

**THE BOARD OF DIRECTORS OF BLACKHAWK GEOLOGIC HAZARD
ABATEMENT DISTRICT**

Adopted this Resolution on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RESOLUTION NO. 2009/02 (BLACKHAWK GHAD)

SUBJECT: Approving consultant contract with Kleinfelder, Inc. to act as general manager of the Blackhawk Geologic Hazard Abatement District (GHAD).

WHEREAS, the Board of Directors desires to approve the consultant contract with Kleinfelder, Inc. to act as general manager of the Blackhawk GHAD attached hereto as Exhibit A.

The Board of Directors of the GHAD HEREBY RESOLVES THAT:

1. The GHAD Board approves the consultant contract with Kleinfelder, Inc. to act as general manager of the Blackhawk GHAD which is attached hereto as Exhibit A and incorporated herein by this reference.

2. The recitals are incorporated herein by this reference.

This Resolution shall become effective immediately upon its passage and adoption.

Exhibit A

CONSULTING SERVICES AGREEMENT

1. **Special Conditions.** These Special Conditions are incorporated below by reference.

(a) Public Agency: **Blackhawk Geological Hazard Abatement District (GHAD)**

(b) Consultant's Name & Address: Kleinfelder, Inc.
1970 Broadway, Suite 170
Oakland, CA 94612.
(510) 628-9000

(c) Project Name, Number & Location: Blackhawk GHAD, Danville, CA

(d) Effective Date: _____, 2009

(e) Payment Limit(s): Payment limit(s) shall be determined by the GHAD Board by resolution for each calendar year, and such determination shall be incorporated herein without further amendment hereto.

(f) Completion Date(s): Each task shall be completed as set forth in Appendix A.

2. **Signatures.** These signatures attest the parties' agreement hereto:

PUBLIC AGENCY

By: _____

Approved by Resolution No. 2009/02

CONSULTANT

By: _____
(Designate official capacity in the business)

By: _____
(Designate official capacity in the business)

Type of Business: Sole Proprietorship, Government Agency, Partnership or Corporation (circle one)

If Corporation, State of Incorporation: _____

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.

STATE OF CALIFORNIA)
)ss
COUNTY OF _____)

On _____, 2009, before me, _____, a notary public in and for said state, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

3. **Parties.** Effective on the above date, the above-named Public Agency and Consultant mutually agree and promise as follows:
4. **Employment.** Public Agency hereby employs Consultant, and Consultant accepts such employment, to perform the professional services described herein, upon the terms and in consideration of the payments stated herein.
5. **Scope of Service.** Scope of service shall be as described in Appendix A, attached hereto and made a part hereof by this reference.
6. **Report Disclosure Section.** Any document or written report prepared hereunder by Consultant, or a subcontractor, for Public Agency shall contain, in a separate section, the numbers and dollar amounts of this contract and all subcontracts relating to the preparation of such document or written report, provided that the payment limit specified in Sec. 1 (e) exceeds \$5,000. When multiple documents or written reports are the subject or products of this agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.
7. **Insurance.** Consultant shall, at no cost to Public Agency, obtain and maintain during the term hereof: (a) Workers' Compensation insurance pursuant to state law; (b) Professional Liability Insurance with minimum coverage of \$1,000,000 and a maximum deductible of \$ 100,000; and (c) Comprehensive General 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 of \$1,000,000 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, and naming Public Agency, its/their governing bodies, officers and employees as additional insureds. Consultant shall promptly furnish to Public Agency certificates of insurance evidencing such coverage and requiring 30 days' written notice to Public Agency of policy lapse, cancellation or material change in coverage.

