

**LEONA QUARRY
GEOLOGIC HAZARD ABATEMENT DISTRICT**

TO: Leona Quarry GHAD Board of Directors

FROM: GHAD Manager
GHAD Attorney/Clerk

BOARD MEETING DATE: July 18, 2023

SUBJECT: Acknowledging Change in Law Firm Name to Fennemore Wendel Serving as GHAD Attorney and Clerk and Approving Contract for Services – Resolution No. 2023/03

RECOMMENDATION(S):

Staff recommends the GHAD Board adopt Resolution 2023/03 acknowledging a change in the law firm name to Fennemore Wendel serving as GHAD Attorney and Clerk and approve the contract for legal and clerk services.

SUMMARY:

In June of 2022, the former Wendel Rosen law firm, which was serving as GHAD Attorney and Clerk, merged with the law firm of Fennemore and became Fennemore Wendel. It is recommended that the GHAD Board affirm the continued legal and clerk services of the attorneys now at Fennemore Wendel.

BACKGROUND AND DISCUSSION:

Pursuant to Resolution No. 1 adopted on March 15, 2005, the GHAD Board appointed Patricia Curtin to serve as GHAD Attorney and authorized the GHAD Treasurer/Clerk to negotiate a contract for legal services with the GHAD Attorney.

On June 17, 2017, pursuant to Resolution No. 16, the GHAD Board assigned the GHAD Clerk responsibilities to the GHAD Attorney.

In June 2022, Wendel Rosen combined with the law firm of Fennemore and became Fennemore Wendel. The attorneys who were at Wendel Rosen serving the GHAD as legal counsel and clerk are now with Fennemore Wendel.

It is recommended that the GHAD Board affirm the continued legal and clerk services of the attorneys now at Fennemore Wendel by the adoption of Resolution No 2023/03 and approve the contract for services in Attachment 1.

FISCAL IMPACT:

The contract for services are funded entirely through the GHAD budget.

Prepared by: The GHAD Manager and GHAD Attorney

Recommended by: The GHAD Manager

ATTACHMENTS:

A. Resolution No. 2023/03

**THE BOARD OF DIRECTORS OF LEONA QUARRY GEOLOGIC HAZARD
ABATEMENT DISTRICT**

RESOLUTION NO. 2023/03

**RESOLUTION ACKNOWLEDGING CHANGE IN LAW FIRM NAME TO
FENNEMORE WENDEL SERVING AS GHAD ATTORNEY AND CLERK AND
APPROVING CONTRACT FOR SERVICES**

WHEREAS, on December 3, 2002, the Oakland City Council adopted Resolution No. 77545 approving and ordering formation of the Leona Quarry Geologic Abatement District (GHAD) and appointed itself to act as the GHAD Board of Directors (GHAD Board).

WHEREAS, on March 15, 2005, pursuant to Resolution No. 1, the GHAD Board appointed Patricia Curtin to serve as GHAD Attorney and authorized the GHAD Treasurer/Clerk to negotiate a contract for legal services with the GHAD Attorney.

WHEREAS, on June 17, 2017, pursuant to Resolution No. 16, the GHAD Board assigned the GHAD Clerk responsibilities to the GHAD Attorney.

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

WHEREAS, Patricia Curtin and the attorneys who were at Wendel Rosen serving the GHAD are now with Fennemore Wendel.

WHEREAS, the GHAD Board desires to affirm the continued legal and clerk services of the attorneys now at Fennemore Wendel for the GHAD and to approve the contract for services in Attachment 1.

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 Attorney.
2. Approves, by passing this Resolution, the contract for legal and clerk services with Fennemore Wendel in Attachment 1.

3. Authorizes the GHAD Attorney 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 on any and all GHAD matters and may utilize the GHAD Attorney beyond those services performed directly with GHAD Manager.

4. Declares the recitals are incorporated herein by this reference.

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

OAKLAND, CALIFORNIA, July 18, 2023

PASSED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

Attest: _____

Attachment 1 - Contract for Legal and Clerk Services with Fennemore Wendel

ATTACHMENT 1

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

This Consulting Services Agreement (“**Agreement**”) is between the Leona Quarry 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
Leona Quarry GHAD
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

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. 2023/03 approved on June 20, 2023, and by Consultant.

GHAD

**CONSULTANT/GHAD
ATTORNEY/CLERK:**

LEONA QUARRY GHAD

FENNEMORE WENDEL

Approved by Resolution No. 2023-01

By: _____
Patricia E. Curtin

Dated: June 20, 2023

APPENDIX A

SCOPE OF SERVICES

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

The GHAD Attorney role includes providing legal advice to the Leona Quarry GHAD in accordance with GHAD Law, the GHAD Plan of Control, and policies and guidelines that may be adopted by the Leona Quarry 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.