

**AMENDED AGREEMENT CONCERNING FUNDING OF AMENDMENT OF
SAN BRUNO MOUNTAIN HABITAT CONSERVATION PLAN AND
ENVIRONMENTAL REVIEW OF HABITAT CONSERVATION PLAN AND
PROPOSED AMENDMENT OF PERMIT AMONG COUNTY OF SAN MATEO,
CITY OF BRISBANE AND BROOKFIELD HOMES BAY AREA, INC.**

This Amended Agreement Concerning Funding of Amendment of San Bruno Mountain Habitat Conservation Plan and Environmental Review of Habitat Conservation Plan and Proposed Amendment of Permit Among County of San Mateo, City of Brisbane and Brookfield Homes Bay Area, Inc. ("**Amended Agreement**") is entered into as of the Effective Date by and among the COUNTY OF SAN MATEO, the CITY OF BRISBANE and BROOKFIELD HOMES BAY AREA, INC. For the purpose of this Amended Agreement, the "**Effective Date**" is the last date on which a Party hereto signs this Amended Agreement as shown on the signature blocks below.

A. In 1982, the United States Fish and Wildlife Service approved the San Bruno Mountain Area Habitat Conservation Plan ("**Habitat Conservation Plan**").

B. In November 1982, the United States Fish and Wildlife Service, the California Department of Fish and Game, the California Department of Parks and Recreation, the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and landowners entered into an Agreement With Respect to the San Bruno Mountain Habitat Conservation Plan to implement provisions of the Habitat Conservation Plan.

C. On November 15, 1982, the County of San Mateo and the City of Brisbane, the City of Daly City and the City of South San Francisco entered into a Trust Agreement Regarding the San Bruno Mountain Area Habitat Conservation Plan to carry out the purposes and provisions of the Habitat Conservation Plan and the Agreement with Respect to the San Bruno Mountain Habitat Conservation Plan.

D. On March 4, 1983, the United States Fish and Wildlife Service issued a permit, authorizing the County of San Mateo, the City of Brisbane, the City of Daly City and the City of South San Francisco to incidentally take mission blue butterflies (*Icaricia icarioides missionensis*), San Bruno elfin butterflies (*Callophrys mossii bayensis*) and San Francisco gartersnakes (*Urothoeus* sp.). The permit provided that no San Bruno elfin butterflies and San Francisco gartersnakes are taken in Administrative Parcels denominated as Carter-Martin Extension (alternate B) (1-02), Parcel X (1-04), State Park (1-09), Transmission Line (1-11), Quarry (2-01), Owl and Buckeye Canyons (2-02), County Park (2-05), Transmission Line (2-07), Antenna Sites (3-01), County Park (3-02), Transmission Line (3-04), State Park (4-04), and Guadalupe Canyon Parkway (4-05), pursuant to Section 10 of the Endangered Species Act, 16 U.S.C. § 1539. Hereinafter, the permit which the United States Fish and Wildlife Service issued on March 4, 1983 shall be described as the "**Permit**."

E. On December 5, 1997, the United States Fish and Wildlife Service listed the Callippe silverspot butterfly (*Speyeria callippe callippe*) as an endangered species pursuant to Section 4 of the Endangered Species Act, 16 U.S.C. § 1533, and in October 1998, the County of San Mateo, the City of Brisbane, the City of Daly City and the City of South San Francisco submitted an application for an amendment to the Permit, authorizing the County and the Cities to incidentally take Callippe silverspot butterflies, in addition to mission blue butterflies, San Bruno elfin butterflies and San Francisco gartersnakes. The application for an amendment of the Permit is pending.

F. Before the United States Fish and Wildlife Service completes its processing of the pending application for an amendment of the Permit, the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service plan to amend the Habitat Conservation Plan and conduct environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit.

G. The County of San Mateo, through the California Department of Fish and Game, applied for a \$100,000 HCP Planning Assistance Grant from the United States Department of the Interior to amend the Habitat Conservation Plan and conduct the environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit. The United States Department of the Interior approved the application and granted the County of San Mateo, through the California Department of Fish and Game, \$100,000 to amend the Habitat Conservation Plan and conduct the environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit, conditioned upon the County of San Mateo, the City of Brisbane, the City of Daly City and the City of South San Francisco collectively contributing \$33,334 to amend the Habitat Conservation Plan and conduct the environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit.

H. In June, the County of San Mateo estimated that it will cost approximately \$233,334 for consultants to assist the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service to amend the Habitat Conservation Plan and conduct environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit.

I. Brookfield Homes Bay Area, Inc. owns property on San Bruno Mountain, on which it plans to construct housing.

J. In June 2003, the Parties executed an Agreement Concerning Funding of Amendment of San Bruno Mountain Habitat Conservation Plan and Environmental Review of Habitat Conservation Plan and Proposed Amendment of Permit Among County of San Mateo, City of Brisbane and Brookfield Homes Bay Area, Inc. ("Agreement").

