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Abatement District
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ORANGE**

9 **SANTIAGO GEOLOGIC HAZARD**
10 **ABATEMENT DISTRICT**, a political
subdivision of the state of California,

11 Petitioner,

12 v.

13 **CITY OF ANAHEIM**, a California
14 charter city,

15 Respondent.
16

Case No. 30-2021-01203933-CU-PT-CJC

PETITION TO:

**1. COMPEL ARBITRATION OF
CLAIM FOR DECLARATORY
RELIEF AND ALL OTHER RELATED
CLAIMS**

2. APPOINT ARBITRATOR

**Code of Civil Procedure §§ 1281.2,
1281.6, 1290**

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18 Petitioner Santiago Geologic Hazard Abatement District (“SGHAD”) files this Petition to
19 Compel Arbitration of Claim for Declaratory Relief and All Other Related Claims and to Appoint
20 Arbitrator against Respondent City of Anaheim (“Anaheim”) and alleges as follows:

21 **INTRODUCTION**

22 1. Disputes have arisen concerning the interpretation and enforcement of an “Agreement
23 Between the City of Anaheim and the Santiago Geologic Hazard Abatement District” executed on or
24 about June 10, 1999 (“Agreement”). Anaheim and SGHAD entered into the Agreement in
25 conjunction with the settlement of dozens of lawsuits residential property owners had brought against
26 Anaheim over damages suffered as a result of a 1993 landslide (the “Santiago Landslide”). SGHAD
27 is a political subdivision of the state that Anaheim formed in furtherance of the settlements.

28 2. Prior to the Agreement, Anaheim had constructed and was operating dewatering

1 facilities designed to lower elevated groundwater levels, stabilize the earth movement, and monitor
2 groundwater levels and movement. The Agreement required Anaheim to transfer the dewatering
3 facilities to SGHAD and contribute \$3.5 million for its operation. In turn, SGHAD agreed to use the
4 funds to maintain and operate the dewatering facilities.

5 3. SGHAD has successfully maintained and operated the dewatering facilities since 1999.
6 But the \$3.5 million fund is being depleted each year. SGHAD has available to it, a single mechanism
7 to generate revenue to fund operations: a special assessment imposed on property owners. But special
8 assessments require majority approval of the property owners. In 2019, SGHAD proposed a special
9 assessment and conducted an election as required by our state Constitution, but property owners
10 overwhelmingly rejected it.

11 4. The costs of operating the dewatering facilities is approximately \$265,000 per year and
12 that does not even count the costs of replacing aging-out infrastructure or major repairs. SGHAD
13 estimates that its fund balance will be \$864,449 on June 30, 2021. Thus, its ability to operate and
14 maintain the dewatering facilities will cease at some point over the next few years.

15 5. SGHAD seeks a declaratory judgment that upon depletion of its funds, it is excused
16 from any contractual obligation to maintain, operate, and repair the dewatering facilities under the
17 doctrines of impossibility, impracticability, and/or frustration of purpose. Alternatively, it seeks a
18 declaratory judgment that it has no such obligation upon depletion of the funds. Hundreds of
19 residential properties and public property owned by Anaheim are at risk. Without active operation and
20 management of the dewatering facilities, catastrophic consequences will follow. A declaratory
21 judgment will put all interested parties on notice that they cannot rely on SGHAD to provide these
22 services going forward.

23 6. As described further herein, the disputes are subject to an arbitration provision in the
24 Agreement. SGHAD demanded that Anaheim submit the disputes to arbitration, but it has refused.
25 By this Petition, SGHAD requests that the Court order Anaheim to arbitrate the disputes and appoint
26 an arbitrator pursuant to Code of Civil Procedure sections 1281.2, 1281.6, and 1290.

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1 **PARTIES**

2 7. Petitioner Santiago Geologic Hazard Abatement District was formed pursuant to Public
3 Resources Code section 26558, et seq. It is a political subdivision of the state. (Pub. Resources Code
4 § 26570.) It is governed by a five-person Board of Directors (“Board”). It may sue and be sued.
5 (Pub. Resources Code § 26574, subd. (a).)

6 8. Respondent City of Anaheim is a charter city located in Orange County.

7 **JURISDICTION AND VENUE**

8 9. Jurisdiction is proper in the Superior Court of the State of California for the County of
9 Orange pursuant to section 410.10 of the Code of Civil Procedure. Venue is proper in the County of
10 Orange pursuant to section 1292 of the Code of Civil Procedure because the Agreement was made in,
11 and was to be performed, in the County of Orange.

12 **GENERAL ALLEGATIONS**

13 ***The Landslide***

14 10. In January 1993, a landslide activated in an area of Anaheim Hills (part of the City of
15 Anaheim) forcing dozens of residential property owners to evacuate their homes. Many never
16 returned and others allowed banks to foreclose rather than make mortgage payments on their damaged
17 homes. The landslide was the subject of local, state, and federal disaster declarations.

18 11. In response to the landslide, Anaheim and its consultants installed dewatering facilities,
19 including but not limited to horizontal wells, vertical wells, pumps, and associated equipment on
20 public and private properties in the vicinity of the earth movement. The intent was to lower
21 groundwater levels and stabilize the earth movement. Anaheim also repaired damage to public
22 improvements, such as roadways, water delivery systems, sidewalks, and sewers.

23 12. In 1996, Anaheim’s geological consultants, Eberhart & Stone, Inc. issued a 98-page
24 report that documented the conditions and incidents associated with the “Santiago Landslide,” a
25 roughly 25-acre area. The report made recommendations as to mitigate the landslide. It also
26 recommended “[t]he implementation of a Geologic Hazard Abatement District (GHAD) [as] a means
27 of raising the necessary funds for maintaining, monitoring, and managing the dewatering system for
28 the benefit of all properties threatened by renewed landslide movement.”

1 ***The Lawsuits and Delmonico Settlement***

2 13. Following the Santiago Landslide, dozens of property owners filed lawsuits against
3 Anaheim for inverse condemnation, negligence, nuisance, dangerous condition of property, failure to
4 discharge mandatory duty, strict products liability, and fraudulent concealment. In 1995, the City filed
5 a cross-claim against the property owners for their own acts that allegedly contributed to the landslide
6 and for express indemnity arising from agreements that property developers had allegedly executed.
7 The cross-claim also named as ROE Defendants, unidentified insurers of the property owners. The
8 cases were consolidated as *Delmonico v. City of Anaheim* (“Delmonico Lawsuit”).

9 14. The Delmonico Lawsuit was pending for years. The court appointed a neutral
10 geologist to opine on the area of the earth movement. In 1995, the City settled with insurers in the
11 amount of \$3 million “for use towards the resolution of the claims asserted by the [Delmonico]
12 plaintiffs.” The settlement provided that the funds could not be released until a global resolution of
13 the Delmonico Lawsuit.

14 15. In early 1999, a global settlement of the Delmonico Lawsuit was proposed under which
15 Anaheim would form a geologic hazard abatement district to which it would transfer responsibility of
16 the operation and maintenance of the dewatering facilities. Anaheim would also fund the district with
17 \$3.5 million.

18 16. On February 23, 1999, in anticipation of the proposed global settlement, Anaheim’s
19 City Council passed Resolution No. 99R-31 which initiated proceedings to form a geologic hazard
20 abatement district pursuant to Public Resources Code section 26500, et seq. Resolution No. 99R-31
21 stated that City Council had been presented with and had reviewed a plan of control, as required by
22 Public Resources Code section 26558. The plan it had reviewed is titled “Plan of Control Prepared for
23 Proposed Santiago Geologic Hazard Abatement District” (“Plan of Control”).

24 17. On March 16, 1999, the City Council, after finding that it had not received written
25 objections from property owners representing greater than 50 percent of the assessed valuation, passed
26 Resolution No. 99R-50 approving the formation of the SGHAD and appointing an initial board of
27 directors.

28 18. On March 2, 1999 (between the adoption of the two above-referenced resolutions), the

1 City and the *Delmonico* plaintiffs entered into a global settlement agreement (“Delmonico
2 Agreement”). The Delmonico Agreement required the City to pay \$15.5 million, which included a
3 \$5.5 million contribution from other parties, inclusive of the \$3 million payment from insurers.

4 Paragraph I.D of the Delmonico Agreement states:

5 *This Agreement shall be further conditioned on the following:*

6 *1. The GHAD [geologic hazard abatement district] and its board are approved not*
7 *later than March 23, 1999.*

8 *2. The GHAD enters into a contract with the City, no later than April 30, 1999,*
9 *accepting ownership, maintenance and operation responsibilities for the Dewatering*
10 *System.*

11 19. Paragraph I.E. of the Delmonico Agreement required the City to pay \$12 million of the
12 \$15.5 million directly to the plaintiff property owners. The balance (\$3.5 million) was to “be paid to
13 the GHAD, if approved, providing the GHAD enters into the contract with the City referred to herein
14 relating to the Dewatering System by April 30, 1999. If the GHAD is not approved or if the GHAD
15 does not enter into the contract with the City by April 30, 1999, the Agreement shall have no further
16 force or effect and neither the Settlement Distribution nor the GHAD Distribution shall be made,
17 unless the City agrees to waive the GHAD conditions.”

18 ***The Anaheim-SGHAD Agreement***

19 20. As contemplated by the Delmonico Agreement, on or about June 10, 1999, Anaheim
20 and SGHAD entered in an “Agreement Between the City of Anaheim and the Santiago Geologic
21 Hazard Abatement District” (“Agreement”). Attached hereto as **Exhibit A** is a true and correct copy
22 of the Agreement.

23 21. Under the Agreement, Anaheim (a) transferred and assigned all rights and interests that
24 it held in specified Dewatering Facilities, (b) provided SGHAD access to such facilities, and (c)
25 transferred \$3.5 million to SGHAD for the purpose of construction, acquisition, operation,
26 maintenance, and repair of dewatering facilities and for the purpose of monitoring, abating and/or
27 stabilizing the Santiago Landslide, *inter alia*. (See Ex. A, ¶¶ 1,3 4, 5.)

28 22. SGHAD’s obligation under the Agreement was to “assume sole and total responsibility
for all ownership, control, operational, maintenance, and repair responsibilities relating to the

1 Dewatering Facilities.” (*Id.* at ¶ 6.) Specifically, the Agreement provides that “[t]he District shall
2 operate, maintain, and repair all or part of the Dewatering Facilities, as well as any additional new or
3 replacement facilities the District may construct or install, in a manner within its discretion which will
4 control groundwater levels to prevent reactivation and/or to abate movement of the Santiago
5 Landslide.” (*Ibid.*)

6 ***SGHAD’s Operations to Date***

7 23. The Dewatering Facilities specified in the Agreement include:

- 8 • 36 pumped, standby, and abandoned vertical dewatering wells as identified as DW-1
9 through DW-23 and DW 25- DW-37 in the Plan of Control (active dewatering wells)
- 10 • 87 horizontal dewatering wells (passive dewatering wells)
- 11 • 28 open-tube stand-pipe piezometers
- 12 • 5 multi-point piezometers
- 13 • 10 inclinometer casings

14 (See Agreement, Ex. A.) The piezometers monitor the depth of groundwater. Inclinometers measure
15 displacements in ground and in structures that lie below ground level (e.g. retaining walls) in relation
16 to a baseline reading.

17 24. The Plan of Control states:

18 *The objective is to achieve area groundwater elevations no higher than those recorded*
19 *for October 5, 1994 each and every year at the onset (October 15) of the seasonal rain-*
20 *year.*

21 The Plan of Control provides that a minimum of three entities need to provide technical and
22 contractual services on behalf of SGHAD: (1) a primary geologic/geotechnical consultant to conduct
23 monitoring of water elevations, perform inclinometer surveys, compile pump discharge volumes, and
24 report and analyze findings, (2) pump contractor to service pumps, monitor performance and report to
25 primary consultant, and (3) review geologic/geotechnical consultant to assist SGHAD in reviewing
26 reports and activities.

27 25. SGHAD has successfully operated, maintained, and repaired the Dewatering Facilities
28 in accordance with the Plan of Control, and as required by the Agreement. It presently engages two

1 consultants: ENGEIO Incorporated (“ENGEIO”) and Charles King Company (“Charles King”).
2 ENGEIO acts as the primary geologic/geotechnical consultant and liaison to SGHAD, and acts as the
3 day-to-day manager, retaining other consultants as needed. It monitors and maintains measurement
4 devices, such as piezometers and inclinometers, and evaluates and reports system data to SGHAD.
5 Charles King maintains and repairs the dewatering wells and related equipment like pumps and
6 electric systems, and obtains and reports water levels of, and volumes pumped from, wells.

