

**HAYWARD
GEOLOGIC HAZARD ABATEMENT DISTRICT**

TO: Hayward GHAD Board of Directors

FROM: GHAD Manager and GHAD Attorney

BOARD MEETING DATE: May 23, 2023

SUBJECT: Resolutions 23-02 and 23-03 Authorizing an Agreement for GHAD Manager Services Between ENGEIO Incorporated and the Hayward Geologic Hazard Abatement District (GHAD) and for GHAD Attorney and Clerk Services Between Fennemore Wendel and the GHAD

RECOMMENDATION(S):

Staff recommends that the Hayward GHAD Board of Directors adopt Resolution 23-02 authorizing the Board Chair to execute an agreement with ENGEIO Incorporated for GHAD Manager Services and Resolution 23-03 authorizing the Board Chair to execute an agreement with Fennemore Wendel for GHAD Attorney and Clerk services.

SUMMARY:

The Hayward GHAD Board of Directors appointed ENGEIO Incorporated to serve as the GHAD Manager and Wendel, Rosen, Black and Dean, to serve as GHAD Attorney and Clerk and for the Hayward GHAD with Resolution 16-001. An agreement between ENGEIO Incorporated and the Hayward GHAD and an agreement between Fennemore Wendel (formerly Wendel Rosen) and the Hayward GHAD has been prepared for approval by the GHAD Board of Directors.

BACKGROUND AND DISCUSSION:

Hayward City Council adopted Resolution 16-030 approving the formation of the Hayward GHAD and the Plan of Control for The Reserve (La Vista) development within the Hayward GHAD on March 1, 2016.

As provided in Public Resources Code § 26584, the GHAD Board of Directors must appoint a Clerk to the GHAD. On September 13, 2016, the Hayward GHAD Board approved Resolution 16-001 appointing Wendel Rosen, as GHAD Clerk. As provided in Public Resources Code § 26586, the GHAD Board of Directors may appoint other officers and delegate to them such powers as may be appropriate. Pursuant to Resolution 16-001 the GHAD Board appointed ENGEIO Incorporated as the GHAD Manager and Wendel Rosen, as GHAD Attorney.

In June 2022, Wendel Rosen combined with the law firm of Fennemore and became Fennemore Wendel. The attorneys at Wendel Rosen serving the GHAD are now with Fennemore Wendel.

It is recommended that the Board affirm the continued legal and clerk services of the attorneys now at Fennemore Wendel and approve a contract for GHAD Attorney and Clerk services attached to Resolution No. 23-02.

FISCAL IMPACT:

The Hayward GHAD operates as a separate entity from the City of Hayward; therefore, there is no fiscal impact to the City of Hayward.

NEXT STEPS:

Execute contracts if approved.

Prepared by: GHAD Manager and GHAD Attorney

Recommended by: GHAD Manager and GHAD Attorney

ATTACHMENTS:

- A. Resolution No. 23-02
- B. Resolution No. 23-03

THE BOARD OF DIRECTORS OF HAYWARD GEOLOGIC HAZARD ABATEMENT DISTRICT

RESOLUTION NO. 23-02

APPROVING A CONTRACT FOR GHAD MANAGER SERVICES WITH ENGEO INCORPORATED

WHEREAS, on March 1, 2016, the City Council adopted Resolution 16-030, approving and ordering formation of the Hayward Geologic Abatement District ("GHAD") as described in the GHAD Plan of Control for the La Vista subdivision (Tract 7620) and appointed itself to act as the GHAD Board of Directors (the "Board"); and

WHEREAS, on September 13, 2016 pursuant to Resolution No. 16-001, the Board approved a scope of services for ENGEO Incorporated to serve as GHAD Manager; and

WHEREAS, the Board desires to affirm the continued GHAD manager services of ENGEO Incorporated for the GHAD; and

WHEREAS, ENGEO Incorporated requests the Board formally approve a contract for GHAD Manager services with an updated scope of services, attached as Attachment 1.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby:

1. Approves the contract for services, attached as Attachment 1, with ENGEO Incorporated for GHAD Manager services.
2. Declares the recitals are incorporated herein by this reference.
3. Orders this Resolution to become effective immediately upon its passage and adoption.

GHAD MEETING, HAYWARD, CALIFORNIA May 23, 2023

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
Clerk of Hayward Geologic Hazard Abatement
District Board of Directors

Attachment 1 – Contract for GHAD Manager services with ENGEO Incorporated

ATTACHMENT 1

CONSULTING SERVICES AGREEMENT BETWEEN ENGEIO INCORPORATED AND THE HAYWARD GEOLOGIC HAZARD ABATEMENT DISTRICT FOR GHAD MANAGER

This Consulting Services Agreement (“**Agreement**”) is between the Hayward Geologic Hazard Abatement District, a political subdivision of the State of California (“**GHAD**”), and ENGEIO Incorporated (“**Consultant**”) for services of Manager for the GHAD, in accordance with Public Resources Code Sections 26579 and 26600 governing GHAD contracting requirements.