H. The County of San Mateo now estimates that it will cost approximately \$45,389 more than the amounts committed to date for consultants to assist the County of

San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service to amend the Habitat Conservation Plan and conduct environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit.

NOW THEREFORE, for good cause and adequate consideration, receipt of which is hereby acknowledged, and pursuant to the following terms and conditions, the County of San Mateo, the City of Brisbane and Brookfield Homes Bay Area, Inc., which are the parties to this Amended Agreement (individually, "Party," and, collectively, the "Parties"), and each of them, hereby covenant and agree as follows:

1. Brookfield Homes Bay Area, Inc. shall provide \$145,389 to the City of Brisbane to fund the cost of consultants to assist the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service to amend the Habitat Conservation Plan and conduct review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit, provision of \$100,000 of which is hereby acknowledged by Brookfield Homes Bay Area, Inc. and receipt of \$100,000 of which is hereby acknowledged by the City of Brisbane.

2. The City of Brisbane shall provide the County of San Mateo the \$145,389, which Brookfield Homes Bay Area, Inc. provides the City of Brisbane for the cost of consultants to assist the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service amend the Habitat Conservation Plan and conduct environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit. The County of San Mateo shall use the \$145,389 solely to pay for the cost of consultants to assist the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service to amend the Habitat Conservation Plan and conduct environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit. The County of San Mateo shall provide the City of Brisbane, the City of Daly City, the City of South San Francisco, the United States Fish and Wildlife Service and Brookfield Homes Bay Area, Inc. with copies of all of the consultants' invoices which the County of San Mateo pays with the \$145,389 or any portion of the \$145,389.

3. The County of San Mateo shall refund any portion of the \$145,389 that the City of Brisbane provides the County of San Mateo which the County of San Mateo does not use to pay for the cost of consultants to assist the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service to amend the Habitat Conservation Plan and conduct environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit to the City of Brisbane. The City of Brisbane shall refund any portion of the \$145,389 which the County of San Mateo refunds to Brookfield Homes Bay Area, Inc.

4. The funding that Brookfield Homes Bay Area, Inc. provides the City of Brisbane and that the City of Brisbane, in turn, provides the County of San Mateo pursuant to this Amended Agreement shall cover Brookfield Homes Bay Area Inc.'s fair share of the cost of consultants to assist the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service to amend the Habitat Conservation Plan and conduct review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit.

5. The Parties recognize that other parties may develop portions of the San Bruno Mountain Habitat Area that may benefit from the amendment of the Habitat Conservation Plan and the amendment of the Permit and that it is fair and appropriate that the parties developing such property contribute to the cost of consultants to assist the County of San Mateo, the City of Brisbane, the City of Daly City, the City of South San Francisco and the United States Fish and Wildlife Service to amend the Habitat Conservation Plan and conduct environmental review of the amendment of the Habitat Conservation Plan and the proposed amendment of the Permit to the extent that they benefit. The County of San Mateo and the City of Brisbane commit to working together, and with the City of Daly City and the City of South San Francisco, to develop a mechanism for recovering a fair share of the cost of the work described above from any party that develops any portion of the San Bruno Mountain Habitat Area and for refunding an appropriate portion thereof to Brookfield Homes Bay Area, Inc.

6. In the event of a dispute between or among the Parties, the Parties shall use their best efforts to resolve the dispute in an informal fashion through consultation and communications, or through other forms of non-binding alternative dispute resolution acceptable to the Parties.

7. Other than the provisions of the Agreement modified by this Amended Agreement, all provisions of the Agreement shall remain in full force and effect.

8. This Amended Agreement may be modified or amended only by written agreement signed by all of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Amended Agreement.

COUNTY OF SAN MATEO

By: _____
Marcia Raines
Director, Environmental Services Agency

Date: _____, 2003

CITY OF BRISBANE

By: _____
Cyril Bologoff
Mayor

Date: _____, 2003

Attested by:

Sheri Schroeder
City Clerk

Date: _____, 2003

Approved As To Form:

Harold S. Toppel
Atkinson Farasyn

Date: _____, 2003

BROOKFIELD HOMES BAY AREA, INC.

By: _____
John Ryan
President

Date: _____, 2003

**AGREEMENT WITH JONES & STOKES FOR SERVICES WITH RESPECT TO THE
ENVIRONMENTAL REVIEW FOR THE AMENDMENT OF THE SAN BRUNO
MOUNTAIN HABITAT CONSERVATION PLAN**

This Agreement entered into this _____ day of _____, 2003, by and between the COUNTY OF SAN MATEO, acting in its role as Plan Operator of the San Bruno Mountain Area Habitat Conservation Plan ("COUNTY"), and JONES & STOKES ASSOCIATES ("CONTRACTOR").