7 26. SGHAD’s Fiscal Year (“FY”) 2020/21 Budget was \$266,646. It consisted of the
8 following projected expenses:

9	Scheduled Monitoring and Analysis Activities	\$ 42,300
10	Maintenance and Operations	\$172,500
11		
12	Administration and Accounting (SGHAD Manager)	\$ 27,000
13	Administration and Accounting (Outside Professional Services)	\$ 23,846
14		
15		

16 27. The FY 2020/21 Budget notes that “[w]hile it appears that there are significant well
17 maintenance and repair items that have been deferred, to help maintain the GHAD account balance
18 and allow response to critical failures that may occur, these items are not funded in the FY 2020/21
19 budget.” SGHAD has, in fact, deferred maintenance which creates significant financial burdens in the
20 future.

21 28. The FY 2020/21 Budget estimates a fund balance of \$864,449 on June 30, 2021. It
22 also estimates that FY 2023/24 will be the final year in which it will have sufficient funds by which to
23 operate, maintain, and repair the Dewatering Facilities. And this does not take into account
24 expenditures for critical well failures. Wells have a lifespan of 30-50 years. As most were
25 constructed in the mid-1990’s, they are approaching their end-of-life.

26 ***SGHAD’s Lack of Funding Sources***

27 29. SGHAD invests its fund balance in certificates of deposit and money market accounts
28 that generate nominal returns. These nominal returns have represented its sole source of revenue.

1 30. Public Resources Code section 26650 authorizes SGHAD to levy and collect
2 assessments to pay for the cost and expenses of maintenance and operation of improvements.
3 Pursuant to Public Resources Code section 26587, SGHAD may fund the costs of improvements via
4 the Improvement Act of 1911 (commencing with Section 5000 of the Streets and Highways Code) or
5 the Municipal Improvement Act of 1913 (commencing with Section 10000 of the Streets and
6 Highways Code) or the Improvement Bond Act of 1915 (commencing with Section 8500 of the
7 Streets and Highways Code).

8 31. In order to fund such costs or improvements as authorized by Public Resources Code
9 section 26650, or under each of the foregoing acts, SGHAD must levy special assessments against
10 property owners. Special assessments are subject to procedures set forth in our state Constitution.
11 Specifically, article XIII D, section 4, subdivision (d) requires a local agency proposing an assessment
12 to mail ballots to each property owner. Subdivision (e) provides each property owner the right to
13 protest the assessment according to the proportional financial obligation of the affected property. If
14 ballots submitted in opposition to the assessment exceed the ballot submitted in favor, the local agency
15 may not impose the assessment.

16 32. In 2019, SGHAD endeavored to pass an annual \$923 per parcel special assessment on
17 303 properties within its boundaries. As required by the California Constitution, SGHAD retained a
18 registered professional engineer (ENGEO) to prepare a detailed engineer’s report to support the
19 assessment. The engineer’s report identified the cost of major well reconditioning or replacements at
20 \$200,000 each and assumed such a replacement would occur once every 5 years. It also projected
21 that, without the assessment, SGHAD’s fund balance would be \$338,849 by the end of FY 2023/24.

22 33. On January 31, 2019, the Board passed Resolution No. 2019/03: “A Resolution of
23 Intention to Order an Assessment for the Santiago Geologic Hazard Abatement District and Set a
24 Public Hearing for March 28, 2019, to Consider the Proposed Assessment and Protests Thereto.”
25 Resolution No. 2019/03 directed SGHAD’s manager (ENGEO) to mail a “Notice of Adoption of
26 Resolution, Proposed Assessment, and Public Hearing” to property owners. It also stated ballots
27 would be tabulated at the March 28, 2019 public hearing.

28 34. In connection with the proposed assessment, SGHAD conducted extensive outreach to

1 property owners, including workshops, mailings, flyers, face-to-face meetings and a website.

2 35. At the March 28, 2019 public hearing, the ballots were tabulated. Of the 177 ballots
3 received, 136 were against, and 41 were for the assessment. In other words, nearly 77% of property
4 owners voted against it. The costs associated with the failed assessment was approximately \$25,000.

5 36. Public Resources Code section 26593 provides that SGHAD is authorized to borrow
6 money. But without any revenue stream to repay it, it is not possible to obtain loans. Nor is SGHAD
7 aware of any available assistance from other private or public sources. (Pub. Resources Code §
8 26591.)

9 37. On March 6, 2020, representatives of SGHAD met with Anaheim City Councilmember
10 Trevor O’Neil and his aide Justin Glover. At the meeting, SGHAD raised the same issues referenced
11 herein, i.e., SGHAD will run out of funds to the detriment of public and private property and was
12 unable to obtain property owner approval to levy assessments. It asked that Anaheim contribute funds
13 in order to sustain SGHAD’s operations. O’Neil and Glover suggested that SGHAD consider a bond.
14 But a bond is not possible without a repayment mechanism as discussed above. A few weeks after the
15 meeting, Glover reported that O’Neil would not recommend providing any financial assistance to
16 SGHAD.

17 38. It is certain that SGHAD **will** run out of funds to sustain the maintenance, operation,
18 and repair of the Dewatering Facilities. The timeline will depend, in part, on the need to address
19 major repair events and well failures. Once such operations cease, it is certain that the Santiago
20 Landslide will reactivate causing a catastrophic event for property owners and Anaheim. The
21 Dewatering Facilities protect the public and private property worth hundreds of millions of dollars.
22 And landslides can injure or kill people as well. For over twenty years, SGHAD has safeguarded
23 property and protected the public through its prudent and professional management and operation of
24 the Dewatering Facilities. At the time the parties entered the Agreement, they assumed SGHAD
25 would be able to levy assessments to sustain its operations. SGHAD sought to ensure its continued
26 operation by seeking an assessment two years ago, which, despite its best efforts, failed. It has no
27 options going forward.

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ARBITRABILITY

39. Section 7 of the Agreement provides:

Any disputes between the City and the District concerning the interpretation or enforcement of this Agreement shall be resolved through binding arbitration between the parties utilizing a mutually-agreed upon arbitrator. The arbitration proceeding may be commenced by either party by service of a notice of intent to arbitrate. The arbitration shall be conducted on an agreed-upon date not more than three months following service of such notice. It is specifically agreed that in addition to any other available remedies, the arbitrator may order specific performance of this Agreement. Judgment on the arbitration proceeding may be entered in any court of competent jurisdiction.

(See Ex. A, § 7.)

40. On May 7, 2021, counsel for SGHAD transmitted a letter to Anaheim’s City Clerk Theresa Bass with a cc to the City Attorney’s Office. A true and correct copy of the letter is attached hereto as **Exhibit B**. The letter attached a draft of a Complaint for Declaratory Relief and advised that SGHAD sought to submit the dispute to arbitration. It proposed a forum for the dispute (JAMS) and requested a response by May 17, 2021.

41. On May 28, 2021, Anaheim’s City Attorney’s Office transmitted a letter to SGHAD’s counsel stating that the arbitration demand did not raise any actual disputes concerning the interpretation or enforcement of the Agreement between the parties. It stated that the City did not agree to arbitrate the matter. A true and correct copy of the letter is attached hereto as **Exhibit C**. Thus, Anaheim has refused to arbitrate the disputes raised herein.

42. Contrary to the Anaheim’s statements, the disputes raised herein concern the interpretation and enforcement of the Agreement and thus, must be resolved through binding arbitration as set forth in Section 7 of the Agreement.

43. By this Petition, SGHAD seeks an order compelling Anaheim to arbitrate the disputes raised herein, together with all other related disputes. It also seeks an order

1 appointing an arbitrator.

2 **CAUSE OF ACTION TO BE ARBITRATED**
3 **Declaratory Relief**
4 **Code of Civil Procedure section 1060**
5 **(Against the City of Anaheim)**

6 44. SGHAD realleges and incorporates by reference each of the foregoing allegations as
7 though fully set forth herein.

8 45. SGHAD and Anaheim are parties to the Agreement. To date, SGHAD has performed
9 each of its contractual obligations as required by the Agreement.

10 46. The Agreement places no explicit time restriction on SGHAD's obligation to operate,
11 maintain, and repair the Dewatering Facilities, and thus, it could be interpreted to require such in
12 perpetuity. SGHAD, by no fault of its own, and due to the unique powers conferred, and limitations
13 imposed, upon it by virtue of the fact it exists merely as a political subdivision of the state pursuant to
14 Public Resources Code section 26558, et seq., will be unable to operate, maintain, and repair the
15 Dewatering Facilities in the future.

16 47. SGHAD contends that the performance of any contractual obligation to operate,
17 maintain, or repair the Dewatering Facilities will be excused when its funds on hand have been
18 depleted, based on the doctrines of impossibility, impracticability, and/or frustration of purpose.
19 Alternatively, SGHAD contends that the Agreement does not impose on SGHAD any obligation to
20 operate, maintain, or repair the Dewatering Facilities if it has no means to fund such.

21 48. Anaheim contends that SGHAD's performance is not excused by the doctrines of
22 impossibility, impracticability, and/or frustration of purpose. It also contends that SGHAD's
23 obligations continue despite the depletion of funds. Accordingly, a present and actual controversy
24 exists between the parties with respect to SGHAD's duties under the Agreement.

25 49. SGHAD is entitled to a declaratory judgment, pursuant to Code of Civil Procedure
26 section 1060.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, SGHAD prays for the following relief against Anaheim:

1. That the Court compel Anaheim to arbitrate the claims raised herein, and all related

1 claims, in a manner consistent with the terms of the Agreement pursuant to Code of Civil Procedure
2 section 1281.2. In the arbitration, SGHAD will seek a declaratory judgment, pursuant to Code of
3 Civil Procedure section 1060, declaring that its performance of any contractual obligation to maintain,
4 operate, or repair the Dewatering Facilities will be excused when the funds on hand have been
5 depleted based on the doctrines of impossibility, impracticability, and/or frustration of purpose. Or
6 alternatively, it will seek a declaratory judgment that declares that the Agreement does not impose on
7 SGHAD any obligation to operate, maintain, or repair the Dewatering Facilities upon depletion of its
8 funds. It will also seek an award of costs of arbitration and other relief that the Arbitrator may deem
9 just and proper or in the interest of justice. It reserves its rights to amend its claims.

10 2. That the Court appoint an arbitrator pursuant to Code of Civil Procedure section
11 1281.6.

12 3. The costs of this proceeding as provided by law.

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14
15 **DATED:** June 3, 2021

BENINK & SLAVENS, LLP

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18 Eric J. Benink
19 Attorneys for Petitioner
20 Santiago Geologic Hazard Abatement District
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EXHIBIT A

**AGREEMENT BETWEEN THE CITY OF ANAHEIM
AND THE SANTIAGO GEOLOGIC HAZARD ABATEMENT DISTRICT**

This Agreement (the "Agreement") is made by and between the City of Anaheim, a municipal corporation ("City") and the Santiago Geologic Hazard Abatement District, a separate political entity formed under Public Resources Code 26500 et seq. ("District").

R E C I T A L S

A. In or about January of 1993, a landslide in an area of Anaheim Hills accelerated, prompting emergency mobilization and actions by City employees and consultants to stabilize the earth movement.

B. After the acceleration of the landslide, the City and its consultants installed dewatering and monitoring facilities ("Dewatering Facilities"), including but not limited to horizontal wells, vertical wells, pumps, inclinometer casings, piezometers and associated equipment on public and private properties in the vicinity of the earth movement. (The Dewatering Facilities are described and depicted in the attached Exhibit "A".) These Dewatering Facilities were designed to lower elevated groundwater levels, stabilize the earth movement and monitor groundwater levels and movement.

C. Commencing on or about September 28, 1993, the City was named as a defendant in lawsuits filed by owners of properties in Anaheim Hills. It is anticipated that most of these lawsuits will be settled through a proposed settlement agreement (the "Settlement Agreement") by which the City and other defendants and cross-defendants will contribute money to a settlement distribution fund from which \$3,500,000 will be set aside for the use of the District pursuant to the terms and conditions of this Agreement. The City's and the District's obligations under this Agreement are conditioned generally upon the consummation of the City's proposed settlement with plaintiffs pursuant to the Settlement Agreement.