8. **Payment.** Public Agency shall pay Consultant for professional services performed at the rates shown in Appendix B attached hereto, which include all overhead and incidental expenses, for which no additional compensation shall be allowed. Notwithstanding the foregoing, those incidental expenses specifically itemized in Appendix B shall be reimbursable by Public Agency to Consultant, provided that Consultant submits copies of receipts and, if applicable, a detailed mileage log to Public Agency. In no event shall the total amount paid to Consultant exceed the payment limit(s) specified in Sec. 1(e) without prior written approval of the Public Agency. Consultants billing statements shall be submitted at convenient intervals to, and approved by, the GHAD Treasurer and shall list, for each item of services, the employee categories, hours and rates. Public Agency will pay consultant in accordance with the requirements of Civil Code Section 3320 as applicable. Consultant may prepare and submit an amended updated Appendix B not more often than on a yearly basis, and if approved by Public Agency, such amended Appendix B shall be attached hereto, and shall be the applicable rates for the current calendar year.

9. **Status.** The Consultant is an independent contractor, and shall not be considered an employee of Public Agency.

10. **Time for Completion.** Unless the time is extended in writing by Public Agency, Consultant shall complete each service covered by this Agreement no later than the dates for completion set forth for such service(s) in Appendix A.

11. **Record Retention and Auditing.** Except for materials and records delivered to Public Agency, 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 Consultants receipt of the final payment for the tasks related to such materials and records under this Agreement. Upon request by Public Agency, at no additional charge, Consultant shall promptly make such records available to Public Agency, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by Public Agency, and without restriction or limitation on their use.

12. **Documentation.** Consultant shall prepare and deliver to Public Agency at no additional charge, the items described in Appendix A to document the performance of this Agreement and shall furnish to Public Agency such information as is necessary to enable Public Agency to monitor the performance of this Agreement.

13. **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 Public Agency. 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 Public Agency at no additional charge and without restriction or limitation on their use.

14. **Extra Work.** Any work or services in addition to the work or services described in Appendix A shall be performed by Consultant according to the rates or charges listed in Appendix B. In the event that no rate or

charge is listed for a particular type of extra work, Consultant shall be paid for the extra work at a rate to be mutually agreed on prior to commencement of the extra work. In no event shall Consultant be entitled to compensation for extra work unless a written authorization or change order describing the work and payment terms has been executed by Public Agency prior to the commencement of the work.

15. **Payment Retention.** Not applicable.

16. **Termination by Public Agency.** At its option, Public Agency shall have the right to terminate this Agreement at any time by written notice to Consultant, whether or not Consultant is then in default. Upon such termination, Consultant shall, without delay, deliver to Public Agency 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 the date of termination.

17. **Abandonment by Consultant.** In the event the Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the services described in this Agreement. Consultant shall, without delay, deliver to Public Agency all materials and records prepared or obtained in the performance of this Agreement, and shall be paid for the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which Public Agency incurs as a result of such cessation or abandonment.

18. **Breach.** In the event that Consultant fails to perform any of the services described in this Agreement or otherwise breaches this Agreement, Public Agency 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. Any litigation involving this Agreement or relating to the work shall be brought in Contra Costa County, and Consultant hereby waives the removal provisions of Code of Civil Procedure Section 394.

19. **Compliance with Laws.** In performing this Agreement, Consultant shall comply with all applicable laws, statutes, ordinances, rules and regulations, whether federal, state, or local in origin. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775.

20. **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 facilities to perform so long as Consultant notifies Public Agency of such subcontracting prior to execution of this Agreement. Any other purported assignment, transfer or subcontracting shall be void.

21. **Subcontracting.** All subcontracts exceeding \$25,000 in cost shall contain all of the required provisions of this contract. Consultant will pay each subconsultant in accordance with the requirements of Civil Code Section 3321 as applicable.

22. **Endorsement on Plans.** Consultant shall endorse all plans, specifications, estimates, reports and other items described in Appendix A prior to delivering them to Public Agency, and where appropriate, indicate his/her registration number.