In consideration of the mutual agreements herein, and other good and valuable consideration, the parties agree as follows:

1. **Scope of Services.** The services to be performed by Consultant are the services of GHAD Manager as set forth in **Appendix A**.

2. **Payment.**

(a) Consultant Services.

GHAD shall pay Consultant for services performed at the rates and payment limits (“**Payment Limits**”) as approved by the GHAD Board. Consultant’s rates include all overhead and incidental expenses and costs, for which no additional compensation shall be allowed. Notwithstanding the foregoing, incidental expenses and costs discussed in 2.B below shall be reimbursable by GHAD to Consultant, provided that Consultant submits copies of receipts and, if applicable, a detailed mileage log to GHAD. In no event shall the total amount paid to Consultant exceed the annual payment limit(s) specified in Payment Limits without prior written approval of GHAD Board unless prior approval is not possible due to circumstances relating to the GHAD Manager’s need to respond to emergency situations. In this event, Consultant shall notify GHAD Board as soon thereafter as reasonably practical on the expenditure. Consultant’s billing statements shall be submitted no more than one invoice per calendar month to the GHAD Treasurer for work performed in accordance with this Agreement. Consultant shall include with each invoice a description of the completed work and shall list, for each item of services, the employee categories, hours, and rates. All invoices shall be payable within thirty (30) days of receipt by GHAD Treasurer if they are in accordance with the terms and conditions of this Agreement. GHAD’s payment for the services performed by Consultant under this Agreement shall be subject to review, determination of satisfaction, and approval of GHAD Treasurer.

(b) Expenses and Costs.

Direct expenses and costs for personnel work related expenses and equipment such as computers, vehicles and mileage, weather gear, meals or similar personal expenses shall be included in the hourly rates. Direct expenses and costs associated with the operational expenses of the GHAD such as postage, courier services, telephones, office supplies, electronic monitoring devices, special projects testing apparatus, and office space rental - shall be billed, at cost, to the GHAD. Memberships to Associations, Insurance Premiums, etc. shall be billed directly to the GHAD. All outside services, materials and supplies shall be billed at direct cost without markup.

3. Payment Amounts Updated Yearly. Consultant shall prepare and submit Payment Limits to the GHAD Board along with the GHAD's annual operating budget once a year, and if approved by GHAD Board, shall be the applicable rates for the current year. In the event an updated Payment Limits are not approved by the GHAD Board, the most recent GHAD Board approved Payment Limits shall be the applicable annual Payment Limits for any services performed under this Agreement.

4. Industry Standards. Consultant agrees that the services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional managers of geologic hazard abatement districts using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by GHAD Board is required, it is understood to be general approval only and does not relieve Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

5. Term of Agreement. This Agreement shall be approved by GHAD resolution and the Agreement shall become effective immediately upon approval of such resolution ("**Effective Date**"). This Agreement shall remain in full force and effect until terminated by either Consultant or GHAD Board in accordance with Sections 6, 7 or 9 below.

6. Termination by GHAD. GHAD Board may, at its sole option and for convenience, terminate this Agreement or all or any portion of the services provided by Consultant under this Agreement, by giving sixty (60) days prior written notice of such termination to Consultant. The termination of services under this Agreement shall terminate at the end of such sixty (60) day period, Consultant shall be paid without duplication, all amounts due for services rendered up to and including the date of termination.

7. Termination by Consultant. Consultant shall have the right to terminate this Agreement at any time, by giving sixty (60) days prior written notice to GHAD. Such sixty (60) day period shall commence on receipt of the notice by GHAD and this Agreement shall terminate at the end of such sixty (60) day period (or such longer time as specified in the notice from Consultant) ("**Termination Period**"). Notwithstanding the foregoing, or anything herein to the contrary, Consultant shall remain obligated during the Termination Period to continue all services hereunder and to act in good faith to perform necessary actions to prevent and mitigate

any potential geologic hazards as may be required by **Appendix A**. Consultant shall also remain obligated to work in good faith to transition the performance of services to any new consultant retained by GHAD, including but not limited providing all materials and records and meeting with such new consultant to transition such services. During this Termination Period, Consultant shall not have the right to enter into any new agreements, contracts, obligations or commit any future financial resources of GHAD without the prior written approval of GHAD Attorney unless such actions are necessary to protect property within GHAD from imminent harm. Upon termination pursuant to this Section 7, Consultant shall without delay, deliver to GHAD all materials and records prepared or obtained in the performance of this Agreement, and shall be paid, without duplication, all amounts due for the services rendered up to and including the date of termination.