D. The City's geological consultants, Eberhart & Stone and Agra Earth and Environmental, based in part upon the findings stated in a report dated June 28, 1996 (the "Eberhart & Stone Report"), concluded that the earth movement was confined to an area of approximately 22.7 acres generally bounded in the north by Georgetown Avenue, on the south by Avenida de Santiago, and on the west by the Rimwood cul de sac, with the eastern boundary located on undeveloped acreage generally between the Williams Circle cul-de-sac and private property on the north side of Avenida de Santiago (the "Santiago Landslide"). The Eberhart & Stone Report also concluded that there was a separate, smaller slide in the slope above Pegasus Street (the "Pegasus Slope Landslide").

E. The Court appointed a neutral geologist, Michael Hart, to investigate the earth movement and render an independent opinion concerning the landslide boundaries. After conducting his investigation, Mr. Hart testified in his deposition on November 2 and November 3, 1998, that the boundaries were confined to the Santiago Landslide and the Pegasus Slope Landslide as depicted by the City's geological consultants in the attached Exhibit "B".

F. The Eberhart & Stone Report indicated that gross movement has not been detected for the Santiago Landslide since February of 1993. The Eberhart & Stone Report also indicated that continued stability of the Santiago Landslide is dependent on the control of local groundwater.

G. The proposed settlement of lawsuits filed in connection with the Santiago Landslide provides that the City will initiate proceedings for the formation of a Geologic Hazard Abatement District which would be responsible for funding, operating, monitoring, maintaining and repairing the Dewatering Facilities and to take such other actions as are necessary to prevent reactivation and abate movement of the Santiago Landslide.

H. It is anticipated that \$3,500,000 of the settlement proceeds called for under the proposed Settlement Agreement will be transferred to the District to fund its operations, provided that certain conditions are met. (The \$3,500,000 is referred to herein as the "GHAD Distribution.") One of these conditions is the execution of this Agreement by the City and the District to provide for, among other things, the ownership, operation, maintenance, and repair of the Dewatering Facilities by the District in order to prevent reactivation and to abate movement of the Santiago Landslide.

I. The groundwater levels within the Santiago Landslide are impacted by water that emanates from properties outside the Santiago Landslide boundaries and the Dewatering Facilities remove water which emanates from these outlying properties as well as from within the Santiago Landslide boundaries.

J. The District's boundaries are larger than the Santiago Landslide boundaries to allow the District to be in a position to address other geologic problems that may arise in this hillside area. While the District has the legal authority to address other geologic problems that are independent of the Santiago Landslide, to the extent that the District addresses other geologic problems it shall utilize and raise funds independent from the GHAD Distribution and the interest and earnings thereon.

Now, therefore, the City and the District hereby agree as follows:

1. Transfer of Ownership of Dewatering Facilities.

Effective upon the satisfaction of all conditions to this Agreement, the City hereby transfers and assigns, and the District hereby accepts, all rights and interests the City has in the Dewatering Facilities.

2. No Warranty.

The Dewatering Facilities are transferred to the District in an "as is" condition, with no warranty of any nature concerning the title, condition, state of repair, effectiveness, or any other aspect of the Dewatering Facilities. The District shall investigate and review the condition and operation of the Dewatering Facilities and make its own conclusions regarding their fitness for their intended purposes.

3. District Access to Dewatering Facilities.

(a) Most of the Dewatering Facilities are located in public rights-of-way or utility easements of the City. Upon execution of this Agreement, the District shall be deemed to have applied to the City for a franchise, in accordance with applicable laws, to utilize such public rights-of-way and utility easements for the purposes of operating the Dewatering Facilities. Such application is attached as Exhibit "C". The City shall waive the franchise application fees, and shall expeditiously process the application and perform the procedures required by law to set and conduct a public hearing regarding the application.

(b) Due to mandatory timing and notice procedures required by applicable law, it may not be possible to fully consider the District's franchise application until some time after the District has assumed ownership and control of the Dewatering facilities. Upon the satisfaction of the Condition to this Agreement, the City shall promptly issue the District such encroachment permits, right-of-way construction permits, or other permits as may be reasonably necessary for the District to operate, maintain, and repair existing Dewatering Facilities within such rights-of-way or easements during the interim period between the District's assumption of such responsibilities and the City's consideration of the franchise application after the appropriate applications are filed with the City by the District. Copies of the appropriate encroachment permit application and the right-of-way construction permit application are attached as Exhibit "D". Subject to compliance with the City's reasonable regulations, the City shall issue to the GHAD such encroachment permits, right-of-way construction permits, and other permits in the future as may be required for the GHAD to construct, maintain, and operate additional Dewatering Facilities within public rights-of-way or easements as may be required for the GHAD to fulfill its objectives and responsibilities.

(c) Certain of the Dewatering Facilities are located within private properties. As to some of the Dewatering Facilities located within private properties, the City is in the process of attempting to acquire specific in gross easements and rights of access. (Descriptions of the Dewatering Facilities, in gross easements, and rights of access which the City is attempting to acquire relating to those Dewatering Facilities are included in Exhibit "E".) After the satisfaction of the Condition to this Agreement, the City shall quitclaim, and the District shall accept, ownership of such of said in gross easements and rights of access, including the duties and obligations associated with the in gross easements and rights of access, that the City in fact acquires. Transfer of such in gross easements and rights of access shall be through instruments in the form as is attached as Exhibit "F", which shall be recorded with the Orange County Recorder. The City's quitclaim and transfer of these rights is without warranty of title or fitness. The District shall be responsible for obtaining any additional easements or rights of access over other private properties to the extent any Dewatering Facilities may be located, now or in the future, on or within other private properties.

4. Transfer of GHAD Distribution to District.

Upon satisfaction of the all conditions to this Agreement, the City shall transfer the \$3,500,000 GHAD Distribution and any accumulated interest to the District. Said funds shall only be used for the purposes specified in Section 5 below.

5. Uses of GHAD Distribution.

The GHAD Distribution, and any interest or earnings thereon, may only be expended for construction, acquisition, operation, maintenance, and repair of dewatering wells and other devices for the purpose of monitoring, abating and/or stabilizing past, present and future land movement of the Santiago Landslide and/or lowering groundwater levels in the vicinity of the Santiago Landslide reasonably deemed to materially or substantially promote the objective of stabilizing or abating past, present and future land movement of the Santiago Landslide or to pay administrative expenses reasonably related thereto. The GHAD Distribution, and any interest or earnings thereon, cannot be used to fund activities or facilities which do not materially or substantially promote this objective. The District is free, in its discretion, to perform any activities and functions it is empowered to perform by Public Resources Code ' 26500 et seq. with funds from other sources. However, the GHAD Distribution, and any interest or earnings thereon, may only be expended for the purposes set forth in this section.

6. District's Assumption of Responsibility for Operation and Maintenance of Dewatering Facilities.

(a) Effective upon the satisfaction of all conditions to this Agreement, the District hereby assumes sole and total responsibility for all ownership, control, operational, maintenance, and repair responsibilities relating to the Dewatering Facilities. The District shall operate, maintain, and repair all or part of the Dewatering Facilities, as well as any additional new or replacement facilities the District may construct or install, in a manner within its discretion which will control groundwater levels to prevent reactivation and/or to abate movement of the Santiago Landslide. The District shall also assume sole and total responsibility for all ownership, control, operational, maintenance, and repair responsibilities for any monitoring wells or dewatering wells that the City may install in Pointe Premier or in Avenida de Santiago south of Tamarisk during the 12 months following the execution of this Agreement which the City offers to transfer to the District and shall cooperate with the City to the extent necessary to allow any such dewatering wells to be connected to the existing Dewatering Facilities.

(b) The District may, contemporaneously with notice by the City of the satisfaction of the Condition to this Agreement, provide the City with a written request to create a 90-day transition period (the "Transition Period"), during which the City will continue to perform operational, maintenance, and repair functions relating to the Dewatering Facility. The City shall continue to perform these functions during the Transition Period if so requested by the District. During the Transition Period, the City shall make available to the District reports, files, as-built plans, and other information in its possession and control relating to the operation, maintenance, and repair of the Dewatering Facilities. During the Transition Period the City shall also make its employees and consultants available to advise the District concerning issues relating to the District's assumption of its functions and responsibilities.

(c) If the District elects to create a Transition Period during which the City will perform the operational, maintenance, and repair functions relating to the Dewatering Facilities, the District shall, on a monthly basis, reimburse the City for any direct costs incurred during the Transition Period for the City's continued performance of these functions and for the City's consultation with the District regarding the District's assumption of responsibilities. Such direct costs include, but are not necessarily limited to, City consultant charges, maintenance, repair, and materials costs, and electricity charges. Detailed invoices shall be submitted by the City to the District regarding the reimbursable direct cost.

7. Enforcement.

Any disputes between the City and the District concerning the interpretation or enforcement of this Agreement shall be resolved through binding arbitration between the parties utilizing a mutually agreed-upon arbitrator. The arbitration proceeding may be commenced by either party by service of a notice of intent to arbitrate. The arbitration shall be conducted on an agreed-upon date not more than three months following service of such notice. It is specifically agreed that in addition to any other available remedies, the arbitrator may order specific performance of this Agreement. Judgment on the arbitration proceeding may be entered in any court of competent jurisdiction.

8. General Provisions.

(a) This Agreement shall be construed under the laws of the State of California.

(b) This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

(c) The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, regardless of who was principally responsible for drafting any specific term or condition. It is acknowledged that all parties have had an opportunity to consult with their lawyers concerning the terms and conditions of this Agreement. As a result, this Agreement shall be deemed to have been drafted by all parties hereto and no party shall urge otherwise.

(d) Each party to this Agreement agrees to perform all further acts and execute all further documents necessary to carry out the purposes of this Agreement.

9. Validation Action.

This Agreement shall be conditioned on the successful prosecution of a validation proceeding pursuant to Code of Civil Procedure sections 860 et seq. to final judgment to confirm the legality of this Agreement. The action shall be pursued by counsel approved by the District exercising its best efforts to obtain a judgment confirming the validity of the agreement. Said action shall be expeditiously filed and prosecuted to successful conclusion to minimize the time required to achieve the full implementation of this Agreement. If the City performs operational, maintenance, and repair functions relating to the Dewatering Facilities during the period prior to the obtaining of a final judgment in such a validation proceeding, the City shall be entitled to deduct any direct costs incurred during that period from the GHAD Distribution to be transferred to the District. Direct costs for purposes of this provision is defined as set forth in paragraph 6(c) of this Agreement.

10. Condition to the Effectiveness of this Agreement.

This Agreement shall become effective only upon the consummation of the anticipated settlement between the City and various plaintiffs to the litigation entitled Delmonico, et al. v. the City of Anaheim, et al., Orange County Superior Court Case No. 718071 and consolidated cases (jointly referred to as the "Delmonico Litigation") whereby a settlement distribution of \$3,500,000 is set aside for distribution to this GHAD.

11. Interim Funding.

Upon consummation of the settlement between the City and various plaintiffs to the Delmonico Litigation, which settlement is a condition to the effectiveness of this Agreement, the City shall provide to the District interim funding as an advance of the GHAD Distribution in the amount of \$30,000 to cover GHAD operations and the cost of the validation proceeding.

Dated: 5-26-99

SANTIAGO GEOLOGIC HAZARD
ABATEMENT DISTRICT

By: William D. Collett
WILLIAM D COLLETT

ATTEST:

APPROVED AS TO FORM:

By: [Signature]
Acting Clerk for the Santiago GHAD
DAVID SALERNE

By: [Signature]
Carl K. Newton, General Counsel
for the Santiago GHAD

Dated: June 10, 1999

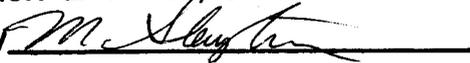
CITY OF ANAHEIM

By: 

ATTEST:

By: 
Lee Sohl
City Clerk for the City of Anaheim

APPROVED AS TO FORM:
JACK L. WHITE, CITY ATTORNEY

By: 



♻️ Recycled Paper

EXHIBIT A

DESCRIPTION OF DEWATERING FACILITIES

Vertical Dewatering Wells.