WITNESSETH

WHEREAS, the County of San Mateo, and the Cities of Brisbane, Daly City and South San Francisco (collectively, the "Cities") are parties to the San Bruno Mountain Area Habitat Conservation Plan ("HCP"), and the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan ("HCP Agreement"), recorded in the official records of San Mateo County as Document No. 83026343, and are permittees under Permit No. PRT 2-9818 ("Section 10a Permit"), issued by the United States Fish and Wildlife Service ("USFWS" or "Service") under Section 10a of the Federal Endangered Species Act, 16 U.S.C. section 1531 et seq.; and

WHEREAS, section IX of the HCP Agreement provides a process by which the HCP may be amended; and

WHEREAS, the COUNTY and the Cities desire to amend the HCP and Section 10a Permit in response to the listing of the Callippe silverspot butterfly and in order to incorporate adaptive management concepts to better manage and implement the HCP; and

WHEREAS, on or about June 10, 2003, the COUNTY entered into a contract with THOMAS REID ASSOCIATES to prepare appropriate amendments to the HCP; and

WHEREAS, the COUNTY, through its Parks and Recreation Department, engaged in a Request for Proposals process to identify a consultant to prepare an EIR/EIS for the HCP amendment; and

WHEREAS, CONTRACTOR, one of two consultants submitting a proposal, submitted a proposal that was most responsive to the Request for Proposals; and

WHEREAS, it is necessary and desirable that CONTRACTOR be engaged for the purpose of preparing an EIR/EIS for the HCP Amendment, as hereinafter described, because of CONTRACTOR'S background and prior experience with undertaking environmental review;

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. **Services to be Performed by Contractor.** In consideration of the payments hereinafter set forth, CONTRACTOR shall perform services in accordance with the terms, conditions and specifications set forth herein and in the Proposed Operating Budget and Work Scope, attached as Exhibit "A" hereto and by this reference made a part hereof. Services shall be performed generally in accordance with the proposed budget set forth in Exhibit "A." The maximum amount payable under this contract shall be \$125,089.

Payments shall be made for services actually performed in each "task" category shown in Exhibit "A," at the rates stated in Exhibit "B," attached hereto and by this reference made a part hereof. Payment in any "task" category may not exceed the amount budgeted for that category, subject to the qualification that the amount budgeted for one task category may be increased by ten percent (10%) so long as one or more other task categories are decreased by a like dollar amount, and subject to the qualification that the County Manager may approve increases above the ten percent (10%) in any category, and a like dollar decrease in another category, upon a showing of good cause by CONTRACTOR.

2. **CONTRACTOR'S** performance will be evaluated, among other things, for compliance with the specific tasks set forth in the Work Scope, attached hereto as Exhibit "A" and incorporated herein by reference. CONTRACTOR shall participate in monthly progress meetings, either in person or by telephone, with County staff designated by the Director of the County Environmental Services Agency. At such meetings, CONTRACTOR shall be prepared to discuss progress made to date in fulfilling the tasks set forth in Exhibit "A" and any other issues of importance to the environmental review for amendment to the Habitat Conservation Plan.

3. **Payments** shall be made at the rates stated in Exhibit "B." Payments shall be made in arrears upon the submission of an invoice showing the amount of hours expended and the payment due for each task category. Invoices shall be submitted at least quarterly. The final invoice for work performed under this contract will be submitted within (30) days of the end of the contract term.

4. **Relationship of the Parties.** It is understood that this is an agreement by and between independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor.

5. **Non-Assignability.** CONTRACTOR shall not assign this Agreement, or any portion thereof, or any of its rights or obligations under this Agreement, to a third party without the prior written consent of the COUNTY, and any attempted assignment without such prior written consent in violation of this section automatically shall terminate this Agreement.

6. **Term** This Agreement shall be in effect upon execution by all parties, and shall expire on November 30, 2005, unless extended in writing by the parties hereto.

COUNTY may terminate this contract at any time for any reason by providing thirty (30) days prior written notice to CONTRACTOR, termination to be effective on the date specified in the notice. In the event of termination under this paragraph, CONTRACTOR shall be paid for all work provided to the date of termination.