8. Abandonment by Consultant. In the event Consultant ceases performing services under this Agreement or otherwise abandons performance of services prior to completing all of the services described in this Agreement, Consultant shall remain responsible for all obligations and liabilities, including without limitation, maintaining insurance and shall be liable for any and all damages incurred by GHAD as a result of or arising out of such abandonment, until such time as GHAD Board or Consultant terminates this Agreement in accordance with the preceding sections.

9. Right to Terminate for Default. In addition to GHAD Board's right to terminate for convenience, if Consultant fails to perform or adequately perform any obligation required by this Agreement, Consultant's failure constitutes a default. If Consultant fails to satisfactorily cure a default within twenty (20) calendar days of receiving written notice from GHAD specifying the nature of the default, GHAD Board may immediately cancel and/or terminate this Agreement, and terminate each and every right of Consultant, and any person claiming any rights by or through Consultant under this Agreement. If Consultant files a voluntary petition in bankruptcy, is subject to an adjudicated bankruptcy or makes a general assignment for the benefit of creditors, GHAD Board may at its option and without further notice to or demand upon Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of Consultant, and any person claiming any rights by or through Consultant. The rights and remedies of GHAD enumerated in this Section 9 are cumulative and shall not limit, waive, or deny any of GHAD's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to GHAD against Consultant.

10. Insurance. Consultant shall, at no cost to GHAD, obtain and maintain during the term hereof: (a) Workers' Compensation Insurance pursuant to state law; (b) Comprehensive Liability Insurance including blanket contractual (or contractual liability) coverage, broad form property damage coverage, and coverage for owned and non-owned vehicles, with a minimum combined single limit coverage over \$2,000,000 for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of use thereof, arising out of each accident or occurrence (\$2,000,000 aggregate), and naming GHAD and its board,

officers and employees as additional insureds, and (c) Professional Liability Insurance in the coverage amount of \$2,000,000. Such insurance shall remain in full force and effect during the term of this Agreement. Consultant shall promptly furnish to GHAD Clerk certificates of insurance evidencing such coverage and requiring thirty (30) days written notice to GHAD of policy lapse, cancellation or material change in coverage. During the term of this Agreement, GHAD Board shall have the right to increase or modify the insurance requirements set forth in this Section 10, not more than once every two (2) years upon not less than sixty (60) days prior written notice to Consultant, to commercially reasonable amounts and coverages required for similar services performed in California.

11. Status. Consultant is an independent contractor and shall not be considered an employee or agent of GHAD.

12. Time for Completion. Unless the time is extended in writing by GHAD, Consultant shall complete each service covered by this Agreement no later than the dates for completion, if any, set forth for such service(s) in **Appendix A**. If no time for completion is specified, such tasks shall continue to be performed throughout the term of this Agreement.

13. Record Retention and Auditing. Except for materials and records delivered to GHAD, Consultant shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least five years after Consultant's receipt of the final payment for the tasks related to such materials and records under this Agreement. Upon request by GHAD, at no additional charge, Consultant shall promptly make such records available to GHAD, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by GHAD, and without restriction or limitation on their use.

14. Ownership of Documents. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of GHAD. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations, and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to GHAD at no additional charge and without restriction or limitation on their use.

15. Extra Work. If Consultant determines any work or services are necessary in addition to the work or services described in **Appendix A**, such extra work shall be explained and a rate or charge shall also be included for the work in writing and submitted to the GHAD Board for approval. Prior approval from the GHAD Board is required before the work commences unless prior approval is not possible due to the emergency response nature of the GHAD. In this event, Consultant shall notify GHAD Board as soon thereafter as reasonably practical on the expenditure.

16. Breach. In the event that Consultant fails to perform any of the services described in this Agreement or otherwise breaches this Agreement, GHAD shall have the right to

pursue all remedies provided by law or equity. Any disputes relating to the performance of this Agreement shall not be subject to non-judicial arbitration.

17. Compliance with Laws. In performing this Agreement, Consultant shall comply with all applicable federal or state laws, and specifically Public Resources Code (PRC) sections 26500 *et seq.* (GHAD Law). The parties acknowledge that GHAD Law exempts GHAD activities from the California Environmental Quality Act (GHAD Law section 26601 of the PRC) and exempts the GHAD from obtaining local permits under building and zoning ordinances, but the GHAD shall comply with applicable provisions of the Uniform Building Code.

18. Assignment. This Agreement shall not be assignable or transferable in whole or in part by Consultant, whether voluntarily, by operation of law or otherwise; provided, however, that Consultant shall have the right to sub-contract that portion of the services for which Consultant does not have the ability to perform so long such subcontracts comply with Section 19 below and are approved by GHAD Attorney. Any other purported assignment, transfer or sub-contracting shall be void.

19. Insurance for Subcontractors. All contracts entered into between Consultant and a subcontractor shall require subcontractor to obtain insurance policies which shall be kept in full force and effect during any and all work pursuant to this Agreement and for the duration of the subcontractor's work. Each subcontractor performing any construction work shall obtain, and Consultant shall require the subcontractor to obtain, at a minimum all policies described in Section 10. Subcontractors engaged in non-construction work, shall be required to obtain adequate insurance for the services being asked to undertake.

