, the Parties will meet to discuss strategies for scaling the County's Management Responsibilities, the number of hours per day or days per week the Trail is open, and/or shortening the Second Term. The COUNTY may elect to extend the Trail Agreement for a Second Term irrespective of the availability of external funding by delivering written notice to POST and CONSERVANCY no later than one hundred and eighty (180) days prior to the expiration of the First Term.
 - e) Extension of Trail Agreement; Additional Term(s). At least six months prior to the end of the Second Term, the Parties shall meet to determine: (1) whether they mutually agree to extend the duration of the Trail Agreement beyond the Second Term and the length and other terms of the extension; and (2) the Parties' respective rights, duties, obligations and liabilities under the extended Trail Agreement.
 - f) Site Clean-up After Expiration/Termination. Within ninety (90) calendar days after the expiration of this Trail Agreement [or the Early Termination Date (defined in Paragraph 14, below)], COUNTY shall remove its equipment, materials, supplies, and personal property excluding fixtures, from the Trail unless otherwise agreed by the Parties in writing. CONSERVANCY or POST may dispose of any COUNTY equipment, materials, supplies, and personal property remaining after said 90 days.
3. Consideration. Each Party agrees that performance of its obligations under this Trail Agreement is supported by fair and reasonable consideration, including COUNTY's rights obtained under the PSA and Conservancy Grant and the benefits to COUNTY's residents, visitors and businesses.
 4. License. POST and CONSERVANCY each grant a non-exclusive, revocable license to COUNTY to access the Trail Property for purposes of operating, managing, and maintaining the Trail in accordance with the terms of this Trail Agreement. Any rights or obligations not explicitly granted under this Trail Agreement are retained by POST and CONSERVANCY.
 5. COUNTY's Management Responsibilities. During the duration of this Trail Agreement, COUNTY shall make all reasonable efforts to perform all of the following activities, which collectively are referred to as the "COUNTY's Management Responsibilities":

- a) COUNTY does not assume any obligation identified in the Landowner Operating Agreements, or other agreements referenced in the Recitals to which COUNTY is not a party, unless such an obligation is expressly identified as a COUNTY obligation in the body of this Trail Agreement.
- b) Operation of the Trail for Public Use. COUNTY shall operate the Cowell-Purissima Trail for purposes of access, ingress, egress, and use by the general public, subject to the terms and conditions of this Trail Agreement. The COUNTY'S roles and responsibilities regarding Trail operations include:
 - i. Allowing public access to the Trail seven (7) days a week, including all major holidays, except when closure is authorized pursuant to this Trail Agreement; opening and closing of the main gates; patrolling the Trail in a manner consistent with San Mateo County Parks Department policies and procedures; ensuring no recreationalists are present when the Trail is closed; enforcing Trail use rules identified in Exhibit [F], including the prohibition of dogs and horses on the Trail; enforcing additional Trail use rules not included in Exhibit [F] but agreed upon in writing by the Parties; providing emergency response and enforcement of applicable rules and regulations consistent with San Mateo County Parks Department policies and procedures; and coordinating with COUNTY Sheriff and other law enforcement and first responders as needed.
 - ii. Coordinating Trail operations with the owners of the Trail Property and adjacent landowners in a manner that facilitates a positive relationship between public recreational use of the Trail and agricultural use of the surrounding lands. COUNTY's obligations under this paragraph shall only include:
 - a) notifying POST when COUNTY has actual knowledge of landowner conduct which COUNTY believes is interfering with public use of the Trail in a manner not permitted by the Landowner Operating Agreements; and
 - b) receiving notice from landowners that triggers COUNTY's obligation to close the Trail under Section 11.a of this Trail Agreement.
 - iii. Additional COUNTY operating duties include documenting and maintaining records of Trail incidents and accidents, and addressing recurring Trail user issues to avoid injuries and liabilities.

