

LICENSE AND MANAGEMENT AGREEMENT

RE DONG PROPERTY

THIS LICENSE AND MANAGEMENT AGREEMENT ("Agreement"), dated as of _____ is by and between the PENINSULA OPEN SPACE TRUST ("POST"), a California non-profit public benefit corporation, and the SANTA CLARA VALLEY OPEN SPACE AUTHORITY ("the AUTHORITY"), an independent special district in Santa Clara County, CA, (collectively, the "Parties") with reference to the following facts and circumstances, and which the Parties agree as follows:

RECITALS

A. POST is under contract to purchase real property situated in unincorporated Santa Clara County, California, comprised of approximately 13.64-acres, located within the Sphere of Influence of the City of San Jose, and commonly known as Santa Clara County Assessor's Parcel Number 712-03-008 & 081 and more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property").

B. POST will purchase the Property from its current owners pursuant to an Agreement for the Purchase and Sale of Real Property, signed on January 24, 2022. POST intends to transfer the Property to the AUTHORITY subject to deed restriction, under terms and conditions to be set forth in a separate transfer agreement.

C. The Property is located in the Mid Coyote Valley planning area, an area of interest to POST and the AUTHORITY for conservation of wildlife habitat and connectivity, habitat restoration, and agriculture. The Parties entered into the Coyote Valley Partnership Agreement ("Coyote Valley Partnership") on July 8, 2020 which provides a general framework to facilitate efficient and effective cooperation between POST and the AUTHORITY to maintain the conservation values for the Coyote Valley as well as for properties acquired in the North and Mid Coyote Valley planning areas.

D. This Agreement sets forth the terms and conditions under which POST will grant a license to the AUTHORITY to use and manage the Property as well as the management obligations, roles and duties to be performed by the AUTHORITY under this Agreement consistent with the terms of the Coyote Valley Partnership.

AGREEMENT

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

1. License. POST hereby grants to the AUTHORITY a non-exclusive and revocable license to access and manage the Property ("License") in accordance with the Management Obligations (defined below), and subject to the terms and conditions set forth in this Agreement.
2. License Term. The License shall commence on the date this Agreement is executed by both Parties ("Effective Date") and shall terminate at the earlier of (1) the transfer of the Property to the AUTHORITY, or (2) termination of the License by ninety (90) days' written notice of either Party to the other Party, unless the Parties mutually agree in writing to another termination date.

3. Consideration. The Parties agree that the benefits to both Parties until the Property is transferred to the AUTHORITY, including coordination of efforts until the AUTHORITY owns the Property, and the AUTHORITY's management of the Property for open space in anticipation of its ultimate ownership, is fair and reasonable consideration for the License and other rights provided by this Agreement. During POST's ownership, lease income, if any, will be payable to POST to help offset the cost of property taxes and other costs related to fee ownership of the Property.

4. Management Obligations. During the term of the License, the AUTHORITY agrees to perform all of the following, which collectively are referred to as the "Management Obligations":

(a) Use, manage, operate and maintain the Property for the purpose of open space preservation and conservation as part of the natural resources of the Santa Clara Valley Open Space Authority system;

(b) Manage and improve the Property as the AUTHORITY deems necessary or appropriate for the proper and safe management of the Property and the prevention of nuisance or harm, consistent with the management of the Property for open space preservation;

(c) Manage any future tenants under agricultural lease(s) for the Property, including limiting operating activities to the defined lease area, and any other practices as necessary.

(d) Coordinate with POST on the development of future agricultural and livestock leases, if any, including selection of said tenants, tenants' roles and responsibilities, and the relationship of those roles and responsibilities to the AUTHORITY's Management Obligations;

(e) Coordinate with POST on the development of an Interim Management Plan as described in the Coyote Valley Partnership.

(f) Coordinate with POST on visioning and implementation of habitat and wildlife connectivity improvements for the Property.

(g) Manage the habitat resources of the Property with the goal of maximizing native vegetative recruitment and canopy cover along Fisher Creek, consistent with the ecological planning recommendations that emerge from the planning process described in 4(e);

(h) Provide regular and customary upkeep of the Property, including, without limitation, inspection, patrol, maintenance and repair of all roads, signage, and fencing;

(i) Install or modify gates and appropriate signage and fencing as is necessary and appropriate for use of the Property consistent with open space preservation, and undertaking such other steps as necessary or appropriate to preserve or enhance the Property's existing character and natural resources, provided that any new or modified fencing shall require the prior approval of POST in its sole and absolute discretion.