20. Endorsement on Plans. Consultant (or the sub-consultant) shall endorse all plans, specifications, estimates, reports, and other items described in **Appendix A** prior to delivering them to GHAD.

21. Patents and Copyrights. The issuance of a patent or copyright to Consultant or any other person shall not affect GHAD's right to the materials and records prepared or obtained in the performance of this Agreement. GHAD reserves a license to use such materials and records without restriction or limitation, and GHAD shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by GHAD shall continue for a period of fifty years from the date of execution of this Agreement, unless extended by operation of law or otherwise.

22. Indemnification. Consultant shall indemnify and hold harmless GHAD, and its boards, officers and employees, from any and all liability, damages, claims, judgments, expenses or other losses (including without limitation, attorney fees, expert witness and other litigation costs) resulting from or caused by, or alleged to have resulted from or caused by Consultant's gross negligence, breach of this Agreement or willful misconduct, excluding any claims to the extent resulting from or arising out of GHAD's sole negligence, active negligence or willful

misconduct. Should Consultant become aware of a claim or lawsuit that may be subject to this section, Consultant shall notify GHAD promptly in writing, and GHAD shall have the right to conduct the defense of such claim or lawsuit. Notwithstanding the foregoing, Consultant's maximum liability to GHAD for professional negligence shall not exceed the amount of Professional Liability Insurance required by Section 10(c). The above maximum is applicable solely to professional negligence and shall not apply to, limit, diminish, or affect Consultant's obligations under this section for any other claims, costs or liability, including but not limited to general liability, vehicular negligence, contractual liability or workers' compensation liability. The provisions of this Section 22 shall survive the termination of the Agreement.

23. Public Endorsements. Consultant shall not in its capacity as a Consultant with GHAD publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of GHAD's Board. In its Consultant capacity, Consultant shall not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely-accepted scientific basis for such claims or without the prior approval of GHAD's Board. In its Consultant capacity, Consultant shall not participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Consultant is not publicly endorsing a product, as long as Consultant's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of GHAD. Notwithstanding the foregoing, Consultant may express its views on products to other consultants, GHAD's Board, its officers, or others who may be authorized by GHAD's Board or by law to receive such views.

24. Project Personnel and Contracting. In performing the services under this Agreement for any project personnel, Consultant shall use the rates listed in Payment Limit. All personnel shall possess training, experience, and credentials necessary to perform the tasks of such position. The parties recognize that GHAD work is performed on an emergency basis and is unique and specialized. Due the nature of GHAD work, all GHAD contracts (including contracts with project personnel) are subject to negotiation between the parties but need not be awarded through a competitive bidding process as authorized by GHAD Law (Public Resources Code section 26600).

25. Amendment. This Agreement shall be subject to amendment only through written amendment approved in advance by GHAD Board.

26. Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is sent by overnight mail or by certified mail, postage paid, return receipt requested. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. Unless otherwise agreed in writing, notice to GHAD for purposes of this Agreement shall be addressed to:

To Consultant:

Attn: Uri Eliahu, GHAD Manager
ENGEIO Incorporated
2010 Crow Canyon Place, Suite 250
San Ramon, CA 94583

To GHAD:

Attn: Patricia E. Curtin, GHAD Attorney
c/o Fennemore Wendel
1850 Mt. Diablo Blvd., Suite 340
Walnut Creek, CA 94596

27. Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

28. Jurisdiction and Venue. The venue for any suit or proceeding concerning this Agreement, the interpretation of application of any of its terms, or any related disputes shall be in the County of Contra Costa, State of California.

29. Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of GHAD or Consultant, shall be deemed to be both covenants and conditions.

30. Integration. This Agreement, the exhibits and other references are hereby incorporated into this Agreement and they fully express all understandings of the parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both parties or an amendment to this Agreement agreed to by both parties. All prior negotiations and agreements are merged into this Agreement.

31. No Waiver. No failure of either GHAD or Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

32. Conflict of Interest. Consultant and its officers, employees, contractors, subcontractors, and agents that perform work under this Agreement shall comply with all applicable federal and state conflict of interest law, regulations, and policies.

33. Use of Subcontractors. Consultant, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the grounds of race, religion, color, sex, sexual orientation, age, or national origin in the selection or retention of subcontractors, including procurement of materials and leases of equipment.

These signatures attest the parties' agreement hereto:

IN WITNESS WHEREOF, this Agreement is executed by GHAD pursuant to Resolution No. 23-02 approved on May 23, 2023, and by Consultant.