- c) Trail Maintenance. The COUNTY shall maintain the Trail and **Associated Recreational Improvements**, which are identified on the map attached as Exhibit [E] and which consist of a public parking lot, minor crossings, culverts, gates, restroom, fences, trash cans, benches, existing wayfinding and interpretive signage, signage added by COUNTY, and existing trail markers.
- i. The COUNTY'S roles and responsibilities regarding maintenance include: routine maintenance of existing gates; routine clearing of culverts; maintaining the tread of the trail, including repairs to manage minor drainage and minor erosion hazards in order to ensure the Trail remains open to public use; maintaining existing wayfinding and interpretive signage, Trail use signage, and signage added by COUNTY; vegetation management along the Trail's edge in a manner consistent with San Mateo County Parks Department policies and procedures; maintenance of the parking lot surface; routine cleaning and pumping of restrooms; and minor fence repair.
 - ii. COUNTY is not responsible for making any improvements required to address the Trail's, or any other improvement's, non-compliance with the Americans with Disabilities Act (ADA) or other local or state laws or regulations related to accessibility, both prior to and during the term of the Trail Agreement.
 - iii. COUNTY may replace existing signage and install new signage, new fencing, and other public access improvements, if COUNTY deems necessary and has obtained written approval from POST and CONSERVANCY.
6. POST'S Responsibilities. During the term of this Trail Agreement, POST shall have the responsibility and obligation, when informed by COUNTY that the landowners are interfering with public access in a manner not permitted by the Landowner Operating Agreements, to coordinate with the landowners to resolve the interference with public access.
7. Unassigned Maintenance and Repair Responsibilities. The Parties acknowledge that the following maintenance and repair responsibilities are, as of the Commencement Date, unassigned and not the responsibility of any of the Parties. The Parties agree that, if and when any of the events listed below ((a) - (e)) occurs during the duration of this Trail Agreement, the Parties will promptly meet to resolve and rectify the issue and to identify potential sources of funding. Nothing in this Paragraph 7 creates an obligation for any of the Parties to resolve any of the following:

- a. Major damage to and/or the required replacement of the Trail, or a section of the Trail, and/or any Associated Recreational Improvements, including major damage caused by poor drainage of the Trail or coastal erosion;
- b. Relocation of the Trail should its stability be threatened by erosion or unstable geology.
- c. Maintenance, repair, and/or replacement of bridges along the Trail.
- d. Aside from routine cleaning, which is COUNTY'S responsibility, repair and replacement of any restroom facilities supporting the Trail.
- e. Habitat restoration and/or preservation activities, except for COUNTY's responsibility to clear vegetation within the immediate proximity of the Trail in accordance with San Mateo County Parks Department policy procedures.

8. Suspension.

- a. COUNTY Need to Suspend. At any time during the term of this Trail Agreement, should COUNTY need to suspend performance of COUNTY's Management Responsibilities and/or other obligations and duties under this Trail Agreement for any reason, including budgetary constraints, COUNTY will notify POST and CONSERVANCY at least 120 days prior to the proposed suspension. The Parties agree to promptly undertake appropriate steps and measures to address and/or ameliorate the conditions or circumstances that brought about the suspension, such that the suspension can be avoided or minimized to the greatest degree possible. Should a suspension occur, the Parties agree to continue to coordinate such that the suspension is lifted as promptly as possible and the COUNTY's Management Responsibilities and other obligations and duties be reinstated. Under no circumstances, shall any single suspension last longer than 2 years. Further, the end date of the then-current Term shall be extended by the number of days Trail use was suspended or for five (5) years, whichever period is shorter.
 - i. Should a suspension occur under the circumstances described in this Paragraph 8.a, POST and the CONSERVANCY may, at their sole discretion and cost, contract with an outside party to undertake the COUNTY's Management Responsibilities and keep the Trail open.
 - ii. Prior to extended closure of the Trail due to suspension of the COUNTY's Management Responsibilities as described in this Paragraph 8.a, the Parties will consult with COUNTY Planning regarding any permits needed for an extended closure.
- b. Force Majeure. In the event of a Force Majeure Event (defined below), COUNTY may suspend its performance under this Trail Agreement if within thirty (30) days of the Force Majeure Event COUNTY notifies POST and CONSERVANCY

of the nature and extent of the Force Majeure Event and its effect on COUNTY'S ability to perform under this Trail Agreement. COUNTY shall meet with POST and CONSERVANCY within a reasonable time to discuss the suspension. COUNTY shall use reasonable efforts to resume its performance under this Trail Agreement as soon as reasonably practicable.

A "**Force Majeure Event**" is an event beyond the COUNTY's control that materially impairs COUNTY's ability to perform its obligations under this Trail Agreement, such as fire, earthquake, flood, embargoes, war, acts of war, acts of terrorism, insurrections, riots, civil commotions, or strikes.

- c. Access to Funding. Suspension of this Trail Agreement shall not restrict or eliminate COUNTY's ability to access funds raised and secured by POST for purposes detailed in the Post Transfer Agreement or grant funds awarded to the COUNTY by the CONSERVANCY.

- 9. Service Access. The Parties may use any roads and/or parking lots/areas for vehicle access when necessary for the construction, operation, improvement and/or maintenance of the Cowell-Purissima Trail and Associated Recreational Improvements. Should POST and/or CONSERVANCY require vehicle access to or on the Trail, they agree to use reasonable efforts to provide the COUNTY at least two (2) business days' notice.