36 pumped, standby and abandoned vertical dewatering wells. These vertical dewatering wells are identified as DW-1 through DW-23 and DW-25 through DW-37 in the GHAD Plan of Control and the Eberhart and Stone report dated June 28, 1996 ("E&S Report"). (DW-24, located on Pegasus Street, is not included.) Includes all piping, mechanical, and electrical improvements as shown on Crosby, Mead, Benton & Associates plans titled "Santiago Incident - Collector Dewatering System" dated April 15, 1993 and showing revision date of January 7, 1998 ("Crosby Plans"), which connect the dewatering wells to the City power grid and storm drain system for the area. Vertical dewatering well pumps; in-well piping, electrical wiring and well suspension supports; and external pump-motor controls are supplied and maintained by the well contractor pursuant to an equipment rental/maintenance agreement. Excludes all pre-1993 City facilities and the City electric transmission line to facility meter and the electric meter.

Horizontal Dewatering Wells.

87 horizontal dewatering wells as installed and plotted on the "Location Map - Horizontal Wells," Plate B.2 Volume II of the E&S Report. These passive drains are connected to outlet systems at or near existing grades and the discharge conveyed to the City storm drain system. Horizontal dewatering wells includes all collector and outlet piping as shown on the Crosby Plans. Excludes any and all pre-1993 City facilities.

Groundwater Observation Wells.

28 open-tube, stand-pipe piezometers installed at the locations shown on the "Location Map - Trenches and Vertical Borings", Plate B.1, Volume II of the E&S Report. Observation wells, also identified as P-wells, consisting of both subsurface and surface improvements: underground well casings, well seals, vaults and installed water-level transducers, data loggers, wiring and battery-operated power sources.

Piezometers.

Five multi-point piezometers sited as shown on the "Location Map - Trenches and Vertical Borings", Plate B.1, Volume II of the E&S Report. Each piezometer set is identified by a PZ boring number and monitoring zone as listed in Table A.3 in Volume VIIb, of the E&S Report, a copy of which table is attached hereto. Piezometer installations include subsurface casings, water pressure transducers, wiring, seals, vaults, data loggers, and battery-operated power sources.

Inclinometers.

Ten inclinometer casings are emplaced as shown on the "Location Map - Vertical Borings", Plate B.1, Volume II of the E&S Report. Each installation consists of RST Instruments flush-coupled, ABS plastic inclinometer casing cemented into a borehole. Construction details are listed on Table E.1, Volume Va of the E&S Report, a copy of which table is attached hereto. Inclinometers include surface vaults, but do not include the instruments to measure casing deflections.

COMPLETION ZONES FOR PZ INSTALLATIONS

CORE BORING NUMBER	PIEZOMETER NUMBER	DEPTH (Feet)	FORMATION	SAND THICKNESS	TYPE OF PLACEMENT
PZ-1	PZ1-C	143	La Vida sandstone	1'	TUBE
	PZ1-D	189	La Vida sandstone	6'	TUBE
PZ-2	PZ2-A	91.5	Soquel sandstone	9'	TUBE
	PZ2-C	187	La Vida sandstone	2'	TUBE
PZ-3	PZ3-A	65	Soquel sandstone	65'	BURIED
	PZ3-B	131	Soquel sandstone	66'	TUBE
	PZ3-C	206	La Vida sandstone	11'	TUBE
PZ-4	PZ4-B	113	Soquel sandstone	10'	TUBE
	PZ4-C	166	La Vida sandstone	8'	TUBE
PZ-5	PZ5-A	63	Soquel sandstone	10'	BURIED
	PZ5-B	100	Soquel sandstone	9'	TUBE
	PZ5-C	198	La Vida sandstone	13'	TUBE

INCLINOMETER COMPLETION DATA

Inclinometer Number	Depth (feet)	Baseline Date	RST Tubing Diameter (OD inches)	Backfill Materials
SI-1	198	03-01-93	2.75	Bentonite - Cement Grout
SI-2	200	03-02-93	3.34	Sand - Fly Ash - Cement
SI-3	210	03-17-93	3.34	Sand - Fly Ash - Cement
SI-4	210	03-01-93	3.34	Sand - Fly Ash - Cement
SI-5	200	02-28-93	3.34	Sand - Fly Ash - Cement
SI-6	200	03-12-93	3.34	Sand - Fly Ash - Cement
SI-7	180	02-28-93	3.34	Sand - Fly Ash - Cement
SI-8	210	03-16-93	3.34	Sand - Fly Ash - Cement
SI-9	260	04-06-93	3.34	Bentonite - Cement Grout
SI-10	260	04-12-93	3.34	Bentonite - Cement Grout

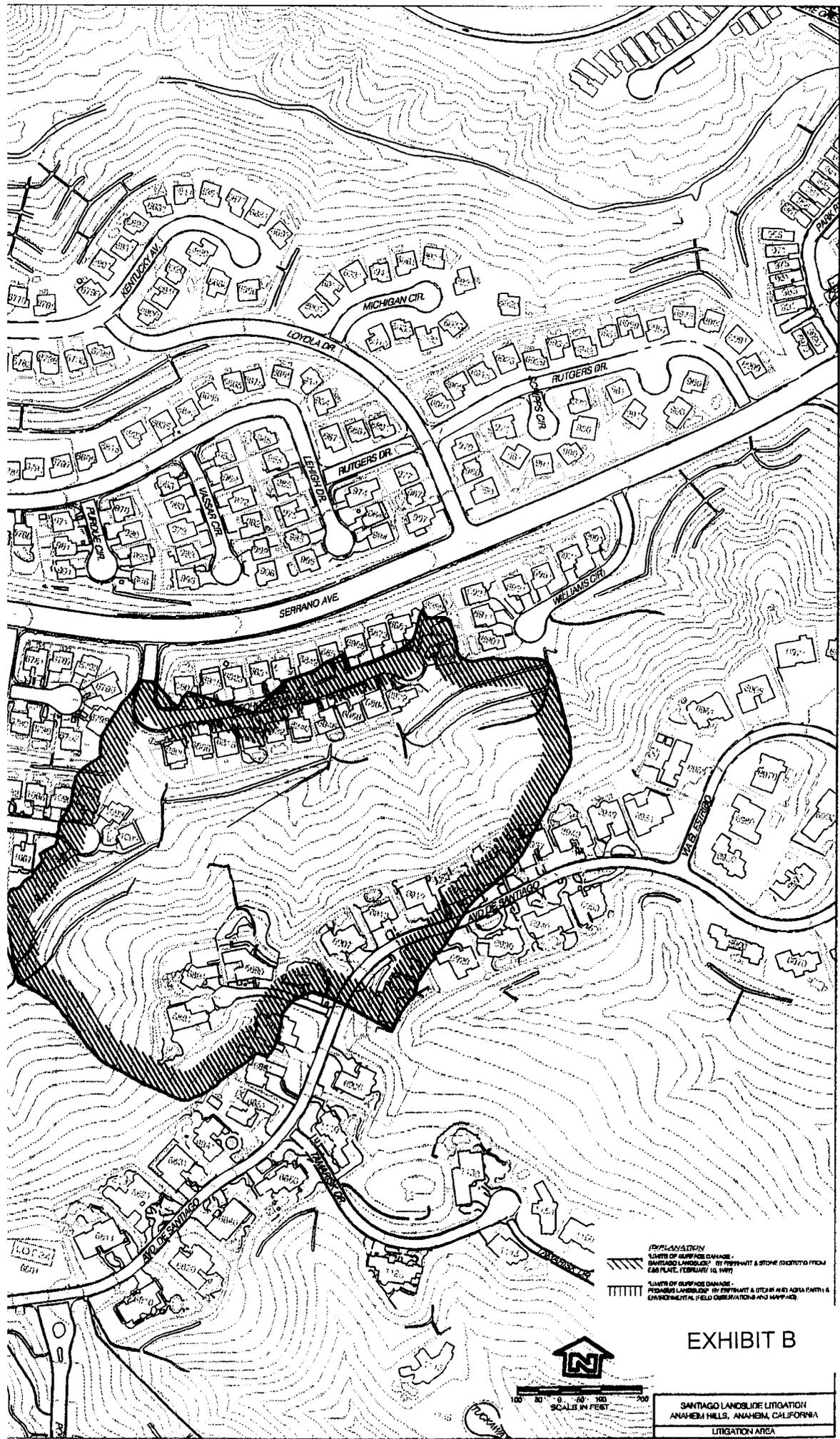
EXHIBIT B



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EXPLANATION
 LIMITS OF SLURFAGE DAMAGE -
 SANTIAGO LANDSLIDE BY PRESENT & STONE (DIKTOTO) FROM
 CAS PLATE, FEBRUARY 10, 1997

LIMITS OF SLURFAGE DAMAGE -
 FORMER LANDSLIDE BY PRESENT & STONE (DIKTOTO) FROM
 ENVIRONMENTAL FIELD OBSERVATIONS AND MAPPING

EXHIBIT B

SANTIAGO LANDSLIDE LITIGATION
 ANAHEIM HILLS, ANAHEIM, CALIFORNIA
 LITIGATION AREA

EXHIBIT C

Application for Franchise

1. Franchise Applicant: Santiago Geologic Hazard Abatement District ("GHAD")
2. Proposed Duration of Franchise: Ten (10) years, and thereafter, as may be renewed pursuant to further application.
3. Proposed Scope of Franchise: To operate, maintain, repair, and construct dewatering facilities, including vertical dewatering wells, horizontal dewatering wells, groundwater observation wells, piezometers, and inclinometers for use in controlling and monitoring groundwater levels for the purpose of stabilizing and abating earth movement known as the Santiago landslide. The GHAD proposes to utilize existing dewatering facilities located within City-owned land, public rights of way and utility easements of the City for this purpose. Such existing dewatering facilities are described in the attached Exhibit A, and were conveyed by the City to the GHAD. The GHAD may, in the future, seek to construct additional dewatering facilities on or within public rights of way and utility easements which materially and substantially promote the above-stated objective.
4. Geographic Limits of the Franchise: The geographic area shown on the attached Exhibit B.

This application is filed pursuant to and subject to the provisions of Article XIV of the Anaheim City Charter and Chapter 1.03 of the Anaheim City Code.

SANTIAGO GEOLOGIC HAZARD ABATEMENT DISTRICT

By: _____

EXHIBIT A

DESCRIPTION OF DEWATERING FACILITIES

Vertical Dewatering Wells.

36 pumped, standby and abandoned vertical dewatering wells. These vertical dewatering wells are identified as DW-1 through DW-23 and DW-25 through DW-37 in the GHAD Plan of Control and the Eberhart and Stone report dated June 28, 1996 ("E&S Report"). (DW-24, located on Pegasus Street, is not included.) Includes all piping, mechanical, and electrical improvements as shown on Crosby, Mead, Benton & Associates plans titled "Santiago Incident - Collector Dewatering System" dated April 15, 1993 and showing revision date of January 7, 1998 ("Crosby Plans"), which connect the dewatering wells to the City power grid and storm drain system for the area. Vertical dewatering well pumps; in-well piping, electrical wiring and well suspension supports; and external pump-motor controls are supplied and maintained by the well contractor pursuant to an equipment rental/maintenance agreement. Excludes all pre-1993 City facilities and the City electric transmission line to facility meter and the electric meter.

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87 horizontal dewatering wells as installed and plotted on the "Location Map - Horizontal Wells," Plate B.2 Volume II of the E&S Report. These passive drains are connected to outlet systems at or near existing grades and the discharge conveyed to the City storm drain system. Horizontal dewatering wells includes all collector and outlet piping as shown on the Crosby Plans. Excludes any and all pre-1993 City facilities.

Groundwater Observation Wells.

28 open-tube, stand-pipe piezometers installed at the locations shown on the "Location Map - Trenches and Vertical Borings", Plate B.1, Volume II of the E&S Report. Observation wells, also identified as P-wells, consisting of both subsurface and surface improvements: underground well casings, well seals, vaults and installed water-level transducers, data loggers, wiring and battery-operated power sources.

Piezometers.

Five multi-point piezometers sited as shown on the "Location Map - Trenches and Vertical Borings", Plate B.1, Volume II of the E&S Report. Each piezometer set is identified by a PZ boring number and monitoring zone as listed in Table A.3 in Volume VIIb, of the E&S Report, a copy of which table is attached hereto. Piezometer installations include subsurface casings, water pressure transducers, wiring, seals, vaults, data loggers, and battery-operated power sources.

Inclinometers.