GHAD

CONSULTANT/GHAD MANAGER:

HAYWARD GHAD

ENGEO INCORPORATED

By: _____
Chair of the GHAD Board

By: _____
Uri Eliahu

Title: _____

By: _____

Title: _____

Dated: _____

Note to Consultant: For corporations, the contract must be signed by two officers. The first signature must be that of the chairman of the board, president or vice-president; the second signature must be that of the secretary, assistant secretary, chief financial officer or assistant treasurer. (Civ. Code, Sec. 1190 and Corps. Code, Sec. 313.) The acknowledgment below must be signed by a Notary Public.

APPENDIX A

SCOPE OF SERVICES

ENGEO Incorporated (“**Consultant**”) agrees to provide Professional Services as the GHAD Manager to the Hayward Geologic Hazard Abatement District (“**GHAD**”) consistent with this Agreement and GHAD Laws (Public Resources Code section 26500 *et. Seq.*). Services include, but are not necessarily limited to, the following:

1. Consultant shall be responsible for the day-to-day management of the GHAD in accordance with all applicable state and federal statutes, the GHAD's adopted Plans of Control and all adopted GHAD Board policies and guidelines. In furtherance of this Agreement, Consultant may retain other civil and/or geotechnical engineering consultants, geologists, contractors and/or other professionals and vendors as may be required to evaluate, review, design, construct or maintain GHAD facilities and improvements in accordance with the GHAD's adopted Plans of Control.

2. Consultant shall develop and maintain a computerized accounting and bookkeeping system sufficient to allow GHAD costs and expenditures to be cost applied to individual projects and/or programs. Consultant shall reconcile the accounting and bookkeeping records to those maintained by the GHAD Treasurer. Consultant shall provide the following to the GHAD Board of Directors in a timely manner:

(a) Each year, Consultant shall develop and submit to the GHAD Board a proposed program style budget detailing anticipated income and expenditures in the four major work areas: (1) major repair projects, (2) preventative maintenance and operations, (3) special projects and (4) administration.

(b) Consultant shall develop or cause to be developed in consultation with the GHAD Treasurer quarterly and year-to-date expense reports comparing actual expenditures to the approved budgets and submit to the GHAD Board.

(c) Consultant shall develop an annual report on the activities of the GHAD. Said report shall include a comparison of income and expenditures against the adopted program budget. In addition, said report shall include Consultant's evaluation and, if appropriate, recommendations related to the need to complete, update and/or revise the following:

- (i) The Plan of Control for the GHAD.
- (ii) The status of the GHAD's financial reserves.
- (iii) The GHAD's Maintenance and Operations Plan.

3. Consultant shall perform the following:

(a) An annual work program, to include all major repair projects and significant incidents and special projects, including assigning and directing contractors to perform repairs.

(b) Monthly incident log detailing all active incidents under review and/or construction by the GHAD and/or GHAD consultants as well as all active GHAD construction projects. Said incident log shall indicate clearly the status of all active incidents and shall identify who should be contacted with questions on any particular incident and/or project.

(c) Establish priorities, forecast and establish work schedules, verify work activities are accomplished within established timeframes.

(d) Prepare requests for proposals ("RFP"), review experience of potential contractors, prepare and negotiate contracts, administer contracts, issue contract change orders, assist in managing claims.

(e) Work with and respond to public inquires, property owner requests, interpret GHAD policies and procedures, work with homeowners association representatives and others regarding activities of the GHAD.

(f) Establish and implement the preventive maintenance program and emergency response capabilities.

(g) Determine work priorities and prepare the annual budget and repair and maintenance programs, capital improvements programs, and updates of the Plan of Control.

(h) Perform other duties as designated by the GHAD Board that are consistent with the Plan of Control and/or GHAD Law.

(i) Consultant shall maintain a record of all incident responses plotted on the GHAD Geographic Information System ("GIS") for purposes of evaluating future risk.

(j) Consultant shall maintain membership in the California Association of GHADs.

THE BOARD OF DIRECTORS OF HAYWARD GEOLOGIC HAZARD ABATEMENT
DISTRICT

RESOLUTION NO. 23-03

APPROVING A CONTRACT FOR GHAD ATTORNEY AND CLERK SERVICES
WITH FENNEMORE WENDEL

WHEREAS, on March 1, 2016, the City Council adopted Resolution 16-030, approving and ordering formation of the Hayward Geologic Abatement District ("GHAD") as described in the GHAD Plan of Control for the La Vista subdivision (Tract 7620) and appointed itself to act as the GHAD Board of Directors (the "Board");

WHEREAS, on March 22, 2016, pursuant to Resolution 16-01, the Board appointed Patricia Curtin of Wendel Rosen Black Dean ("Wendel Rosen") to serve as GHAD Legal Counsel and Clerk and, pursuant to Resolution No. 16-02, the Board approved a scope of services for Wendel Rosen to serve as Legal Counsel and Clerk;

WHEREAS, in June 2022, Wendel Rosen combined with the law firm of Fennemore and became Fennemore Wendel;