10. Coordination, Communications and Quarterly Meetings.

- a. Coordination. During the Term of the Trail Agreement, the Parties shall coordinate on the above Management Responsibilities regarding the Cowell-Purissima Trail. Each Party agrees to designate a point of contact who will be responsible for coordinating project meetings and dispersing information.
- b. County Communications. COUNTY shall inform POST and CONSERVANCY regarding: (1) the condition of the Trail and Associated Recreational Improvements, including Trail conditions that, if unaddressed, could lead to closure of the Trail; and, (2) annually and within ninety (90) days of the close of COUNTY's fiscal year, provide POST and CONSERVANCY with: (i) a estimated budget for operating and maintaining the Trail in the upcoming year and (ii) financial statements showing COUNTY's actual costs to operate and maintain the Trail in the prior year.
- c. Quarterly Meetings of Parties. From the Commencement Date of this Trail Agreement and throughout its duration, the Parties shall meet on a quarterly basis to assess the management and performance of COUNTY's Management Responsibilities under this Trail Agreement, including, among other things, review of supporting expenses, anticipated future plans related to the Trail, level

of service and strategies and steps to be taken to promote and sustain public use of the Trail seven (7) days a week.

11. Trail Closing. Closing of the Cowell-Purisima Trail or a section of the Trail, shall occur only as set forth below:

- a. Agricultural Closing. If agricultural spraying or other agricultural uses trigger an obligation to close the Trail, or a section of the Trail, under the Landowner Operating Agreements, the COUNTY shall close, and subsequently re-open, the Trail, or affected section of the Trail, consistent with the terms of those agreements and upon landowner's confirmation of compliance with the stated re-entry interval for the chemical in use.
- b. Damage to Land. If the Parties collectively agree that, as a result of the use of the Trail or any Associated Recreational Improvements, significant damage is resulting to the Trail through erosion, disturbance of wildlife or removal of natural vegetation, the COUNTY, upon receipt of notice of such collective agreement from POST and CONSERVANCY, shall close the section of the Trail through the affected area until the damage is corrected. Any closure of a portion or all of the Trail pursuant to this section shall not constitute a Suspension of the Agreement pursuant to Section 8, and shall not have the effect of extending the then current term of the Agreement.
- c. Safety. If COUNTY determines that a section of the Trail is unsafe for public access, COUNTY shall close the affected section of the Trail and notify POST and CONSERVANCY within 48 hours. If the cause for closure can be remedied by action that is within COUNTY's Management Responsibilities, COUNTY shall use reasonable efforts to carry out such action and re-open the section of Trail as soon as possible. If the cause for closure is due to failure of land or infrastructure that is described in Paragraph 7, the Parties shall coordinate and determine next steps, and COUNTY shall re-open the affected section of the Trail when the cause for closure has been resolved.

12. Indemnification.

- a. COUNTY. COUNTY agrees to indemnify, defend and hold harmless POST and its officers, directors, employees, agents and consultants, individually and collectively, against any and all third party claims, costs, penalties, fines and/or liabilities for injury or damage to persons or property occurring during the term of the Trail Agreement in, on, or about the Property which arise out of or result from the negligence or willful misconduct of any COUNTY officers, directors,

employees, agents and consultants in the performance of COUNTY's duties and/or obligations under the Trail Agreement, except to the extent of any of POST's negligence or willful misconduct, or to the extent arising out of POST's exercise of its rights to access the Property under this Trail Agreement. In the event of concurrent negligence, COUNTY and POST will each bear responsibility for its acts in proportion to its fault under the doctrine of comparative negligence. The duty of COUNTY to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code. The obligations set forth in this Section shall continue beyond the term of this Trail Agreement as to any act or omission which occurred during or under this Trail Agreement.

- b. POST. POST shall indemnify, defend and hold harmless CONSERVANCY, its members, officers, employees, agents and contractors, and COUNTY and members of the Board of Supervisor of the County of San Mateo, and the officers, directors, employees, agents and consultants of the County of San Mateo, individually and collectively, (collectively "Indemnified Parties") against any and all third party claims, damages, costs, penalties, fines and/or liabilities, including attorneys' fees and litigation expenses, for injury or damage to persons or property occurring during the term of the Trail Agreement that arise out of or result from the negligence or willful misconduct of any POST officers, directors, employees, agents and consultants in the performance of POST's duties and/or obligations under the Trail Agreement, except to the extent of any of COUNTY's negligence or willful misconduct and except to the extent of CONSERVANCY's active negligence or willful misconduct. In the event of concurrent negligence, COUNTY AND POST will each bear responsibility for its acts in proportion to its fault under the doctrine of comparative negligence. The duty of POST to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code. The obligations set forth in this Section will survive the expiration, suspension or termination of this Trail Agreement.
- c. Pro Rata Allocation. In lieu of the pro rata risk allocation that might otherwise be imposed between the COUNTY and CONSERVANCY pursuant to Government Code Section 895.6, and pursuant to Government Code section 895.4, COUNTY shall indemnify, defend and hold harmless the CONSERVANCY, its members, officers, employees, agents and contractors, individually and collectively, against any and all third party claims, damages, costs, penalties, fines and/or liabilities, including attorneys' fees and litigation costs (collectively "Losses"), for injury or damage to persons or property occurring during the term of the Trail Agreement that arise out of or result from this Trail Agreement, except to the extent Losses are due to the active negligence or willful misconduct of CONSERVANCY. The duty of COUNTY to indemnify and hold harmless as set forth by this Section

shall include the duty to defend as set forth in Section 2778 of the California Civil Code. The obligations set forth in this Section will survive the expiration, termination, or suspension of this Trail Agreement.

