

**AGREEMENT WITH THOMAS REID ASSOCIATES
FOR SERVICES WITH RESPECT TO THE AMENDMENT OF
THE SAN BRUNO MOUNTAIN HABITAT CONSERVATION PLAN**

This Agreement is entered into this _____ day of _____, 2006, 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 THOMAS REID ASSOCIATES ("CONTRACTOR").

W I T N E S S E T H

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, in June, 2003, the COUNTY entered into an Agreement with CONTRACTOR for the purpose of performing services to develop appropriate amendments to the HCP, which agreement expired by its terms on June 30, 2005; and

WHEREAS, it is now necessary and desirable that the COUNTY enter into a new Agreement with CONTRACTOR for the purpose of completing the HCP amendment process;

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 \$171,256.00.

2. **Evaluation of Services to be Performed by Contractor.** 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 amendment of the Habitat Conservation Plan.

3. **Payments.** 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 thirty (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. **Contract Term.** This Agreement shall be in effect upon execution by all parties, and shall expire on December 31, 2007, unless extended in writing by the parties hereto. COUNTY may terminate this contract at any time for any reason by providing thirty (30) days 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 from all claims, suits or actions of every name, kind and description, 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, resulting from the performance of any work required of CONTRACTOR or payments made pursuant to this

agreement. In the event of concurrent 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, or any of them, and CONTRACTOR, its officers, agents and employees, or any of them, any liability shall be apportioned according to the California theory of comparative negligence.

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.

Workers' Compensation and Employer Liability Insurance: 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 provi-

sions 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 no n-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 Manager, including but not limited to

- 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. **Compliance with Equal Benefits Ordinance.** 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.

11. **Compliance with Contractor Employee Jury Service Ordinance.** Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury

service with the contractor or that the contractor deduct from the employees regular pay the fees received for jury service.

12. **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. The COUNTY shall have access to any 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.

13. **Rights in Data.** All data and rights-in-data will be the property of the COUNTY. All maps, correspondence records of meetings or telephone conversations, photographic negatives, photographic prints, computer output, and magnetic storage media 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 TRUSTEES with electronic and hard copies of data on an annual basis.

14. **Conflict of Interest.** CONTRACTOR covenants that he 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.

15. **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. The

prohibition herein shall not preclude CONTRACTOR from providing planning assistance or participating in environmental review with regard to any Developable Administrative Parcel through the auspices of the County acting as Plan Operator, or through the County or any of the Cities acting as Lead Agency for purposes of environmental review under the California Environmental Quality Act.

16. **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.

THOMAS REID ASSOCIATES

Dated: _____

By: _____
Thomas Reid, Contractor

Contractor's Tax I.D. Number
or Social Security Number

Contractor Address

COUNTY OF SAN MATEO

Dated: _____

By: _____
Marcia Raines, Director
Environmental Services Agency