WHEREAS, the attorneys who were at Wendel Rosen serving the GHAD are now with Fennemore Wendel;

WHEREAS, the Board desires to affirm the continued legal and clerk services of the attorneys now at Fennemore Wendel for the GHAD as set forth in Attachment 1 to Resolution No. 23-03; and

NOW, THEREFORE, BE IT RESOLVED that the Board hereby:

1. Confirms the continued services of the attorneys that have been serving the GHAD who are now at Fennemore Wendel and appoints Fennemore Wendel as GHAD Legal Counsel and Clerk.
2. Authorizes the GHAD Attorney and Clerk to work directly with the GHAD Manager in determining the scope and budget for legal services to be provided to the GHAD as part of the annual budget. The Board has the final authority to engage the GHAD Attorney and Clerk on any and all GHAD matters and may utilize the GHAD Attorney/Clerk beyond those services performed directly with GHAD Manager.
3. Approves the contract for services, attached as Attachment 1, with Fennemore Wendel for GHAD Attorney and Clerk services.
4. Declares the recitals are incorporated herein by this reference.

5. Orders this Resolution to become effective immediately upon its passage and adoption.

GHAD MEETING, HAYWARD, CALIFORNIA May 23, 2023

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
Clerk of Hayward Geologic Hazard Abatement
District Board of Directors

Attachment 1 – Contract for GHAD Attorney and Clerk services with Fennemore Wendel

ATTACHMENT 1

CONSULTING SERVICES AGREEMENT BETWEEN FENNEMORE WENDEL AND THE HAYWARD GEOLOGIC HAZARD ABATEMENT DISTRICT FOR GHAD ATTORNEY AND CLERK

This Consulting Services Agreement (“**Agreement**”) is between the Hayward Geologic Hazard Abatement District, a political subdivision of the State of California (“**GHAD**”), and Fennemore Wendel (“**Consultant**”) for services of GHAD Attorney and Clerk, in accordance with Public Resources Code Sections 26579 and 26600 governing GHAD contracting requirements.

In consideration of the mutual agreements herein, and other good and valuable consideration, the parties agree as follows:

1. Scope of Services. The services to be performed by Consultant are the services of GHAD Legal Counsel and Clerk as set forth in **Appendix A**.

2. Payment. GHAD shall pay Consultant for services performed in accordance with this Agreement. Billing statements shall be submitted to the GHAD Manager for review in relation to the annual budget and shall be paid by the GHAD Treasurer. Each year, Consultant shall work directly with the GHAD Manager in determining the scope and budget for legal services to be provided to the GHAD as part of the annual budget. The Board has the final authority to engage the GHAD Attorney and Clerk on any and all GHAD matters and may utilize the GHAD Attorney/Clerk beyond those services performed directly with GHAD Manager. Consultant shall charge fees and costs that are reasonable based on criteria for reasonableness set forth in the applicable Rules of Professional Conduct, which includes the time, effort, and skill required to perform the services needed, the novelty and complexity of the issues, and time constraints involved. All invoices shall be payable within thirty (30) days of receipt by GHAD Treasurer if they are in accordance with the terms and conditions of this Agreement. GHAD’s payment for the services performed by Consultant under this Agreement shall be subject to review, determination of satisfaction, and approval of GHAD Treasurer.

2. Term of Agreement. This Agreement shall be approved by GHAD resolution, and the Agreement shall become effective immediately upon approval of such resolution (“**Effective Date**”). This Agreement shall remain in full force and effect until terminated by either Consultant or GHAD Board in accordance with this Agreement.

3. Termination by GHAD. GHAD Board may, at its sole option and for convenience, terminate this Agreement or all or any portion of the services provided by Consultant under this Agreement, by giving sixty (60) days prior written notice of such termination to Consultant. The termination of services under this Agreement shall terminate at the end of such sixty (60) day period and Consultant shall be paid, without duplication, all amounts due for services rendered up to and including the date of termination.

4. Termination by Consultant. Consultant shall have the right to terminate this Agreement at any time, by giving sixty (60) days prior written notice to GHAD. Such sixty (60) day period shall commence on receipt of the notice by GHAD, and this Agreement shall terminate at the end of such sixty (60) day period (or such longer time as specified in the notice from Consultant) (“**Termination Period**”). Notwithstanding the foregoing, or anything herein to the contrary, Consultant shall remain obligated during the Termination Period to continue all services hereunder and to act in good faith to perform necessary actions as may be required by **Appendix A**. Consultant shall also remain obligated to work in good faith to transition the performance of services to any new consultant retained by GHAD, including but not limited providing all materials and records and meeting with such new consultant to transition such services. During this Termination Period, Consultant shall not have the right to enter into any new agreements, contracts, obligations or commit any future financial resources of GHAD without the prior written approval of the GHAD Board unless such actions are necessary to protect property within GHAD from imminent harm. Upon termination pursuant to this Section 4, Consultant shall without delay, deliver to GHAD Board all materials and records prepared or obtained in the performance of this Agreement, and shall be paid, without duplication, all amounts due for the services rendered up to and including the date of termination.