Ten inclinometer casings are emplaced as shown on the "Location Map - Vertical Borings", Plate B.1, Volume II of the E&S Report. Each installation consists of RST Instruments flush-coupled, ABS plastic inclinometer casing cemented into a borehole. Construction details are listed on Table E.1, Volume Va of the E&S Report, a copy of which table is attached hereto. Inclinometers include surface vaults, but do not include the instruments to measure casing deflections.

COMPLETION ZONES FOR PZ INSTALLATIONS

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	PZ2-C	187	La Vida sandstone	2'	TUBE
PZ-3	PZ3-A	65	Soquel sandstone	65'	BURIED
	PZ3-B	131	Soquel sandstone	66'	TUBE
	PZ3-C	206	La Vida sandstone	11'	TUBE
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	PZ5-B	100	Soquel sandstone	9'	TUBE
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INCLINOMETER COMPLETION DATA

Inclinometer Number	Depth (feet)	Baseline Date	RST Tubing Diameter (OD inches)	Backfill Materials
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SI-10	260	04-12-93	3.34	Bentonite - Cement Grout

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FILE _____
DATE _____

APPLICATION FOR ENCROACHMENT LICENSE

Application is hereby made for License to encroach on City property, public rights of way and utility easements to the extent reasonably necessary to operate, maintain, repair or replace certain dewatering facilities, including vertical dewatering wells, horizontal dewatering wells, groundwater observation wells, piezometers, and inclinometers, which are more fully described in the attached Exhibit A, and which have locations that are set forth in the following maps and plans in the possession of the City:

- (1) the "Location Map - Trenches and Vertical Borings", Plate B.1, Volume II of the Eberhart & Stone Report dated June 28, 1996 ("E&S Report");
- (2) the "Location Map - Horizontal Wells," Plate B.2 Volume II of the E&S Report;
- (3) the Crosby, Mead, Benton & Associates plans titled "Santiago Incident -Collector Dewatering System" dated April 15, 1993 and showing revision date of January 7, 1998 ("Crosby Plans").

The following items must normally be submitted with City of Anaheim encroachment license applications, but are either deemed satisfied, or waived in this case, as set forth below:

1. Readable copy of recorded easement or legal description of the area to be encroached upon.

[DEEMED SATISFIED BY REFERENCE TO THE E&S REPORT PLATES B.1 AND B.2, AND THE CROSBY PLANS.]

2. A scale drawing showing in plan and/or profile view the relationship of the proposed encroachment to existing City facilities. Show exact dimensions.

[DEEMED SATISFIED BY REFERENCE TO THE E&S REPORT PLATES B.1 AND B.2, AND THE CROSBY PLANS.]

NOTE: The drawing and/or legal description must bear the signature and stamp if prepared by a Civil Engineer or Licensed Surveyor.

[DEEMED SATISFIED BY REFERENCE TO THE E&S REPORT PLATES B.1 AND B.2, AND THE CROSBY PLANS.]

3. A copy of the owners Grant Deed or Title Report.
[WAIVED IN THIS CASE]

4. Check for \$800.00 payable to the City of Anaheim for processing fee deposit.
[WAIVED IN THIS CASE]

Mail to: Real Property Section, City of Anaheim, P.O. Box 3222, Anaheim, CA 92803

The purpose of this request is: (Please be specific, the more information you give, the easier it will be to process your application).

This request is made pursuant to the written contract between the City of Anaheim and the Santiago Geologic Hazard Abatement District (the "District") which contains provisions for the District's application for a Franchise with respect to the facilities shown on Plates B.1, and B.2 of the Eberhart & Stone Report, and on the Crosby Plans. This request is made pending approval of the District's application for Franchise.

Requested by:

Date _____

SANTIAGO GEOLOGIC HAZARD ABATEMENT
DISTRICT

Phone _____

By: _____

EXHIBIT A

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SI-9	260	04-06-93	3.34	Bentonite - Cement Grout
SI-10	260	04-12-93	3.34	Bentonite - Cement Grout

RIGHT OF WAY CONSTRUCTION PERMIT
CITY OF ANAHEIM - DEPARTMENT OF PUBLIC WORKS
 200 SOUTH ANAHEIM BOULEVARD (714) 254-4431

PERMIT NO. _____

LOCATION: _____

WORK TO BE DONE: _____

PLAN(S) ATTACHED: _____

STARTING DATE: _____ ENDING DATE: _____

This permit expires 60 days from starting date if the work has not commenced or the ending date, whichever is later.

APPLICANT: _____		OWNER/BUILDER: _____		CONTRACTOR: _____	
ADDRESS: _____					
CITY: _____		STATE: _____	ZIP: _____	TELEPHONE NO.: _____	
CITY LICENSE NO.: _____		EXP.: _____	STATE LICENSE NO.: _____		CLASS: _____

PERMIT FEE: \$ _____ DEPOSIT: \$ _____ DTF # _____ BOND NO.: _____

IMPORTANT:

I agree to comply with the Rules and Regulations adopted by the Director of Public Works, all provisions of the City Ordinances, Resolutions, Standards and Specifications currently in force, copies of which are available from the Engineering Representative at 200 South Anaheim Boulevard, Anaheim. I agree to have forms and subgrades inspected and approved prior to placing concrete, base, or asphalt concrete. I agree to pay for removal or proper replacement of any items installed under this permit which do not comply with the above. By signing and accepting this Permit, the Permittee states that he has or will notify, at least 48 hours prior to starting any work, the following:

- Public Works Field Inspection 714-254-5126
- City Water Utilities 714-254-5268
- Underground Service Alert (USA) 1-800-422-4133

Contact the following for specific questions or problems regarding the applicable utility:

The Gas Company	714-529-2889	Defense Fuel Support Point	310-921-2271
Southern California Edison	714-870-9825	Santa Fe Pacific Pipelines	714-538-5227
Metropolitan Water District	213-217-6000	City Electrical Utilities	714-254-6843
Arco Pipeline Company	310-428-9000	City Water Utilities	714-254-5268

UNDERGROUND SERVICE ALERT NO. _____

- OBTAIN UNDERGROUND SERVICE ALERT NO. AND PROVIDE TO FIELD INSPECTOR PRIOR TO STARTING EXCAVATION.

SPECIAL CONDITIONS IMPOSED:

Permit Approved for the City Engineer

By _____

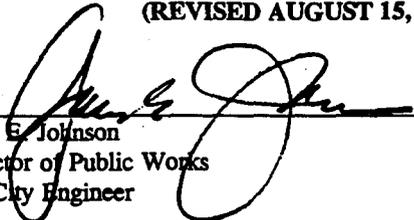
Date: _____

<i>Applicant or Authorized Agent</i>	
X _____	
Date _____	
Print name _____	

DISTRIBUTION: White - Applicant, Canary - Engineering Field, Pink - Engineering Office, Goldwood - Finance

**CITY OF ANAHEIM
DEPARTMENT OF PUBLIC WORKS
RIGHT OF WAY CONSTRUCTION PERMIT
RULES AND REGULATIONS
(REVISED AUGUST 15, 1996)**

ADOPTED AND APPROVED _____


Gary E. Johnson
Director of Public Works
and City Engineer

August 29, 1996
Date

1. GENERAL

1. Applicant agrees that it shall be his responsibility to provide the contractor, subcontractor, or an other agent responsible for construction of permitted use within the right of way, with a copy of the permit with these conditions attached and a complete set of approved plans.
2. A copy of the permit and approved plans shall be on site whenever work is in progress.
3. Work shall be in accordance with City Standard Plans, Standard Specifications for Public Works Construction (Green Book), and approved plans, subject to inspection and approved by the Field Inspector.
4. Specific provisions and conditions may be appended to each permit by the City Engineer at the time of issuance of the permit or at any time thereafter, prescribe such additional conditions as he may deem necessary for the protection of the street or for the prevention of undue interference with traffic or to assure the safety of persons using the street, until completion of the work.
5. Permit is void if work is not completed prior to expiration date noted hereon. An extension may be granted if such extension is applied for 24 hours before permit expires.
6. All work and materials shall be guaranteed for a period of one year. Failure of the City Inspectors to detect flaws shall not relieve the applicant of this responsibility.
7. Failure to pay any bills due under any previous permit issued by the Engineering Division will result in rendering the applicant ineligible for any Engineering Division permit until such bill(s) is paid.
8. In accordance with California Civil Code Section 2782.1, Applicant agrees to and shall fully indemnify and hold and save harmless the City of Anaheim, its officers and agents against any and all losses, damage, liability, claims demands, suites or causes of action resulting from injury or harm to any person or property arising out of or in any way connected with performance of work under this permit caused by any person whomsoever, including any injury or harm as may be caused solely by the negligence of the City of Anaheim, its officers and agents.
9. A written Notice of Violation will be issued for failure to comply with any and all permit requirements and conditions. Contractors receiving such notice shall be ineligible to obtain additional permits for 90 days or until the violation is corrected, whichever is greater.

2. NOTIFICATION

1. Permittee must notify the Field Inspector (254-5126) 48 hours prior to start of construction.
2. Permittee must notify Underground Service Alert at 1-800-422-4133 a minimum of two full working days prior to start of construction. USA ticket number must be available at the construction site and provided to the City's representative.
3. Permittee must notify the Chief of Survey (254-5126) at least two (2) working days prior to removing any survey monuments. All monuments must be replaced at the permittee's expense. All monuments must be replaced in their original positions and such replacement must be done by a person authorized to practice land surveying. The appropriate records shall be filed with the Orange County Surveyor in accordance with Chapter 15; Section 8771 of the Business and Professions Code. A copy of the recorded documents shall be delivered to the Chief of Survey prior to release of the project.
4. Permittee shall notify Traffic Engineering (254-5183) 24 hours prior to cutting any traffic signal interconnect conduit or loop detectors.

3. WORK HOURS

1. Local Streets - No work shall begin before 7:00 a.m. or continue after 7:00 p.m. Arterial Streets - No work shall begin before 8:30 a.m. or continue after 3:00 p.m.
2. Absolutely no work is permitted on Saturdays, Sundays, for holidays unless specifically approved by the Field Inspector.

4. TRAFFIC

1. All traffic control within the construction area shall be flagged and barricaded to the satisfaction of the Field Inspector and shall be in compliance with the State of California Construction Safety Orders (California Administrative Code Title 8), State of California Manual of Traffic Controls (S.A.F.E.), (latest edition) or approved Detour Plan, and the California Vehicle Code.
2. Traffic control devices shall be in place prior to start of work.
3. All regulatory signs which require removal during construction shall be relocated and maintained during construction and replaced by the permittee in a location designated by the City Engineer.
4. Failure to place barricades which are subsequently placed by the City to protect the public shall be billed to the applicant at \$100.00 for the first barricade and \$5.00 for each thereafter.

5. ACCESS

1. All approaches to private driveways and intersecting roads and streets shall be kept open to traffic at all times, unless otherwise approved by the City Engineer.
2. In the event that any work permitted prevents or hinders vehicular or pedestrian traffic to travel from the street to any property, whether public or private, the permittee shall construct and maintain such structures as the City Engineer shall prescribe to permit access to said property.
3. Access to fire hydrants shall be maintained at all times.
4. When closing streets is permitted, the Police and Fire Departments shall be notified a minimum of 24 hours prior to closure each day the street will be closed.

