

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

Hayward Geologic Hazard Abatement District  
Board of Directors  
c/o Hayward GHAD Manager  
ENGEO Incorporated  
2010 Crow Canyon Place, Suite 250  
San Ramon, CA 94583  
Attention: Eric Harrell

THIS SPACE ABOVE FOR RECORDER'S USE

### **RIGHT OF ENTRY AND AGREEMENT REGARDING OPEN SPACE PROPERTY**

This Right of Entry and Agreement Regarding Open Space Property (the "Agreement") is entered into as of March 18, 2020 (the "Effective Date"), by and between the CITY OF HAYWARD, a municipal corporation ("CITY") and HAYWARD GEOLOGIC HAZARD ABATEMENT DISTRICT, a California district organized and existing under the laws of the State of California ("GHAD").

### **RECITALS**

This Agreement is made with reference to and reliance upon the following:

**WHEREAS**, the City approved a 179-lot residential subdivision by and through Final Map, Subdivision 7620, filed on May 3, 2016, in Book 339 of Maps, at pages 46 through 69, all in the Official Records of Alameda County, California (the "La Vista Development" or "Development").

**WHEREAS**, Condition of Approval #84 of the Subdivision 7620 required the formation of the GHAD to include the Development. Condition of Approval # 35 required the Development to form a Lighting and Landscape Assessment District ("LLD"). La Vista formed and annexed the Development to Benefit Zone No. 14 of LLD No. 96-1.

**WHEREAS**, the GHAD is the owner of real property consisting of parcels C, D, N, O, U, V and APN 083-075-002-15 and more particularly described in Exhibit A hereto (the "Property"). GHAD is the sole owner in fee simple of the Property.

**WHEREAS**, GHAD therefore desires to allow the City and its representatives, employees, agents, consultants, contractors, and subcontractors (collectively, "City's Agents"), to enter upon and to undertake any and all actions on the Property that are necessary to perform the work required of LLD 96-1 and which is consistent with the GHAD Plan of Control.

**WHEREAS**, the City and GHAD have agreed to execute this Agreement in order to establish the rights, duties and obligations of the City and the GHAD with regard to the Property.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions, and restrictions contained herein, CITY and GHAD hereby agree as follows:

1. **Right of Entry.** GHAD hereby grants to CITY and to CITY's Agents the perpetual right to enter onto the Property at any time and from time to time, without prior notice to GHAD, in order to conduct any and all activities necessary for the performance of the CITY Work described below in Section 2 (the "Right of Entry").

2. **CITY's Duties and Obligations.** CITY will have the following rights and obligations with respect to the Property:

2.1 City shall be solely responsible to maintain and service the following on GHAD property including firebreak landscaping, groundcover, shrubs, trees, and weed abatement in planted area, upkeep and servicing of the irrigation system; graffiti removal, renovations and replacements; and maintenance of bioswales and tree filters.

2.2 CITY shall be solely responsible for all costs associated with performing the CITY Work, including payment of any and all water and utility bills.

2.3 CITY shall, at its sole expense, repair any damage done to the Property or to any improvements thereon that are in any manner whatsoever damaged, destroyed, or removed in connection with the exercise by CITY or CITY's Agents of the rights herein granted.

3. **GHAD's Duties and Obligations.** GHAD will have the following rights and obligations with respect to the Property:

3.1 GHAD shall be solely responsible for managing the Property consistent with the terms of the Plan of Control and shall have all rights accruing from its ownership of the Property.

3.2 GHAD shall take no action, with the exception of the prevention, mitigation, abatement, or control of geologic hazards as provided in the GHAD Plan of Control, which will interfere with or adversely affect the performance of the CITY Work. If such interference or adverse effect occurs due to actions or events caused by or within the control of GHAD, GHAD shall take all actions necessary to correct such interference or adverse effect.

4. **Indemnification by CITY.** CITY shall defend (with counsel acceptable to GHAD), indemnify, protect, and hold harmless GHAD, its officers, directors, employees, officials, agents, representatives and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "GHAD Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expense, cause of action, claims, demands or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with: (a) any activities of CITY or of any of CITY's Agents on the Property or under this Agreement, including without limitation CITY's failure to pay when due all claims for labor or materials furnished or alleged to have been furnished to CITY at, or for use on, the Property; (b) any injury to, or death of, any person, or physical damage to the Property or to any personal

property thereon, resulting from any act by CITY or CITY's Agents occurring on the Property, except to the extent such injury, death or damage is caused by the negligent act or intentional misconduct of any of the GHAD Indemnified Parties; (c) the breach of any of the terms of this Agreement by CITY.

