

## EXHIBIT B

## **CONSULTING SERVICES AGREEMENT GHAD MANAGER CALIFORNIA TRADEWINDS GHAD**

This Consulting Agreement (“**Agreement**”) is by and between the California Tradewinds Geological Hazard Abatement District, a public agency of the State of California (“**Public Agency**”) and Sands Construction Company, Inc. (“**Consultant**”) for Consultant to provide services to the GHAD as more particularly set forth herein. This Agreement is dated October 7, 2014 for reference purposes only.

In consideration of the mutual covenants, conditions and agreements herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Scope of Services.** The services to be performed by Consultant pursuant to this Agreement are the services of GHAD Manager and Clerk and are more particularly set forth in Appendix A, attached hereto and made a part hereof by this reference.
2. **Payment.** Public Agency shall pay Consultant for professional services performed at the rates shown in Appendix B attached hereto and made part hereof by this reference. Consultant’s rates 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 Appendix B without prior written approval of the Public Agency. Consultant's billing statements shall be submitted no more than one invoice per calendar month to the treasurer of Public Agency for work performed in accordance with this Agreement. The 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 treasurer of Public Agency if they are in accordance with the terms and conditions of this Agreement. Public Agency's payment for the services performed by Consultant under this Agreement shall be subject to review, determination of satisfaction, and approval of the GHAD Treasurer.
3. **Payment Amounts Updated Yearly.** Consultant may prepare and submit an amended updated Appendix B to Public Agency with updated rates and payment limits 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. Any updated Appendix B adopted by the Board of Public Agency by resolution shall be incorporated herein without further amendment hereto. In the event an updated Appendix B is not approved by the Board in any calendar year, the most recent Board approved Appendix B shall be the applicable yearly payment limit and compensation rates for any services performed under this Agreement.
4. **Industry Standards.** The 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 the Public Agency is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

5. **Term of Agreement.** This Agreement shall be effective (“**Effective Date**”) on the later of the date that this Agreement is signed by Consultant and the date it is approved by the GHAD Board for the Public Agency. This Agreement shall remain in full force and effect until terminated by either Consultant or the Public Agency in accordance with Sections 6 and 7 below.

6. **Termination by Public Agency.** The Public Agency may, at its sole option and for convenience, at any time, whether or not Consultant is in default, terminate this Agreement or all or any portion of the services provided by Consultant under this Agreement, by giving written notice of such termination to Consultant. The termination of services under the Agreement shall be effective upon receipt of such notice by Consultant, or upon such date specified in the notice from Public Agency. Upon such termination, 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, whether or not Consultant is in default, by giving thirty (30) days prior written notice to Public Agency. Such thirty (30) day period shall commence on receipt of the notice by Public Agency and this Agreement shall terminate at the end of such thirty (30) day period (or such longer time as specified in the notice from Consultant). Notwithstanding the foregoing, or anything herein to the contrary, Consultant shall remain obligated during such thirty (30) day 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 and the Plan of Control for the California Tradewinds GHAD. Consultant shall also remain obligated to work in good faith to transition the performance of services to any new consultant retained by Public Agency, including but not limited providing all materials and records and meeting with such new consultant to transition such services. During such thirty (30) day period Consultant shall not have the right to enter into any new agreements, contracts, obligations or commit any future financial resources of Public Agency without the prior written approval of the GHAD attorney unless such actions are necessary to protect property within the GHAD from imminent harm. Upon termination pursuant to this Section 7, 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 and including the date of termination.

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

9. **Right to Terminate for Default.** In addition to Public Agency’s right to terminate for convenience, if the Consultant fails to perform or adequately perform any obligation required by this Agreement, the Consultant’s failure constitutes a default. If the Consultant fails to satisfactorily cure a default within ten calendar days of receiving written notice from the Public Agency specifying the nature of the default, the Public Agency may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. If the Consultant files a voluntary petition in bankruptcy, is adjudicated bankruptcy

or makes a general assignment for the benefit of creditors, the Public Agency may at its option and without further notice to or demand upon the Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant. The rights and remedies of the Public Agency enumerated in this Section 9 are cumulative and shall not limit, waive, or deny any of the Public Agency'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 the Public Agency against the Consultant.