23. **Patents and Copyrights.** The issuance of a patent or copyright to Consultant or any other person shall not affect Public Agency's rights to the materials and records prepared or obtained in the performance of this Agreement. Public Agency reserves a license to use such materials and records without restriction or limitation,

and Public Agency shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by Public Agency shall continue for a period of fifty years from the date of execution of this Agreement, unless extended by operation of law or otherwise.

24. **Indemnification.** Consultant shall indemnify, defend, save, protect, and hold harmless Public Agency, its governing body, officers, employees, representatives, and agents (“Indemnitees”) from any and all demands, losses, claims, costs, suits, liabilities, and expenses for any damage, injury, or death (collectively “Liability”) arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control and shall make good to and reimburse indemnitees for any expenditures, including reasonable attorneys’ fees and costs, the Indemnitees may make by reason of such matters and, if requested by any of the Indemnitees, shall defend any such suits at the sole cost and expense of Consultant. Consultants obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the Public Agency or any other person; provided, however, that Consultant shall not be required to indemnify Indemnitees for the proportion of liability a court determines is attributable to the negligence or willful misconduct of the Public Agency, its governing body, officers, or employees. This indemnification clause shall survive the termination or expiration of this Agreement.

25. **Heirs, Successors and Assigns.** Except as provided otherwise in Section 20 above, this Agreement shall inure to the benefit of and bind the heirs, successors, executors, personal representatives, and assigns of the parties.

26. **Public Endorsements.** Consultant shall not in its capacity as a Consultant with Public Agency publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of the Public Agency’s governing board. In its Public Agency 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 the Public Agency’s governing board. In its Public Agency 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 the Consultant’s presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Public Agency. Notwithstanding the foregoing, Consultant may express its views on products to other Consultants, the Public Agency’s governing board, its officers, or others who may be authorized by the Public Agency’s governing board or by law to receive such views.

27. **Project Personnel.** In performing the services under this Agreement, Consultant shall use the personnel listed in Appendix B, attached hereto and made a part hereof by this reference. Changes in project personnel may only be made with Public Agency’s written consent, and Consultant shall notify Public Agency in writing at least thirty (30) days in advance of any proposed change. Any person proposed as a replacement shall possess training, experience and credentials comparable to those of the person being replaced.

28. **Disadvantaged Business Enterprise (DBE) Requirements (Federal aid projects only).** Consultant shall comply with all applicable provisions of 49 CFR, Parts 23 and 26, and the County’s Disadvantaged Business Enterprise (DBE) Program, which are incorporated into this Agreement by reference. In addition, in

performing services under this Agreement, Consultant shall utilize all DBEs listed in Consultant's written response to the Public Agency's request for qualifications or request for proposal and shall pay to the listed DBEs the estimated amounts listed in Appendix 8 attached to this Agreement. The Consultant shall not substitute a listed DBE at any time or decrease the amount to be paid to a listed DBE without the advance, written consent of the Public Agency. If a listed DBE is proposed to be replaced, Consultant shall make a good faith effort to replace the original DBE with another DBE and shall submit to Public Agency written documentation of such effort.

29. **Federal Cost Principles and Procedures (Federal aid projects only)**. Consultant shall comply with the following provisions, which are incorporated into this Agreement by reference: (a) the cost principles for allow ability of individual items of costs set forth in 48 CFR, Chapter 1, Part 31; (b) the administrative procedures set forth in 49 CFR, Part 18; and (c) the administrative procedures for non-profit organizations set forth in OMS Circular A-11 0, if applicable to Consultant. In the event that payment is made to Consultant for any costs that are determined by subsequent audit to be unallowable under 48 CFR, Chapter 1, Part 31, Consultant shall refund the payment to Public Agency within 30 days of written request from Public Agency. Should Consultant fail to do so, and should the Public Agency file legal action to recover the refund, Consultant shall reimburse the Public Agency for all attorneys' fees, costs, and other expenses incurred by Public Agency in connection with such action.

30. **Amendment**. This Agreement shall be subject to amendment only through a written amendment executed by both parties (and approval of the GHAD Board).