(j) Manage all parking activities on the Property, including but not limited to, prevention of illegal parking, and event parking;

(k) Patrol and manage the Property, and secure all buildings and structures, in a manner consistent with nearby the AUTHORITY's holdings to discourage deleterious or incompatible uses of the

Property, and to inspect for illegal dumping, squatting, or other unauthorized activities on the Property. Should any trespass or other unauthorized use or activity occur upon the Property, the AUTHORITY is authorized pursuant to this Agreement, and shall exercise such authority, to correct these matters including, where necessary, enforcing applicable regulations and ordinances on the Property to the extent the AUTHORITY is permitted by law and in a reasonable and prudent manner and to the same extent as it does at other AUTHORITY properties. This Agreement authorizes the AUTHORITY to contact law enforcement to assist the AUTHORITY in these matters.

(l) The AUTHORITY shall perform the Management Obligations at its own cost and expense provided, however, that in the event of a significant unforeseen expenditure, the Parties shall meet and confer to determine by mutual agreement the proper course of action and responsibility for costs. Management Obligations do not include any remediation actions required for the Property. The expense of construction of riparian fencing or any other one-time major stewardship costs shall be reviewed on a case by case basis consistent with Section 4(e) of the Coyote Valley Partnership.

5. Scope of License. During the License Term, the AUTHORITY shall have the non-exclusive right to access, use and operate the Property for purposes consistent with preservation of the Property as open space and carrying out the Management Obligations. The AUTHORITY may permit public access on the Property with prior notification to POST.

6. Prohibited Activities. Notwithstanding anything in this Agreement to the contrary:

(a) The AUTHORITY shall not grant any sub-license or any other use rights for any activity, including without limitation any agricultural activity, without the prior written approval of POST, which approval may be granted or denied in POST's sole and absolute discretion.

(b) The AUTHORITY shall not engage in any significant management activity on the Property that is inconsistent with the long-term use of the Property for open space preservation as set forth in the Coyote Valley Landscape Linkage science brief dated June 2017 which is hereby incorporated by reference, without the prior written approval of POST, which approval may be granted or denied in POST's sole and absolute discretion.

7. POST Access Rights. POST (together with its directors, officers, agents, employees, invitees and guests) shall have the right to access the Property with advance notice to the AUTHORITY, so that the AUTHORITY may ensure that such access will not unreasonably interfere with the AUTHORITY's management activities.

8. Legal Responsibility and Indemnification. During the term of the License, the AUTHORITY assumes full legal responsibility for the management, condition, control and operation of the Property owned by POST, including taking full responsibility for any legal or law enforcement matters arising out of trespass by former owners, former tenants or other members of the public, the conditions thereof and for all activities conducted by the AUTHORITY and its officers, directors, employees, agents and consultants thereon. The AUTHORITY shall indemnify and hold POST harmless from, and defend POST and its officers, directors, employees, agents and consultants against, any and all claims, costs, penalties, fines and/or liabilities for injury or damage to any persons or property whatsoever occurring during the term of the License in, on, or about the Property, except to the extent of POST's active negligence or willful misconduct, or to the extent arising out of other exercise of POST's rights to access the Property under this Agreement or POST's grant of any rights to third parties other than any tenant under any future agricultural lease.

9. Insurance. During the License Term and for at least one (1) year thereafter, the AUTHORITY will maintain a comprehensive general liability insurance policy applicable to the Property and the

AUTHORITY's activities under the License with limits of liability of at least two million dollars (\$2,000,000) aggregate combined single limit for bodily injury and property damage liability; and one million dollars (\$1,000,000) combined single limit per occurrence. Such policy or policies shall name POST as an additional insured party, and shall be provided by an insurer or insurers reasonably acceptable to POST, provided however that the AUTHORITY may satisfy the obligations set out in this Section by participation in a government self-insurance risk pool authorized under state law.