10. **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) 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 \$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 California Tradewinds GHAD and their boards, officers and employees as additional insureds. Such insurance shall remain in full force and effect during the term of this Agreement. 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.

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

12. **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, if any, set forth for such service(s) in Appendix A.

13. **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 Consultant's 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.

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 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.

15. **Extra Work.** If Public Agency requires any work or services in addition to the work or services described in Appendix A, such extra work shall be requested by Public Agency in writing and if agreed to by Consultant 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.

16. **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.

17. **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.

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 facilities to perform so long as Consultant notifies Public Agency of such subcontracting prior to execution of such subcontracts and such subcontracts comply with Section 19 below and are approved by legal counsel for Public Agency. Any other purported assignment, transfer or sub-contracting shall be void.

19. **Subcontractor Contract**. All contracts entered into between Consultant and a subcontractor shall provide as follows:

a. The Consultant is obligated to pay the subcontractor, for Consultant approved invoice amounts, out of amounts paid by the Public Agency to the Consultant, not later than fourteen working days from the Consultant's receipt of payment from the Public Agency. Nothing in this paragraph shall be construed to impair the right of the Consultant and any subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

b. In the case of a deficiency in the performance of subcontractor services, the Consultant shall notify the Public Agency in writing of any withholding of payment to the subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the subcontractor must take in order to receive the amount withheld. Once the subcontractor corrects the deficiency, the Consultant shall pay the subcontractor the amount withheld within fourteen working days of the Consultants receipt of the Public Agency's next payment.

c. In any dispute between the Consultant and subcontractor the Public Agency shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend, indemnify, protect, and hold harmless the Public Agency in any dispute between Consultant and subcontractor should the Public Agency be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this Section. Each subcontractor shall be required 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



this Agreement. Each subcontractor shall obtain, and Consultant shall require the Subcontractor to obtain, all policies described in Section 10.

20. **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.

21. **Patents and Copyrights.** The issuance of a patent or copyright to Consultant or any other person shall not affect Public Agency's right 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.

22. **Indemnification.** Consultant shall indemnify and hold harmless Public Agency, and its boards, officers and employees from any and all expenses, including reasonable attorneys fees, claims, demands, costs, liabilities, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding determined by a court of competent jurisdiction to have arisen from or to be connected with Consultant's gross negligence, breach of this Agreement or willful misconduct, excluding any claims to the extent resulting from or arising out of Public Agency'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 Public Agency promptly in writing, and Public Agency shall have the right to conduct the defense of such claim or lawsuit.

23. **Heirs, Successors and Assigns.** Except as provided otherwise in Section 18 above, this Agreement shall inure to the benefit of and bind the heirs, successors, executors, personal representative and assigns of the parties.

24. **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.

25. **Project Personnel.** In performing the services under this Agreement, Consultant shall use the personnel listed in Appendix C, 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 necessary to perform the tasks of such position.

26. **Amendment.** This Agreement shall be subject to amendment only through written amendment approved in advance by the Board of Public Agency and legal counsel.

27. **Notices.** In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is sent 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. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the Public Agency for purposes of this Agreement only shall be addressed to:

**To Consultant:**

Attn: Michael D. Sands, GHAD Manager  
Sands Construction Company, Inc.  
4125 Blackhawk Plaza Circle, Suite 175  
Danville CA 94506  
Facsimile: (925) 964-0825

**Public Agency:**

Attn: Patricia E. Curtin, GHAD Attorney  
c/o Wendel Rosen Black & Dean, LLP  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607  
Facsimile: (510) 808-4729

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

29. **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.

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

31. **Integration.** This Agreement and the exhibits and references incorporated into this Agreement 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.

32. **No Waiver.** No failure of either the Public Agency 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.

33. **Conflict of Interest.** The 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.

34. **Use of Subcontractors.** The 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.

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

IN WITNESS WHEREOF, this Agreement is executed by the California Tradewinds GHAD pursuant to Resolution No. 2014/02, and by the Consultant.