5. **Indemnification by GHAD.** GHAD shall defend (with counsel acceptable to CITY), indemnify, protect, and hold harmless CITY, its officers, directors, employees, officials, agents, representatives and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "CITY Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expense, cause of action, claims, demands or judgments, including without limitation reasonable attorneys' fees, arising from or in any way connected with: (a) any activities of GHAD or of any of GHAD's Agents on the Property or under this Agreement, including without limitation GHAD's failure to pay when due all claims for labor or materials furnished or alleged to have been furnished to GHAD at, or for use on, the Property; (b) any injury to, or death of, any person, or physical damage to the Property or to any personal property thereon, resulting from any act by GHAD or GHAD's Agents occurring on the Property, except to the extent such injury, death or damage is caused by the negligent act or intentional misconduct of any of the CITY Indemnified Parties; (c) the breach of any of the terms of this Agreement by GHAD; or (d) any conditions existing on the Property as of the Effective Date.

6. **Successors.** The covenants, terms, conditions, rights and obligations of GHAD under this Agreement shall run with the land and shall be binding upon and inure to the benefit of GHAD and its respective successors and assigns. The successors and assigns of GHAD's interest in the Property shall have the right to enforce the terms of the Agreement against CITY and/or CITY's successors and assigns. CITY shall likewise have the right to enforce the terms of the Agreement against GHAD and its and/or GHAD's successors and assigns.

7. **Notice and Cure.** In the event of a default by either party under this Agreement, the non-defaulting party shall provide thirty (30) days written notice of such default to the defaulting party, during which time the defaulting party shall be entitled to cure said default. In the event that the default cannot reasonably be cured within thirty (30) days, the defaulting party shall be entitled to diligently pursue cure of the default until finally cured. If the default by either party remains uncured at the end of the thirty (30) day cure period, or, in the event that the default cannot reasonably be cured within thirty (30) days, if the defaulting party fails to continue diligently to cure such default, the non-defaulting party shall be entitled to exercise all rights or remedies available at law or in equity.

## 8. **Miscellaneous**

8.1 **Entire Agreement.** This Agreement, and the Exhibits attached hereto, which are incorporated herein by this reference, embodies the entire agreement between CITY and GHAD relative to the subject matter hereof, and there are no oral agreements existing between CITY and GHAD relative to the subject matter hereof that are not expressly set forth herein and covered hereby.

8.2 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

8.3 Controlling Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

8.4 Attorney's Fees. In any proceeding between the parties hereto seeking enforcement of or attempting to construe any of the terms and provisions of this Agreement, including without limitation any litigation seeking legal, declaratory or other relief, the prevailing party in such action shall be awarded, in addition to damages, injunctive, or other relief, its reasonable costs and expenses and reasonable attorneys' fees.

8.5 Notices. Any notice required or permitted to be delivered hereunder shall be in writing and personally delivered or sent by United States mail, postage prepaid, certified or registered mail, return receipt requested; by facsimile transmission; or by Federal Express, UPS or similar nationally recognized overnight courier service. Notice shall be deemed received upon personal delivery to the party to whom the notice is directed; or, if sent by mail, two (2) Business Days following its deposit in the United States mail, postage prepaid; or, if sent by facsimile, upon transmission; or one (1) Business Day following deposit with Federal Express, UPS or similar nationally recognized overnight courier service, addressed to CITY or GHAD, as the case may be, at the address set forth below (or at such other address as CITY or GHAD may specify by notice given pursuant to this Paragraph):

If to CITY:

City of Hayward  
Attn: Public Works Director  
777 "B" Street  
Hayward, CA 94541

If to GHAD:

Hayward Geologic Hazard Abatement District  
ENGEO Incorporated, General Manager  
2010 Crow Canyon Place, Suite 250  
San Ramon, CA 94583

8.6 Business Days. The term "Business Day" as used in this Agreement shall mean any day other than: (a) a Saturday, Sunday or a public holiday in the State of California; or (b) a day on which state, federal or municipal offices are closed for the conduct of business. If the time period for the performance of any act called for under this Agreement expires on a day other than a Business Day, said act may be performed on the next succeeding Business Day.

8.7 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the

remainder of the provisions of this Agreement shall continue in full force and effect without impairment.

8.8 Time of the Essence. Time is of the essence in this Agreement.

8.9 Waiver. The waiver by either party of a breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach whether of the same or another provision of this Agreement.

8.10 Counterparts and Duplicate Originals. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by all parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. This Agreement may be executed in any number of duplicate originals, all of which shall be of equal force and effect.

8.11 Amendments in Writing. The provisions of this Agreement may not be amended or altered except by a written instrument duly executed by each of the parties hereto.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date:

**CITY:** CITY OF HAYWARD

By: \_\_\_\_\_  
Kelly McAdoo

Its: \_\_\_\_\_  
City Manager

**GHAD:** HAYWARD GEOLOGIC HAZARD ABATEMENT DISTRICT, a California district organized and existing under the laws of the State of California

By: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT A**

Map of the Property (Parcels C, D, N, O, U, V, and APN 083-075-002-15)

(see attached)