5. Abandonment by Consultant. In the event Consultant ceases performing services under this Agreement or otherwise abandons performance of services prior to completing all of the services described in this Agreement, Consultant shall remain responsible for all obligations and liabilities, including without limitation, maintaining insurance and shall be liable for any and all damages incurred by GHAD as a result of or arising out of such abandonment, until such time as GHAD Board or Consultant terminates this Agreement in accordance with the preceding sections.

6. Right to Terminate for Default. In addition to GHAD Board’s right to terminate for convenience, if Consultant fails to perform or adequately perform any obligation required by this Agreement, Consultant’s failure constitutes a default. If Consultant fails to satisfactorily cure a default within twenty (20) calendar days of receiving written notice from GHAD specifying the nature of the default, GHAD Board may immediately cancel and/or terminate this Agreement, and terminate each and every right of Consultant, and any person claiming any rights by or through Consultant under this Agreement. If Consultant files a voluntary petition in bankruptcy, is subject to an adjudicated bankruptcy or makes a general assignment for the benefit of creditors, GHAD Board may at its option and without further notice to or demand upon Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of Consultant, and any person claiming any rights by or through Consultant. The rights and remedies of GHAD enumerated in this Section 6 are cumulative and shall not limit, waive, or deny any of GHAD’s rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to GHAD against Consultant.

7. **Status.** Consultant is an independent contractor and shall not be considered an employee or agent of GHAD.

8. **Time for Completion.** Unless the time is extended in writing by GHAD, Consultant shall complete each service covered by this Agreement no later than the dates for completion, if any, set forth for such service(s) in **Appendix A**. If no time for completion is specified, such tasks shall continue to be performed throughout the term of this Agreement.

9. **Record Retention and Auditing.** Except for materials and records delivered to GHAD, Consultant shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least five years after Consultant's receipt of the final payment for the tasks related to such materials and records under this Agreement. Upon request by GHAD, at no additional charge, Consultant shall promptly make such records available to GHAD, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by GHAD, and without restriction or limitation on their use.

10. **Ownership of Documents.** All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of GHAD. All materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations, and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to GHAD at no additional charge and without restriction or limitation on their use.

11. **Extra Work.** If Consultant determines any work or services are necessary in addition to the work or services described in **Appendix A**, such extra work shall be explained, and a rate or charge shall also be included for the work in writing and submitted to the GHAD Board for approval. Prior approval from the GHAD Board is required before the work commences unless prior approval is not possible due to the emergency response nature of the GHAD. In this event, Consultant shall notify GHAD Board as soon thereafter as reasonably practical on the expenditure.

12. **Breach.** In the event that Consultant fails to perform any of the services described in this Agreement or otherwise breaches this Agreement, GHAD shall have the right to pursue all remedies provided by law or equity. Any disputes relating to the performance of this Agreement shall not be subject to non-judicial arbitration.

13. **Compliance with Laws.** In performing this Agreement, Consultant shall comply with all applicable federal or state laws, and specifically Public Resources Code (PRC) sections 26500 *et seq.* (GHAD Law). The parties acknowledge that GHAD Law exempts GHAD activities from the California Environmental Quality Act (GHAD Law section 26601 of the PRC) and exempts the GHAD from obtaining local permits under building and zoning ordinances, but the GHAD shall comply with applicable provisions of the Uniform Building Code.

14. Assignment. This Agreement shall not be assignable or transferable in whole or in part by Consultant, whether voluntarily, by operation of law or otherwise; provided, however, that Consultant shall have the right to sub-contract that portion of the services for which Consultant does not have the ability to perform so long such subcontracts comply with Section 19 below and are approved by GHAD Attorney. Any other purported assignment, transfer or sub-contracting shall be void.

15. Amendment. This Agreement shall be subject to amendment only through written amendment approved in advance by GHAD Board.

16. Notices. In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is sent by overnight mail or by certified mail, postage paid, return receipt requested. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. Unless otherwise agreed in writing, notices for purposes of this Agreement shall be addressed to:

To Consultant:

Attn: Patricia E. Curtin, GHAD Attorney
c/o Fennemore Wendel
1850 Mt. Diablo Blvd., Suite 340
Walnut Creek, CA 94596

To GHAD:

Attn: Chair of GHAD Board
Hayward GHAD
777 B Street
Hayward, CA 9541

17. Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.

18. Jurisdiction and Venue. The venue for any suit or proceeding concerning this Agreement, the interpretation of application of any of its terms, or any related disputes shall be in the County of Contra Costa, State of California.

19. Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of GHAD or Consultant, shall be deemed to be both covenants and conditions.