**PUBLIC AGENCY:**

CALIFORNIA TRADEWINDS GHAD

By: \_\_\_\_\_  
Chair of the GHAD Board

Approved by Resolution No. 2014/02

Dated: \_\_\_\_\_

Approved as to form and legality  
on \_\_\_\_\_, 2014.

By: \_\_\_\_\_  
Patricia E. Curtin  
GHAD Attorney

**CONSULTANT:**

SANDS CONSTRUCTION COMPANY, INC.

By: \_\_\_\_\_  
Michael D. Sands

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Susan C. Sands

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.



STATE OF CALIFORNIA )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2014, 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.

STATE OF CALIFORNIA )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2014, 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.

**California Tradewinds Geologic Hazard Abatement GHAD**  
**Appendix “A”**  
**Scope of Services**  
**Sands Construction Company, Inc.**

CONSULTANT shall be responsible for the day-to-day management of the California Tradewinds Geologic Hazard Abatement GHAD (GHAD) in accordance with all applicable state and federal statutes; the GHAD’s adopted Plan of Control and all adopted GHAD Board of Directors policies and guidelines. In furtherance of this contract, GHAD 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 Plan of Control.

CONSULTANT shall secure these services on behalf of the GHAD in accordance with the Board of Directors adopted procedures.

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 Board of Directors in a timely manner:

1. Prior to April 30 of every year, CONSULTANT shall develop and submit to the Board of Directors 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.
2. CONSULTANT shall develop and submit **Quarterly** and **Year-To-Date Expense Reports** comparing actual expenditures to the approved budgets.
3. CONSULTANT shall develop an **Annual Report** on the activities of the California Tradewinds 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:
  - a. The Plan of Control for the GHAD.
  - b. The status of the GHAD’s financial reserves.
  - c. The GHAD’s Communications Policy.
  - d. The GHAD's Maintenance and Operations Plan.

CONSULTANT shall prepare and maintain the following:

1. An **Annual Work Program**, to include all major repair projects and significant incidents and special projects.
2. A **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.

CONSULTANT shall develop and maintain a **Communications Plan** for the GHAD to insure that all residents, merchants, property owners, local homeowners associations and others interested in the GHAD are provided updates and status information on the activities of the GHAD. Said communications plan shall include, at a minimum, an emergency response protocol, an incident response protocol and a community education and outreach program (newsletters, brochures, etc.).

CONSULTANT may maintain a record of all incident responses plotted on the GHAD **Geographic Information System (GIS)** for purposes of evaluating future risk.

CONSULTANT may maintain an active role in the **California Association of GHAD Managers**.

**California Tradewinds Geologic Hazard Abatement District**  
**Appendix "B"**  
**Fee Schedule**  
**Sands Construction Company, Inc.**  
**2014**

Code	Title	Hr. Rate
1.001	General Manager	175.00
2.001	Administration. Manager	85.50
3.001	Construction Services Manager	120.00
3.003	Construction Services Technician	95.00
7.002	Network Administrator	100.00
2.004	Word Processing/Administrative Assistant	75.00

**Maximum Annual Payment Limit                      \$ 750.00**  
**(October 16, 2014-June 30, 2015)**

1. Direct costs for personal work related expenses and equipment such as computers, vehicles and mileage, weather gear, meals or similar personal expenses are included in the hourly rates.
2. Direct costs associated with the operational expenses of the California Tradewinds 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 California Tradewinds GHAD. Memberships to Associations, Insurance Premiums, etc. shall be billed directly to the GHAD under separate Contract provisions.
3. All outside services, materials and supplies shall be billed at direct cost without markup.

**California Tradewinds Geologic Hazard Abatement District**  
**Appendix “C”**  
**Project Personnel**  
**Sands Construction Company, Inc.**  
**2014**

Name	Title	Hr. Rate
Michael D. Sands	General Manager	175.00
Kaitlin Sands	Administration. Manager	85.50
Mark E. Simpson	Construction Services Manager	120.00
TBD	Construction Services Technician	95.00
TBD	Network Administrator	100.00
TBD	Word Processing/Administrative Assistant	75.00

1. Project Personnel changes will be fully compliant with Contract condition 25. “Project Personnel”.