10. Surrender of Property. Unless the License terminates due to transfer of the Property to the AUTHORITY, the AUTHORITY shall surrender the Property prior to termination of the License in substantially the same condition as it was in upon the Effective Date, except for any changes to such condition authorized by POST or this Agreement, or made or caused to be made by POST or any of POST's agents, lenders, contractors, engineers, consultants, employees, subcontractors, lessees, invitees and representatives, or as a result of any casualty or condemnation.

11. Compliance with Laws. In performing their respective obligations with respect to the Property under this Agreement, each Party 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 Property, and shall not commit and shall not knowingly permit others to commit waste upon the Property.

12. Liens. During the License Term, the AUTHORITY shall not use the Property nor permit the Property to be used for any purpose except as expressly provided in this Agreement. The AUTHORITY shall promptly pay and/or discharge any liens that may be recorded against the Property resulting from any work performed or materials ordered by or on behalf of the AUTHORITY or otherwise as required to fulfill the AUTHORITY's obligations herein.

13. Assignment. The AUTHORITY may not assign or transfer the License to any other party without the prior written consent of POST, which consent shall not be unreasonably withheld or delayed (provided adequate information concerning assignee is submitted to POST). Any such approved assignee must agree to expressly assume in writing the AUTHORITY's obligations and liabilities hereunder and must be otherwise qualified to assume the duties and obligations stated herein. In the event of any such assignment, the AUTHORITY shall remain liable for the performance of all of the AUTHORITY's obligations under this Agreement, except to the extent such obligations are released in writing by POST, which release POST may grant or withhold in its sole and absolute discretion.

14. Taxes. During the License Term, POST will pay for any assessed property taxes. POST anticipates securing a welfare exemption from property taxes. The AUTHORITY agrees that it will not undertake any action that jeopardizes POST's eligibility for this welfare exemption, including but not limited to leasing any portion of the Property for any reason without POST's written authorization.

15. Miscellaneous Provisions.

(a) Severability. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons whose circumstances other than those as to which it is held invalid or unenforceable, shall not be affected.

(b) Successors and Assigns. Subject to the limitations set forth above, the terms, conditions and covenants of this 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.

(c) Writing. No waivers, amendments, alterations or modifications of this Agreement, or any agreements in connection with this Agreement, shall be valid unless in writing and duly executed by both POST and the AUTHORITY or their respective successors-in-interest.

(d) Construction. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Agreement or in any way affect this Agreement. Any gender used shall be deemed to refer to any other gender more grammatically applicable to the Party to whom such use of gender relates. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

(e) 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: (i) personal service; (ii) telephonic facsimile transmission; (iii) nationally recognized overnight commercial mail service; (iv) registered or certified, first class U.S. mail, return receipt requested; or (v) electronic mail, in each case, addressed as provided below.

If intended for the AUTHORITY, addressed as follows:

Santa Clara Valley Open Space Authority
33 Las Colinas Lane
San Jose, CA 95119
Attn: Andrea Mackenzie, General Manager
TEL: (408) 224-7476
FAX: (408) 224-7548
EMAIL: Derek Neumann,
Field Operations Manager
dneumann@openspaceauthority.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) 854-7696
FAX: (650) 854-7703
EMAIL: Taylor Jang,
Stewardship Project Manager
tjang@openspacetrust.org

Such addresses may be changed by either Party by notice to the other Party given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (i) or (ii) 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 (iii) above shall be deemed received on the business day immediately following deposit with the commercial mail service and, if sent pursuant to clause (iv) above shall be deemed received forty-eight (48) hours following deposit in the U.S. mail.

(f) Authority to Sign. The parties executing this Agreement on behalf of POST and the AUTHORITY represent that they have authority and power to sign this Agreement on behalf of POST and the AUTHORITY, respectively.

(g) Choice of Laws and Venue. This Agreement shall be governed by and construed pursuant to the laws of the State of California, without regard to choice of law rules, and the venue for any suit arising out of this Agreement shall be the County of Santa Clara.

(h) Waiver. The waiver by either Party of any breach of any term, covenant, or condition herein contained 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 AUTHORITY to insist upon the performance by POST or the AUTHORITY in accordance with said terms.

(i) Time. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

(j) Prior Agreements. This Agreement contains all of the agreements and understandings of the Parties with respect to any matter covered or mentioned in this Agreement and supersedes all prior contemporaneous agreements, representations and understandings of the Parties, and no prior agreement or understanding between the Parties pertaining to any such matter shall be effective for any purpose. This Agreement cannot be amended or modified except by written agreement signed by all the Parties.