6. SITE CONDITIONS

1. Care shall be exercised to prevent water, soil and debris from depositing in gutters and catch basins.

2. All excavated material shall be cast away from the improved portion of the highway. After the work has been completed or as directed by the Field Inspector, all excess material, including excess excavation, shall be removed from the right of way and the roadway and left in a neat and orderly condition. Remove excess soil and debris from the site daily.
7. BACKFILL
 1. One sack cement slurry mix shall be required as backfill on all trenches less than one foot wide.
8. CONCRETE - SIDEWALK, CURB AND GUTTERS
 1. Curb and gutter cuts shall be at score lines or existing joints for the full width of the curb and gutter (no shiner cuts allowed) for a minimum length of 5 feet.
 2. Minimum concrete replacement areas shall be:
 - a. Driveways - full parkway width with a minimum of 1/2 the driveway for right angle crossings or the entire approach for parallel crossing.
 - b. Cross gutters - 1/2 street width or 10 feet, whichever is greater.
 - c. Spandrels - entire spandrel, including curb.
 - d. Sidewalk - Minimum removal/replacement area shall be twenty square feet.
 - e. Sidewalk landings - entire landing unless approved otherwise by the City Engineer. Replacement of spandrels or sidewalk landings shall require installation of the wheel chair ramp if none exists.
 - f. Concrete alleys shall have a minimum trench width of forth-eight inches and a minimum depth of six inches with a minimum compressive strength of 3000 psi.
 3. All concrete removals shall be to the nearest cold joint or score joint, or saw cut if said joint is more than five feet from work limits. Saw cuts shall be a full depth cut with a concrete saw.
9. ASPHALT PAVING
 1. Asphalt paving repairs shall be per City Standards based on the age of the pavement, direction of trench, and type of backfill. When streets are scheduled for reconstruction/resurfacing within two years, the City Engineer may reduce the pavement repair standards. Any deviation from standards must be specified on the approved plans or permit.
 2. Trenches shall be backfilled at the conclusion of each days work unless otherwise permitted by the Public Works Department. Trenches shall be covered with temporary paving or plated, if approved by the Field Engineer.
 3. Cold mix A.C. may be used for temporary overnight surfacing only. Hot mix base course A.C. must be placed within 24 hours of backfilling the excavation.
 4. Finish course asphalt concrete shall be placed within one week of backfilling.
 5. Traffic bearing plates may be used for covering excavations overnight only, subject to approval of the Field Engineer and the following guidelines:
 - a. Steel plates used for bridging must extend a minimum of 300 mm (12") beyond the edges of the trench.
 - b. Steel plate bridging shall be installed to operate with minimum noise.
 - c. The trench shall be adequately shored, to support the bridging and traffic loads.
 - d. Temporary paving with cold asphalt concrete shall be used to feather the edges of the plates.

- e. Bridging shall be secured against displacement by using adjustable cleats, shims or other devices.
 - f. A rough road sign (W33) with black lettering on an orange background, shall be used in advance of steel plate bridging. This is to be used along with any other required construction signing.
6. No section of asphalt pavement between the trench line and gutter which is four feet wide or less shall remain. The asphalt in this area shall be removed, base paved, and capped with the adjacent trench paving.
 7. Finish course asphalt concrete shall be placed within one week of backfilling.

10. BORING REQUIREMENTS

1. All lateral cuts or crossings of arterial streets shall be bored unless permittee can show that subsurface obstructions make boring impracticable. Bore pit locations shall be approved by the Field Inspector.

11. REPAIRS

1. Any roadway striping damaged or removed during the operations of this permit shall be matched and replaced by the applicant to the satisfaction of the Field Inspector.
2. If, after the refilling of an excavation, the permittee fails or refuses to resurface or repair that portion of the roadway damaged by him, or if it becomes necessary to repair such street due to settlement or any other cause attributed to such excavation, the City Engineer may elect to make the necessary repairs and the permittee shall be charged with the cost thereof as computed by the City Engineer.
3. Any excavation within the public rights-of-way that fails and is considered hazardous will be repaired immediately upon notification or attempted notification if the responsible party does not respond within a 4-hour period, the City of Anaheim will correct the condition and then bill the permittee. A minimum charge for each call-out will be \$100 plus any costs incurred.
4. When excavations are made in a parkway area which has been planted, it shall be the permittee's responsibility to replace plants, sod and irrigation in a neat and workmanlike manner, leaving the area in as near its original state as possible.
5. Any traffic signal interconnect conduit cut during construction shall be replaced the same working day, unless otherwise approved by the Field Inspector. Any cut or damaged loop detectors shall be replaced within five working days to the satisfaction of the Field Inspector.

RULES

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Anaheim
200 S. Anaheim Boulevard
Anaheim, CA 92805
Attention: Malcolm Slaughter, Esq.

**Exempt from Documentary Transfer Tax
Pursuant to R&T Code § 11928**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GENERAL RELEASE OF CLAIMS,
COVENANT NOT TO SUE, AND GRANT OF EASEMENT**

We, Franklin A. Hanauer & Kathryn Joanne Hanauer, both as Individuals and as Trustees of the Hanauer Family Trust dated Mar 1, 1988, ("Releasors") execute this General Release of Claims and Covenant Not to Sue ("Release") with the express intent that it shall be binding on successors-in-ownership of the Property, as defined below.

Releasors represent and warrant that they own the real property described as Lot 19 of Tract 7587 as per the map recorded in Book 378, Pages 21-25 in the office of the Orange County Recorder, and more commonly known as 6925 Avenida De Santiago, Anaheim Hills, California (the "Property").

In consideration of the terms and provisions contained in the Settlement Agreement between the City of Anaheim and various plaintiffs including Releasors dated March 2, 1999 relating to certain actions consolidated under Delmonico, et al. v. The City of Anaheim, et al., Orange County Superior Court Case No. 718071, Releasors on behalf of themselves, their transferees, assigns, predecessors, successors, heirs, and devisees, and all people who make claims through and on behalf of them (collectively the "Releasors"), do hereby release, discharge forever and covenant not to sue the City of Anaheim or its officers, employees, agents, attorneys, successors, assigns, or representatives (collectively the "Releasees"), from and for any and all past, current, and future claims, damages, liabilities, expenses, or causes of action, of any kind, known or unknown, connected in any way with the following:

The acts or omissions alleged in the Consolidated Actions, the geologic instabilities or earth movement alleged in the Consolidated Actions, the City of Anaheim's involvement in or approval of development activities within the areas described as the "Affected Area" in the Consolidated Actions, the grading that occurred within the Affected Area

in connection with development of that area, the Releasees' past acts, omissions or conduct concerning the design, construction, installation, operation, maintenance, and/or repair of any utilities, drainage, sewer, or water facilities referred to in the Consolidated Actions or concerning the installation and operation of dewatering and monitoring facilities/systems in response to ground movement in the Affected Area.

Releasors have read and discussed the terms of Section 1542 of the California Civil Code with their attorneys and expressly waive its provisions. It states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

It is expressly intended that successors-in-ownership of the Property shall be bound by the covenant and release made herein, however, Releasors make no warranty that this instrument will be effective in doing so. The covenant not to sue and release, among other things, is expressly intended to apply to any future interference/damage that may occur to the use and enjoyment of the Property or to improvements thereon, to the extent that this may be caused in whole or in part by any of the acts, omissions, conduct, events or conditions which have been described in this Release. This covenant and release are made for the express benefit of the City of Anaheim and for that property owned by the City of Anaheim, including but not limited to, streets, curbs, sidewalks, drainage systems, water delivery systems, utility lines, and dewatering systems and all easements and land in which such facilities are installed, which easements and real property interests are set forth in the following recorded instruments:

Tract 7587, as shown on Book 378, pages 21-25, of official records of Orange County, California; Tract 8375, as shown on Book 345, pages 34-39, of official records of Orange County, California; Tract 8376, as shown on Book 345, pages 40-43, of official records of Orange County, California; Tract 8377, as shown on Book 345, pages 44-47, of official records of Orange County, California; Tract 8520, as shown on Book 539, pages 4-7, of official records of Orange County, California; Tract 9080, as shown on Book 381, pages 21-23, of official records of Orange County, California; Tract 9133, as shown on Book 374, pages 8-11, of official records of Orange County, California; Tract 9134, as shown on Book 389, pages 1-3, of official records of Orange County, California; Tract 9135, as shown on Book 389, pages 4-8, of official records of Orange County, California; Tract 9136, as shown on Book

389, pages 9-11, of official records of Orange County, California; Tract 9313, as shown on Book 399, pages 32-33, of official records of Orange County, California; Tract 10996, as shown on Book 532, pages 11-16, of official records of Orange County, California; Tract 10997, as shown on Book 532, pages 17-19, of official records of Orange County, California; Tract 10998, as shown on Book 532, pages 20-25, of official records of Orange County, California; Tract 13760, as shown on Book 666, pages 35-36, of official records of Orange County, California

all of which are collectively referred to as the "Benefitted Property." It is expressly intended that successors-in-ownership of the Benefitted Property shall benefit from this Release and Covenant Not to Sue.

GRANT OF EASEMENT TO CITY OF ANAHEIM

For valuable consideration, receipt of which is acknowledged, I hereby grant to the City of Anaheim the real property described as follows:

(1) an easement in gross on, over, and across that portion of the Property as is reasonably necessary for the purposes of operating, monitoring, inspecting, testing, maintaining, re-installing, repairing and/or replacing that portion of the City's dewatering facilities located within the Property. The dewatering facilities referred to are those facilities depicted on Exhibit A.

Nothing in this instrument creates any obligation on the part of the City to operate or continue to operate any such dewatering facilities, nor removes any such obligation to the extent that it otherwise may have existed.

The easement granted herein is fully transferable and assignable by City as its sole discretion.

DATED: _____, 1999

Releasors:

By: _____
Franklin Hanauer, Individual

By: _____
Franklin Hanauer, Trustee

By: _____
Kathryn J. Hanauer, Individual

By: _____
Kathryn J. Hanauer, Trustee

EXHIBIT A

DEWATERING/MONITORING FACILITIES
FOR WHICH EASEMENT IS GRANTED

Description of the Property (Franklin and Kathryn Hanauer residence):

Lot 19, Tract 7587 as shown on Book 378, pages 21-25 of the Official Records of Orange County, more commonly known as 6925 Avenida de Santiago, Anaheim, CA 92807.

The attached map depicts the boundaries of the Grantor property as well as the dewatering facilities for which this easement is granted. The lot boundaries of the Grantor property are indicated by the bold outline. The dewatering facilities for which this easement is granted are identified by numbers highlighted in bold-faced boxes or circles. The descriptions of the facilities on the Property for which this easement is granted are as follows:

#53 (end of the black line indicated by the bold circle #53):

1 1/2" Horizontal well discharge (1 1/2" dia.)
at the northerly boundary of the lot.

#60 (end of the black line on the larger map indicated by the bold circle #60):

Clean-out (6" dia.) at the northerly lot
boundary.

#57 (thick black line indicated by the circle #57):

PVC pipe (6" dia.) at the northerly lot
boundary.

H-44 (area marked with an open arrow and "H-44"):

Horizontal drains at the northerly lot
boundary.

H-42 (area marked with an open arrow and "H-42"):

Horizontal drains at the northerly lot boundary.



CURVE DATA				
Δ	R	L	T	
A	13° 21' 54"	160.00'	37.32'	18.79'
B	07° 38' 46"	300.00'	40.03'	20.05'
C	49° 14' 07"	130.00'	111.71'	59.57'
D	09° 57' 00"	400.00'	69.46'	34.82'

LOT 19
TRACT 7587
SEE ATTACHED
MAP



These

E: 1" = 40'

RED UNDER THE SUPERVISION OF

James E. Crosby

NO. 13557 EXP. 3-31-97

MEND VAL DEPUTY CITY ENGINEER

VED DIRECTOR P. W. / CITY ENGINEER

DATE

4/15/93

SANTIAGO INCIDENT - COL
GEORGETC
FROM KNUCKLE SO. OF SERRANO /

CITY OF

EXHIBIT A

DEWATERING/MONITORING FACILITIES
FOR WHICH EASEMENT IS GRANTED

Description of the Property (Sushama and Sampat Saste residence):

Lot 24, Tract 9080 as shown on Book 381, pages 21-23 of the Official Records of Orange County, more commonly known as 6848 Georgetown Circle, Anaheim, CA 92807.

The attached map depicts the boundaries of the Grantor property as well as the dewatering facilities for which this easement is granted. The lot boundaries of the Grantor property are indicated by the bold outline. The dewatering facilities for which this easement is granted are identified by numbers highlighted in bold-faced boxes or circles. The descriptions of the facilities on the Property for which this easement is granted are as follows:

#57 (bold black line indicated by the two bold circles #57):

Line "C" and Line "C-2" PVC pipe (6" dia.) at the southern portion of the lot.

#60 (areas indicated by the two bold circles #60):

6" Cleanouts at the southern portion of the lot.

#53 (bold black line indicated by six bold circles #53):

1. 1/2" Horizontal well discharge at the southern portion of the lot.

#64 (bold black line indicated by six bold circles #64):

Horizontal dewatering well vaults at the southern portion of the lot.

#H-21 (area marked with an open arrow and "H-21"):

Horizontal drain at the southern portion of the lot.

#H-47 (area marked with an open arrow and "H-47"):

Horizontal drain at the southern portion of the lot.

#H-50 (area marked with an open arrow and "H-50"):

Horizontal drain at the southern portion of the lot.

