

**CONSULTING SERVICES AGREEMENT BETWEEN
SANDS CONSTRUCTION COMPANY, INC AND
THE CANYON LAKES GEOLOGIC HAZARD ABATEMENT DISTRICT
FOR GHAD MANAGER**

This Consulting Services Agreement (“**Agreement**”) is between the Canyon Lakes Geological Hazard Abatement District, a political subdivision of the State of California (“**GHAD**”), and Sands Construction Company, Inc. (“**Consultant**”) for services of Manager and Clerk for the GHAD, in accordance with Public Resources Code Sections 26579 and 26600 governing GHAD contracting requirements. This Agreement supersedes the Consulting Services Agreement Between Sands Construction Company, Inc and the GHAD for Interim GHAD Manager and Clerk Services adopted pursuant to GHAD Resolution 2011/01 on March 15, 2011 (“**GHAD Manager Agreement**”) and Consulting Services Agreement Between Sands Construction Company, Inc and the GHAD for Operations Manager adopted pursuant to GHAD Resolution 2011/04 on May 10, 2011 (“**Operations Manager Agreement**”). This Agreement combines and reflects both the managerial duties and the operational duties that were previously set forth in two separate agreements, the GHAD Manager Agreement and Operations Manager Agreement. Pursuant to Resolution No. 2023/01, the GHAD Manager no longer serves as GHAD Clerk; the GHAD Attorney serves as GHAD Clerk.

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 Bis 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 only shall be addressed to:

To Consultant:

Attn: Michael D. Sands, GHAD Manager
Sands Construction Company, Inc.
959 Mountain View Drive
Lafayette, CA 94549

To GHAD:

Attn: Patricia E. Curtin, GHAD Attorney/Clerk
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.