Exhibit B

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

For POST:

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

By: _____
Walter T. Moore, President

Date: _____

For the AUTHORITY:

SANTA CLARA VALLEY OPEN SPACE AUTHORITY,
an independent special district in Santa Clara County, CA

APPROVED AS TO FORM:

By: _____
William P. Parkin, General Counsel

APPROVED AND ACCEPTED:

By: _____
Andrea Mackenzie, General Manager

Date: _____

EXHIBIT "A"

Legal Description

The land referred to is situated in the unincorporated area of the County of Santa Clara, State of California, and is described as follows:

BEGINNING AT AN IRON PIPE SET IN THE NORTHWESTERLY LINE OF THAT CERTAIN 771.20 ACRE TRACT DEEDED TO THOMAS N. FISHER ESTATE COMPANY, BY CHARLES JULIAN FISHER, ET AL, BY DEED DATED DECEMBER 5, 1921 AND RECORDED IN BOOK 392 OF DEEDS, PAGE 554, IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, CALIFORNIA, AT THE MOST WESTERLY CORNER OF THAT CERTAIN 83.82 ACRE TRACT DEEDED TO GEORGE N. HERBERT, BY THOMAS N. FISHER ESTATE COMPANY, BY DEED DATED JANUARY 22, 1917 AND RECORDED IN BOOK 453 OF DEEDS, PAGE 338, IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, CALIFORNIA; AND RUNNING THENCE ALONG THE SOUTHWESTERLY LINE OF SAID 83.82 ACRE TRACT, S. 39° E. 2031.70 FEET TO A POINT IN THE NORTHWESTERLY LINE OF THAT CERTAIN 30.00 ACRE TRACT DESCRIBED FIRST IN THAT CERTAIN DEED TO WILLIAM J. FISHER, BY ANNA FISHER, BY DEED DATED OCTOBER 16, 1916 AND RECORDED IN BOOK 454 OF DEEDS, PAGE 132, IN THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AND RUNNING THENCE ALONG THE NORTHWESTERLY LINE OF SAID 30.00 ACRE TRACT, S. 49° W. 1407.00 CENTERLINE OF DRAINAGE CANAL N. 39° 56' W. 2030.70 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SAID 771.20 ACRE TRACT; AND RUNNING THENCE ALONG SAID NORTHWESTERLY LINE, N. 49° E. 1440 FEET TO THE PLACE OF BEGINNING, AND BEING A PORTION OF SAID 771.20 ACRE TRACT OF LAND IN THE RANCHO LA LAGUNA SECA.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF LYING NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBE DIN THAT CERTAIN FINAL ORDER AND DECREE OF CONDEMNATION; CASE NO. 159058, HAD IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, A CERTIFIED COPY OF WHICH WAS RECORDED SEPTEMBER 2, 1965 IN BOOK 7091 OF OFFICIAL RECORDS, PAGE 416.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF LYING SOUTHEASTERLY OF THE CENTER LINE OF FISHER ROAD, ALSO KNOWN AS LAGUNA AVENUE, 40 FEET WIDE AS SAID ROAD WAS ESTABLISHED BY DEED TO THE COUNTY OF SANTA CLARA, RECORDED JANUARY 5, 1943 IN BOOK 1122 OF OFFICIAL RECORDS, PAGE 520.

ALSO EXCEPTING THEREFROM THE INTEREST IN AND TO THAT PORTION OF SAID LAND LYING WITHIN THE BOUNDS OF FISHER ROAD, ALSO KNOWN AS LAGUNA AVENUE, 40 FEET WIDE, (BEING THE NORTHWESTERLY 20 FEET OF SAID LAND), AS CONVEYED TO THE COUNTY OF SANTA CLARA, FOR USE AS A PUBLIC ROAD AND HIGHWAY, BY DEED RECORDED JANUARY 5, 1945 IN BOOK 1122 OF OFFICIAL RECORDS, PAGE 520.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE COUNTY OF SANTA CLARA, BY DEED RECORDED APRIL 28, 1978 IN BOOK D629, PAGE 287 OFFICIAL RECORDS.