#H-49 (area marked with an open arrow and "H-49"):

Horizontal drain at the southern portion of the lot.

#H-22 (area marked with an open arrow and "H-22"):

Horizontal drain at the southern portion of the lot.

#H-52 (area marked with an open arrow and "H-52"):

Horizontal drain at the southern portion of the lot.

5

4

3



CURVE DATA

△	R	L	T	
(D)	13° 21' 54"	160.00	37.32'	18.75'

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Anaheim
200 S. Anaheim Boulevard
Anaheim, CA 92805
Attention: Malcolm Slaughter, Esq.

**Exempt from Documentary Transfer Tax
Pursuant to R&T Code § 11928**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GENERAL RELEASE OF CLAIMS,
COVENANT NOT TO SUE, AND GRANT OF EASEMENT**

I, Stavros Meimetis, ("Releasor") execute this General Release of Claims and Covenant Not to Sue ("Release") with the express intent that it shall be binding on successors-in-ownership of the Property, as defined below.

Releasor represents and warrants that he owns the real property described as Lot 26 of Tract 9080 as per the map recorded in Book 381, Pages 21-23 in the office of the Orange County Recorder, and more commonly known as 6832 Georgetown Circle, Anaheim Hills, California (the "Property").

In consideration of the terms and provisions contained in the Settlement Agreement between the City of Anaheim and various plaintiffs including Releasor dated March 2, 1999 relating to certain actions consolidated under Delmonico, et al. v. The City of Anaheim, et al., Orange County Superior Court Case No. 718071, Releasor on behalf of himself, his transferees, assigns, predecessors, successors, heirs, and devisees, and all people who make claims through and on behalf of them (collectively the "Releasors"), do hereby release, discharge forever and covenant not to sue the City of Anaheim or its officers, employees, agents, attorneys, successors, assigns, or representatives (collectively the "Releasees"), from and for any and all past, current, and future claims, damages, liabilities, expenses, or causes of action, of any kind, known or unknown, connected in any way with the following:

The acts or omissions alleged in the Consolidated Actions, the geologic instabilities or earth movement alleged in the Consolidated Actions, the City of Anaheim's involvement in or approval of development activities within the areas described as the "Affected Area" in the Consolidated Actions, the grading that occurred within the Affected Area in connection with development of that area, the Releasees' past acts, omissions or conduct concerning the

design, construction, installation, operation, maintenance, and/or repair of any utilities, drainage, sewer, or water facilities referred to in the Consolidated Actions or concerning the installation and operation of dewatering and monitoring facilities/systems in response to ground movement in the Affected Area.

Releasor has read and discussed the terms of Section 1542 of the California Civil Code with their attorneys and expressly waive its provisions. It states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

It is expressly intended that successors-in-ownership of the Property shall be bound by the covenant and release made herein, however, Releasor makes no warranty that this instrument will be effective in doing so. The covenant not to sue and release, among other things, is expressly intended to apply to any future interference/damage that may occur to the use and enjoyment of the Property or to improvements thereon, to the extent that this may be caused in whole or in part by any of the acts, omissions, conduct, events or conditions which have been described in this Release. This covenant and release are made for the express benefit of the City of Anaheim and for that property owned by the City of Anaheim, including but not limited to, streets, curbs, sidewalks, drainage systems, water delivery systems, utility lines, and dewatering systems and all easements and land in which such facilities are installed, which easements and real property interests are set forth in the following recorded instruments:

Tract 7587, as shown on Book 378, pages 21-25, of official records of Orange County, California; Tract 8375, as shown on Book 345, pages 34-39, of official records of Orange County, California; Tract 8376, as shown on Book 345, pages 40-43, of official records of Orange County, California; Tract 8377, as shown on Book 345, pages 44-47, of official records of Orange County, California; Tract 8520, as shown on Book 539, pages 4-7, of official records of Orange County, California; Tract 9080, as shown on Book 381, pages 21-23, of official records of Orange County, California; Tract 9133, as shown on Book 374, pages 8-11, of official records of Orange County, California; Tract 9134, as shown on Book 389, pages 1-3, of official records of Orange County, California; Tract 9135, as shown on Book 389, pages 4-8, of official records of Orange County, California; Tract 9136, as shown on Book 389, pages 9-11, of official records of Orange County, California; Tract 9313, as shown on Book 399, pages 32-33, of official records of

Orange County, California; Tract 10996, as shown on Book 532, pages 11-16, of official records of Orange County, California; Tract 10997, as shown on Book 532, pages 17-19, of official records of Orange County, California; Tract 10998, as shown on Book 532, pages 20-25, of official records of Orange County, California; Tract 13760, as shown on Book 666, pages 35-36, of official records of Orange County, California

all of which are collectively referred to as the "Benefitted Property." It is expressly intended that successors-in-ownership of the Benefitted Property shall benefit from this Release and Covenant Not to Sue.

GRANT OF EASEMENT TO CITY OF ANAHEIM

For valuable consideration, receipt of which is acknowledged, I hereby grant to the City of Anaheim the real property described as follows:

(1) an easement in gross on, over, and across that portion of the Property as is reasonably necessary for the purposes of operating, monitoring, inspecting, testing, maintaining, re-installing, repairing and/or replacing that portion of the City's dewatering facilities located within the Property. The dewatering facilities referred to are those facilities depicted on Exhibit A.

Nothing in this instrument creates any obligation on the part of the City to operate or continue to operate any such dewatering facilities, nor removes any such obligation to the extent that it otherwise may have existed.

The easement granted herein is fully transferable and assignable by City as its sole discretion.

DATED: _____, 1999

Releasor:

By: _____
Stavros Meimetis

EXHIBIT A

DEWATERING/MONITORING FACILITIES
FOR WHICH EASEMENT IS GRANTED

Description of the Property (Steve Meimetis residence):

Lot 26, Tract 9080 as shown on Book 381, pages 21-23 of the Official Records of Orange County, more commonly known as 6832 Georgetown Circle, Anaheim, CA 92807.

The attached map depicts the boundaries of the Grantor property as well as the dewatering facilities for which this easement is granted. The lot boundaries of the Grantor property are indicated by the bold outline. The dewatering facilities for which this easement is granted are identified by numbers highlighted in bold-faced boxes or circles. The descriptions of the facilities on the Property for which this easement is granted are as follows:

#57 (thick black line indicated by the bold circle #57):

Line "C" PVC pipe (6" dia.) in the southern portion of the lot at the toe of the slope.

#60 (end of the thick black line indicated by the bold circle #60):

Cleanout (6") in the southern portion of the lot at the toe of the slope.

#53 (thick black line indicated by the bold circle #53):

Horizontal well discharge (1 1/2" dia.) in the southern portion of the lot at the toe of the slope.

#64 (thick black line indicated by the bold circle #64):

Horizontal dewatering well in the southern portion of the lot at the toe of the slope.

H-58 (area marked with an open arrow and "H-58"):

Horizontal drain in the southern portion of the lot at the toe of the slope.

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Anaheim
200 S. Anaheim Boulevard
Anaheim, CA 92805
Attention: Malcolm Slaughter, Esq.

**Exempt from Documentary Transfer Tax
Pursuant to R&T Code § 11928**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GENERAL RELEASE OF CLAIMS,
COVENANT NOT TO SUE, AND GRANT OF EASEMENT**

We, Joon Ho Choi and Jeong Ja Choi, ("Releasors") execute this General Release of Claims and Covenant Not to Sue ("Release") with the express intent that it shall be binding on successors-in-ownership of the Property, as defined below.

Releasors represent and warrant that they own the real property described as Lot 27 of Tract 9080 as per the map recorded in Book 381, Pages 21-23 in the office of the Orange County Recorder, and more commonly known as 6824 Georgetown Circle, Anaheim Hills, California (the "Property").

In consideration of the terms and provisions contained in the Settlement Agreement between the City of Anaheim and various plaintiffs including Releasors dated March 2, 1999 relating to certain actions consolidated under Delmonico, et al. v. The City of Anaheim, et al., Orange County Superior Court Case No. 718071, Releasors on behalf of themselves, their transferees, assigns, predecessors, successors, heirs, and devisees, and all people who make claims through and on behalf of them (collectively the "Releasors"), do hereby release, discharge forever and covenant not to sue the City of Anaheim or its officers, employees, agents, attorneys, successors, assigns, or representatives (collectively the "Releasees"), from and for any and all past, current, and future claims, damages, liabilities, expenses, or causes of action, of any kind, known or unknown, connected in any way with the following:

The acts or omissions alleged in the Consolidated Actions, the geologic instabilities or earth movement alleged in the Consolidated Actions, the City of Anaheim's involvement in or approval of development activities within the areas described as the "Affected Area" in the Consolidated Actions, the grading that occurred within the Affected Area in connection with development of that area, the Releasees' past acts, omissions or conduct concerning the

design, construction, installation, operation, maintenance, and/or repair of any utilities, drainage, sewer, or water facilities referred to in the Consolidated Actions or concerning the installation and operation of dewatering and monitoring facilities/systems in response to ground movement in the Affected Area.

Releasors have read and discussed the terms of Section 1542 of the California Civil Code with their attorneys and expressly waive its provisions. It states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

It is expressly intended that successors-in-ownership of the Property shall be bound by the covenant and release made herein, however, Releasors make no warranty that this instrument will be effective in doing so. The covenant not to sue and release, among other things, is expressly intended to apply to any future interference/damage that may occur to the use and enjoyment of the Property or to improvements thereon, to the extent that this may be caused in whole or in part by any of the acts, omissions, conduct, events or conditions which have been described in this Release. This covenant and release are made for the express benefit of the City of Anaheim and for that property owned by the City of Anaheim, including but not limited to, streets, curbs, sidewalks, drainage systems, water delivery systems, utility lines, and dewatering systems and all easements and land in which such facilities are installed, which easements and real property interests are set forth in the following recorded instruments:

Tract 7587, as shown on Book 378, pages 21-25, of official records of Orange County, California; Tract 8375, as shown on Book 345, pages 34-39, of official records of Orange County, California; Tract 8376, as shown on Book 345, pages 40-43, of official records of Orange County, California; Tract 8377, as shown on Book 345, pages 44-47, of official records of Orange County, California; Tract 8520, as shown on Book 539, pages 4-7, of official records of Orange County, California; Tract 9080, as shown on Book 381, pages 21-23, of official records of Orange County, California; Tract 9133, as shown on Book 374, pages 8-11, of official records of Orange County, California; Tract 9134, as shown on Book 389, pages 1-3, of official records of Orange County, California; Tract 9135, as shown on Book 389, pages 4-8, of official records of Orange County, California; Tract 9136, as shown on Book 389, pages 9-11, of official records of Orange County, California; Tract 9313, as shown on Book 399, pages 32-33, of official records of

Orange County, California; Tract 10996, as shown on Book 532, pages 11-16, of official records of Orange County, California; Tract 10997, as shown on Book 532, pages 17-19, of official records of Orange County, California; Tract 10998, as shown on Book 532, pages 20-25, of official records of Orange County, California; Tract 13760, as shown on Book 666, pages 35-36, of official records of Orange County, California

all of which are collectively referred to as the "Benefitted Property." It is expressly intended that successors-in-ownership of the Benefitted Property shall benefit from this Release and Covenant Not to Sue.

GRANT OF EASEMENT TO CITY OF ANAHEIM

For valuable consideration, receipt of which is acknowledged, I hereby grant to the City of Anaheim the real property described as follows:

(1) an easement in gross on, over, and across that portion of the Property as is reasonably necessary for the purposes of operating, monitoring, inspecting, testing, maintaining, re-installing, repairing and/or replacing that portion of the City's dewatering facilities located within the Property. The dewatering facilities referred to are those facilities depicted on Exhibit A.

Nothing in this instrument creates any obligation on the part of the City to operate or continue to operate any such dewatering facilities, nor removes any such obligation to the extent that it otherwise may have existed.

The easement granted herein is fully transferable and assignable by City as its sole discretion.

DATED: _____, 1999

Releasors:

By: _____
Joon Ho Choi

By: _____
Jeong Ja Choi

EXHIBIT A

DEWATERING/MONITORING FACILITIES
FOR WHICH EASEMENT IS GRANTED

Description of the Property (Jeong Ja and Joon Ho Choi residence):

Lot 27, Tract 9080 as shown on Book 381, pages 21-23 of the Official Records of Orange County, more commonly known as 6824 Georgetown Circle, Anaheim, CA 92807.