20. Integration. This Agreement, the exhibits and other references are hereby incorporated into this Agreement, and they fully express all understandings of the parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in

writing by both parties or an amendment to this Agreement agreed to by both parties. All prior negotiations and agreements are merged into this Agreement.

21. No Waiver. No failure of either GHAD or Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

22. Conflict of Interest. Consultant and its officers, employees, contractors, subcontractors, and agents that perform work under this Agreement shall comply with all applicable federal and state conflict of interest law, regulations, and policies.

These signatures attest the parties' agreement hereto:

IN WITNESS WHEREOF, this Agreement is executed by GHAD pursuant to Resolution No. 23-03 approved on May 23, 2023, and by Consultant.

GHAD

**CONSULTANT/GHAD
ATTORNEY/CLERK:**

HAYWARD GHAD

FENNEMORE WENDEL

By: _____
Chair of the GHAD Board

By: _____
Patricia E. Curtin

APPENDIX A

SCOPE OF SERVICES

Consultant agrees to provide Professional Services as Legal Counsel and Clerk to the Hayward Geologic Hazard Abatement District (“GHAD”) consistent with this Agreement and GHAD Laws (Public Resources Code section 26500 *et. Seq.*).

I. INTRODUCTION.

A geological hazard abatement district ("GHAD") is an independent, public agency that oversees geologic hazard prevention, mitigation, abatement and control. A "geologic hazard" is broadly defined as an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement or any other natural or unnatural movement of land or earth.

On November 17, 2015, the City Council of the City of Hayward adopted Resolution No. 15-224 declaring its intent to be subject to the laws governing geologic hazard abatement districts ("GHAD Law"). Consistent with GHAD Law, on March 1, 2016, the City Council adopted Resolution No. 16-030 approving the formation of the Hayward Geological Hazard Abatement District ("Hayward GHAD"), appointing itself to serve as the GHAD Board of Directors and stating that the GHAD will be responsible for hiring its own staff. On May 17, 2016, the GHAD Board adopted Resolution No. 16-001 appointing the Chairperson, Clerk/Legal Counsel, Treasurer and Manager for the Hayward GHAD and Resolution 16-002 approving scope of services for the GHAD Officers. Resolution No. 23-03, approved by the GHAD Board on May 23, 2023, update the appointment for Attorney/Clerk.

As stated in GHAD Law, a geologic hazard abatement district is a political subdivision of the state; it is not an agency or instrumentality of a local agency. As such, the Hayward GHAD is an independent district separate and distinct from the City of Hayward. Consistent with Resolution No. 16-030 and GHAD Law, this scope of services is prepared for the GHAD Attorney/Clerk.

II. SCOPE OF SERVICES FOR GHAD ATTORNEY/CLERK.

The GHAD Attorney role includes providing legal advice to the Hayward GHAD in accordance with GHAD Law, the GHAD Plan of Control, and policies and guidelines that may be adopted by the Hayward GHAD Board. In this role, the GHAD Attorney is also responsible for advising the GHAD Board, if it so desires, in the creation of its own rules, regulations and policies in accordance with GHAD Law. Such rules, regulations and policies may relate, but is not limited to awarding of contracts for services, conflict of interest provisions, filing claims with the GHAD, and investment criteria. The GHAD Attorney shall review all official legal documents (i.e., Plan of Control and any amendments thereto, engineer's report and any amendments thereto, contracts, agreement, claims, reports, resolutions) presented to the GHAD Board.

Additionally, the GHAD Attorney will consult with the GHAD Manager and GHAD Treasurer in assuring the Plan of Control and GHAD Law is implemented and the GHAD Board is provided with all necessary documents to make informed decisions.

In working with the GHAD Manager and Treasurer, the GHAD Attorney/Clerk shall provide the following to the GHAD Board on an annual basis:

1. A proposed budget explaining how the GHAD funds are to be expended for the upcoming year.
2. An update (either by written communication or at a GHAD Board meeting) explaining the operations of the GHAD including but not limited to (a) the tasks that have been undertaken by GHAD staff in accordance with the plan of control, (b) the number of units in the GHAD, (c) the current assessment amount being levied, and (d) the balance in the GHAD account.

The GHAD Attorney advises the GHAD Board, GHAD Manager, GHAD Treasurer and other GHAD staff or officers that may be appointed by the GHAD Board in the future. The Attorney will attend all GHAD Board meetings.

The GHAD Clerk role includes securing GHAD Board meeting dates, creating agendas and distributing all necessary notices of public meetings, documents and staff reports to the GHAD Board and as required, to all interested parties. The GHAD Clerk shall work with the City Clerk in assuring that the GHAD materials are included as part of the City's meeting agendas and distributed to the GHAD Board. The GHAD Clerk shall keep records of the proceedings of the meetings and is responsible for maintaining the official records of GHAD proceedings. The GHAD is subject to the provisions of the Ralph M. Brown Act and the Clerk is responsible for clerical roles under the Brown Act.