7. **Hold Harmless.** The CONTRACTOR shall indemnify and save harmless the COUNTY, the Cities of Brisbane, South San Francisco and Daly City, the San Bruno Mountain Habitat Conservation Trust, and its Trustees, and the officers, agents, employees and servants of each of these entities (the "Indemnitees") from all claims, suits or actions brought for, or on account of (A) injuries to or death of any person, including CONTRACTOR, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earnings under this contract as made necessary by federal or state law, excluding to the extent of the concurrent active or passive negligence of the COUNTY, the Cities of Brisbane, South San Francisco and Daly City, the San Bruno Mountain Habitat Conservation Trust, and its Trustees, and the officers, agents, employees and servants of each of these entities, resulting from, and to the extent of the negligent acts or omissions or willful misconduct of CONTRACTOR in the performance of any work required of CONTRACTOR as set forth in Exhibit "A" herein, or payments made pursuant to this agreement.

The duty of the CONTRACTOR to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. **Insurance.** The CONTRACTOR shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the San Mateo County Director of the County Environmental Services Agency.

The CONTRACTOR shall furnish the Director with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the CONTRACTOR's coverage to include the contractual liability assumed by the CONTRACTOR pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the COUNTY of any pending change in the limits of liability or of nonrenewal, cancellation, or modification of the policy.

The CONTRACTOR shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, the CONTRACTOR makes the following certification, required by section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of this work of the Agreement.

Liability Insurance: The CONTRACTOR shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by himself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000 unless another amount is specified below.

Required insurance shall include:

- a. Comprehensive General Liability \$1,000,000
- b. Motor Vehicle Liability Insurance \$1,000,000
- c. Workers' Compensation \$Statutory

The COUNTY, the Cities of Brisbane, South San Francisco and Daly City, the San Bruno Mountain Habitat Conservation Trust, and its Trustees, and the officers, agents, employees and servants of each of these entities shall be named as additional insureds on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the COUNTY, the Cities of Brisbane, South San Francisco and Daly City, the San Bruno Mountain Habitat Conservation Trust, and its Trustees, and the officers, agents, employees and servants of each of these entities shall be primary insurance to the full limits of liability of the policy, and that if the COUNTY, the Cities of Brisbane, South San Francisco and Daly City, the San Bruno Mountain Habitat Conservation Trust, and its Trustees, and the officers, agents, employees and servants of each of these entities have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the COUNTY, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

9. **Nondiscrimination.**

No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be

denied any benefits or subject to discrimination under this agreement. CONTRACTOR shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this agreement. CONTRACTOR'S equal employment policies shall be made available to County of San Mateo upon request.

With respect to the provision of employee benefits, CONTRACTOR shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the CONTRACTOR to penalties, to be determined by the County

- i) termination of this Agreement;
- ii) disqualification of the CONTRACTOR from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to:

- i) examine CONTRACTOR'S employment records with respect to compliance with this paragraph;
- ii) set off all or any portion of the amount described in this paragraph against amounts due to CONTRACTOR under the Contract or any other contract between CONTRACTOR and County.

CONTRACTOR shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified CONTRACTOR that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. CONTRACTOR shall provide County with a copy of their response to the Complaint when filed.

10. **Access To Records.** CONTRACTOR shall at all times keep a complete and thorough record of the services and time expended on behalf of the Trustees. During the term of this Agreement, and for a three year period thereafter, the COUNTY shall have access to those books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions to ensure compliance by the CONTRACTOR with the terms and conditions of this Agreement.

11. **Rights in Data.** All data and rights-in-data will be the property of the COUNTY upon payment in full to CONTRACTOR for such data. All maps, correspondence records of meetings or telephone conversations, photographic negatives, photographic prints, computer output, and removable magnetic storage media (i.e. CDs, diskettes) prepared by or obtained by CONTRACTOR in the course of work under this Agreement shall be the property of the COUNTY. COUNTY may request CONTRACTOR to provide the originals of all such material in fulfillment of this Agreement. CONTRACTOR may retain a copy of such property at its own expense subject to the conditions set forth herein. CONTRACTOR will supply COUNTY with electronic and hard copies of data on an annual basis.

12. **Conflict of Interest.** CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

CONTRACTOR further covenants that, in the performance of this contract, no persons having any such interest shall be employed.

13. **Prohibited Activity by Contractor.** CONTRACTOR shall be prohibited from entering into any agreement with any owner or developer of land identified as a Developable Administrative Parcel within the Habitat Conservation Plan area to act as a consultant for the purpose of providing planning assistance and/or conducting environmental review. Further CONTRACTOR shall be prohibited from serving as a subconsultant to any consultant retained by an owner or developer of land identified by a Developable Administrative Parcel within the HCP area for the purpose of planning assistance and/or conducting environmental review.

14. **Merger Clause.** This Agreement constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the Trustees. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions or specifications set forth herein shall prevail.

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

JONES & STOKES ASSOCIATES

Dated: _____

By: _____, Contractor

94-1730361

Contractor's Tax I.D. Number

Contractor Address

COUNTY OF SAN MATEO

Dated: _____

By: _____
Marcia Raines, Director
Environmental Services Agency

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