- d. INSURANCE. During the term of this Trail Agreement and for at least one (1) year thereafter, the COUNTY will maintain sufficient insurance to cover its activities and responsibilities outlined herein, including the indemnification obligations set forth in Section 12.1 above, in no less than commercially reasonable amounts under commercially reasonable terms. Notwithstanding the foregoing, POST and CONSERVANCY understand and agree that COUNTY may be self-insured with regard to COUNTY's activities and responsibilities under this Trail Agreement.

13. Compliance with Laws. In connection with performance under this Trail Agreement, the Parties shall comply with any and all federal, state and local laws, statutes, codes, ordinances, regulations, rules, orders, permits, licenses approvals and requirements applicable to the use and occupancy of the Cowell-Purisima Trail, and shall not commit and shall not knowingly permit others to commit waste upon same. Each Party shall provide all necessary cooperation and assistance to the other Parties in order to obtain all governmental consents, approvals, permits or variances required for improvements to the Cowell-Purisima Trail.

14. Miscellaneous Provisions.

- a. Invalidity. If any term or provision of this Trail Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Trail 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.
- b. Assignment. No Party shall assign this Trail Agreement or any portion of it to a third party or subcontract with a third party to provide services under this Trail Agreement without the prior written consent of the other Parties. Any such assignment or subcontract without the other Parties' prior written consent shall give those Parties the right to automatically and immediately terminate this Trail Agreement without penalty or advance notice.
- c. Merger Clause. This Trail Agreement, including the Exhibits attached to this Trail Agreement is intended as a complete, exclusive, and fully-integrated statement of agreement and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the Parties concerning the obligations of this Trail Agreement not expressly stated in this document are not binding.

- d. Amendments. No amendment to this Trail Agreement will be valid unless made in writing and signed by the Parties.
- e. Construction. The captions appearing in this Trail 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 Trail Agreement or in any way affect this Trail Agreement. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.
- f. 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:

Nicholas J. Calderon, Parks Director
455 County Center, 4th Floor
Redwood City, CA 94063

IF intended for POST, addressed as follows:

Daniel Olstein, Director, Land Programs and Stewardship
222 High Street
Palo Alto, CA 94301

IF intended for the CONSERVANCY, addressed as follows

Hilary Walecka, Central Coast Project Manager
1515 Clay Street, 10th Floor
Oakland, CA 94612

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.

- g. Authority to Sign. The Parties executing this Trail Agreement on behalf of POST, the COUNTY and the CONSERVANCY represent that they have authority and power to sign this Trail Agreement on behalf of POST, the COUNTY and the CONSERVANCY, respectively.
- h. Choice of Laws and Venue. This Trail 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 Trail Agreement shall be venued in the County of San Mateo.
- i. 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, the COUNTY or the CONSERVANCY to insist upon the performance by POST, the COUNTY or the CONSERVANCY in accordance with said terms.
- j. Time. Time is of the essence with respect to the performance of every provision of this Trail Agreement in which time of performance is a factor.
- k. Dispute Resolution.
 - i. Should any dispute arise out of this Trail Agreement, authorized representatives from the CONSERVANCY, COUNTY and POST agree to meet and confer in person to negotiate a resolution of the dispute.
 - ii. 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 any Party notifying the others of the existence of a dispute, by any Party 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 all Parties.
 - iii. If a mediated settlement is reached, no Party shall be the prevailing Party for the purposes of the mediated settlement. COUNTY and POST shall each bear an equal share of the expenses of the mediator. CONSERVANCY will make a

good faith effort to bear an equal quota of expenses, but will not be obligated to bear mediation expenses.

1. Early Termination. If the Parties mutually agree that this Trail Agreement should be terminated sooner than the term expiration date set forth in Section 2, above, this Trail Agreement will terminate upon the early termination date set forth in a written document signed by the Parties (“Early Termination Date”). Early termination of this Trail Agreement under this Section 14.k will not restrict or eliminate COUNTY’s ability to access funds raised and secured by POST for purposes detailed in the Post Transfer Agreement or grant funds awarded to COUNTY by the CONSERVANCY.]

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

Nicholas J. Calderon, Director
San Mateo County Parks Department

Walter T. Moore, President
Peninsula Open Space Trust

Samuel Schuchat, Executive Officer
California State Coastal Conservancy