The attached map depicts the boundaries of the Grantor property as well as the dewatering facilities for which this easement is granted. The lot boundaries of the Grantor property are indicated by the bold outline. The dewatering facilities for which this easement is granted are identified by numbers highlighted in bold-faced boxes or circles. The descriptions of the facilities on the Property for which this easement is granted are as follows:

#57 (thick line indicated by the bold circle #57):

Line "A-1" PVC pipe (6" dia.) in the southern portion of the lot at the toe of the slope.

#60 (end of the thick line indicated by the bold circle #60):

Cleanout (6") in the southern portion of the lot at the toe of the slope.

#53 (thick line indicated by the bold circle #53):

Horizontal well discharge (1 1/2") in the southern portion of the lot at the toe of the slope.

#64 (thick line indicated by the bold circle #64):

Horizontal dewatering well vault in the southern portion of the lot at the toe of the slope.

#27 (dashed line indicated by the bold circle #27):

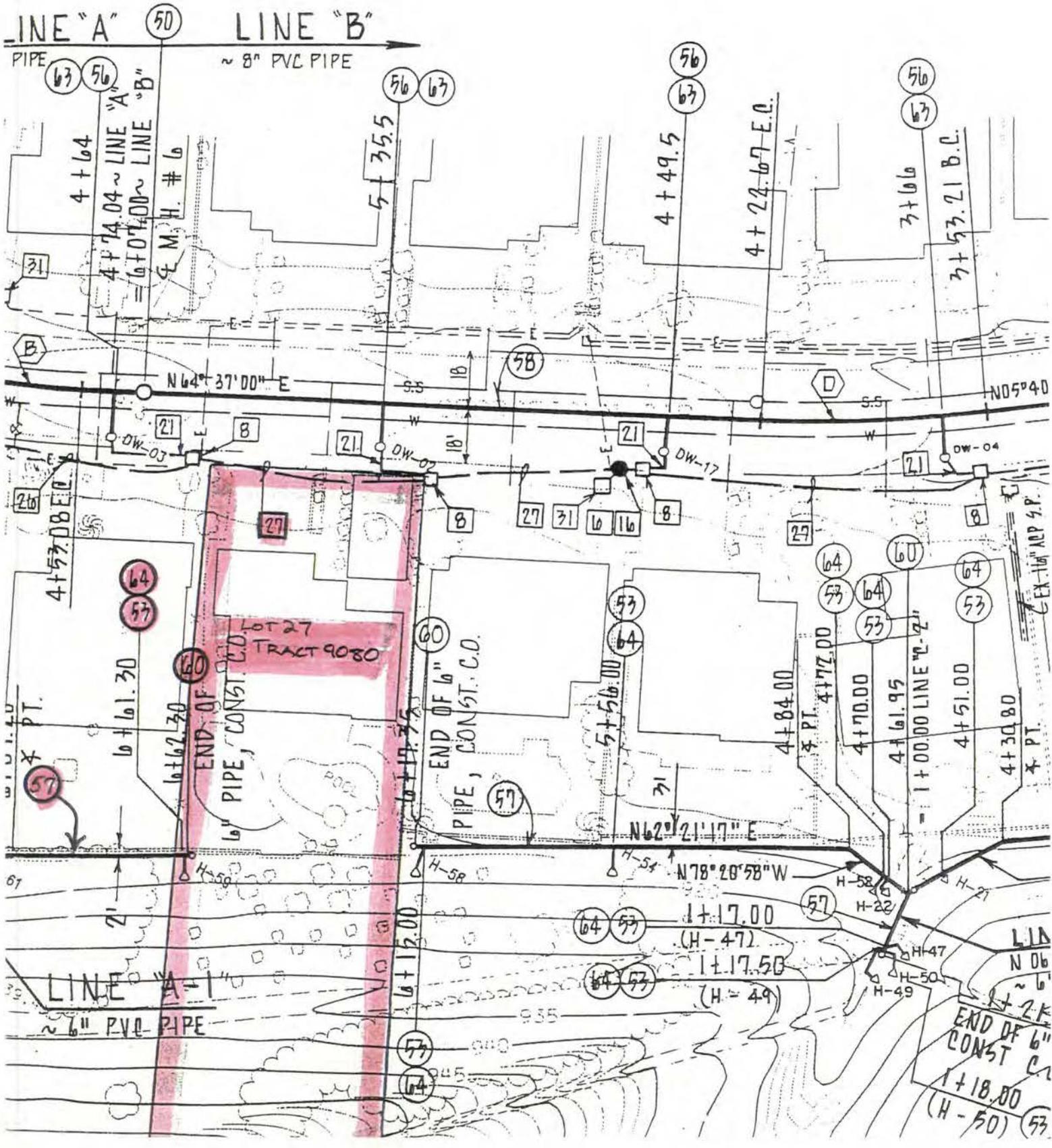
2" Electrical conduit along the northern lot boundary.

H-59 (area marked with an open arrow and "H-59"):

Horizontal drain in the southern portion of the lot at the toe of the slope.

4+72.00
 4" INLET
 4+70.00
 4" INLET
 LINE "D"
 CONST 324.59 L.F. ~ 6" P.V.C.
 Q = 45.5 G.P.M.

6 5 4



**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Anaheim
200 S. Anaheim Boulevard
Anaheim, CA 92805
Attention: Malcolm Slaughter, Esq.

Exempt from Documentary Transfer Tax
Pursuant to R&T Code § 11928

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GENERAL RELEASE OF CLAIMS,
COVENANT NOT TO SUE, AND GRANT OF EASEMENT**

We, Larry J. Mauzey and Linda Mauzey, ("Releasors") execute this General Release of Claims and Covenant Not to Sue ("Release") with the express intent that it shall be binding on successors-in-ownership of the Property, as defined below.

Releasors represent and warrant that they own the real property described as Lot 29 of Tract 9134 as per the map recorded in Book 389, Pages 1-3 in the office of the Orange County Recorder, and more commonly known as 1095 Burlwood Drive, Anaheim Hills, California (the "Property").

In consideration of the terms and provisions contained in the Settlement Agreement between the City of Anaheim and various plaintiffs including Releasors dated March 2, 1999 relating to certain actions consolidated under Delmonico, et al. v. The City of Anaheim, et al., Orange County Superior Court Case No. 718071, Releasors on behalf of themselves, their transferees, assigns, predecessors, successors, heirs, and devisees, and all people who make claims through and on behalf of them (collectively the "Releasors"), do hereby release, discharge forever and covenant not to sue the City of Anaheim or its officers, employees, agents, attorneys, successors, assigns, or representatives (collectively the "Releasees"), from and for any and all past, current, and future claims, damages, liabilities, expenses, or causes of action, of any kind, known or unknown, connected in any way with the following:

The acts or omissions alleged in the Consolidated Actions, the geologic instabilities or earth movement alleged in the Consolidated Actions, the City of Anaheim's involvement in or approval of development activities within the areas described as the "Affected Area" in the Consolidated Actions, the grading that occurred within the Affected Area in connection with development of that area, the Releasees' past acts, omissions or conduct concerning the

design, construction, installation, operation, maintenance, and/or repair of any utilities, drainage, sewer, or water facilities referred to in the Consolidated Actions or concerning the installation and operation of dewatering and monitoring facilities/systems in response to ground movement in the Affected Area.

Releasors have read and discussed the terms of Section-1542 of the California Civil Code with their attorneys and expressly waive its provisions. It states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

It is expressly intended that successors-in-ownership of the Property shall be bound by the covenant and release made herein, however, Releasors make no warranty that this instrument will be effective in doing so. The covenant not to sue and release, among other things, is expressly intended to apply to any future interference/damage that may occur to the use and enjoyment of the Property or to improvements thereon, to the extent that this may be caused in whole or in part by any of the acts, omissions, conduct, events or conditions which have been described in this Release. This covenant and release are made for the express benefit of the City of Anaheim and for that property owned by the City of Anaheim, including but not limited to, streets, curbs, sidewalks, drainage systems, water delivery systems, utility lines, and dewatering systems and all easements and land in which such facilities are installed, which easements and real property interests are set forth in the following recorded instruments:

Tract 7587, as shown on Book 378, pages 21-25, of official records of Orange County, California; Tract 8375, as shown on Book 345, pages 34-39, of official records of Orange County, California; Tract 8376, as shown on Book 345, pages 40-43, of official records of Orange County, California; Tract 8377, as shown on Book 345, pages 44-47, of official records of Orange County, California; Tract 8520, as shown on Book 539, pages 4-7, of official records of Orange County, California; Tract 9080, as shown on Book 381, pages 21-23, of official records of Orange County, California; Tract 9133, as shown on Book 374, pages 8-11, of official records of Orange County, California; Tract 9134, as shown on Book 389, pages 1-3, of official records of Orange County, California; Tract 9135, as shown on Book 389, pages 4-8, of official records of Orange County, California; Tract 9136, as shown on Book 389, pages 9-11, of official records of Orange County, California; Tract 9313, as shown on Book 399, pages 32-33, of official records of

Orange County, California; Tract 10996, as shown on Book 532, pages 11-16, of official records of Orange County, California; Tract 10997, as shown on Book 532, pages 17-19, of official records of Orange County, California; Tract 10998, as shown on Book 532, pages 20-25, of official records of Orange County, California; Tract 13760, as shown on Book 666, pages 35-36, of official records of Orange County, California

all of which are collectively referred to as the "Benefitted Property." It is expressly intended that successors-in-ownership of the Benefitted Property shall benefit from this Release and Covenant Not to Sue.

GRANT OF EASEMENT TO CITY OF ANAHEIM

For valuable consideration, receipt of which is acknowledged, I hereby grant to the City of Anaheim the real property described as follows:

(1) an easement in gross on, over, and across that portion of the Property as is reasonably necessary for the purposes of operating, monitoring, inspecting, testing, maintaining, re-installing, repairing and/or replacing that portion of the City's dewatering facilities located within the Property. The dewatering facilities referred to are those facilities depicted on Exhibit A.

Nothing in this instrument creates any obligation on the part of the City to operate or continue to operate any such dewatering facilities, nor removes any such obligation to the extent that it otherwise may have existed.

The easement granted herein is fully transferable and assignable by City as its sole discretion.

DATED: _____, 1999

Releasors:

By: _____
Larry J. Mauzey

By: _____
Linda Mauzey

EXHIBIT A

**DEWATERING/MONITORING FACILITIES
FOR WHICH EASEMENT IS GRANTED**

Description of the Property (Larry and Linda Mauzey residence):

Lot 29, Tract 9134 as shown on Book 389, pages 1-3 of the Official Records of Orange County, more commonly known as 1095 Burlwood Drive, Anaheim, CA 92807.

The attached map depicts the boundaries of the Grantor property as well as the dewatering facilities for which this easement is granted. The lot boundaries of the Grantor property are indicated by the bold outline. The dewatering facilities for which this easement is granted are identified by numbers highlighted in bold-faced boxes or circles. The descriptions of the facilities on the Property for which this easement is granted are as follows:

#2 (darkened circle indicated by the bold box #2):

Meter pedestal at the southern lot boundary.

#17 (black line indicated by the bold box #17):

Electrical conduit (3/4") at the southern boundary.

#8 (open square indicated by the bold box #8):

HP control cabinet (1 1/2") at the southern lot boundary.

#21 (dashed line indicated by the bold box #21):

Electrical conduit (3/4") at the center of the lot.

#53 (thick black line indicated by the four bold circles #53):

Horizontal well discharge (1 1/2") in the eastern portion of the lot.

#64 (thick black line indicated by the four bold circles #64):

Horizontal dewatering well vaults in the eastern portion of the lot.

#50 (open circle indicated by the bold circle #50):

Manhole south of the center of the lot.

#14 (dashed line indicated by the bold square #14):

Electrical conduit (1 1/2") at the southern lot boundary.

#58 (thick solid line indicated by the bold circle #58):

Line H-1 PVC pipe (8" dia.) in the eastern portion of the lot.

#56 (open circle indicated by the bold circle #56):

2" Vertical well discharge connection.

#63 (open circle indicated by the bold circle #63):

Vertical dewatering well vault per DTL 1 on SHT 13.

PVC Pipe (thick solid line indicated by the arrow labeled "2" 0 PVC):

PVC Pipe (2" dia.) at the southeastern corner of the lot.

H-51 (area marked with an open arrow and "H-51"):

Horizontal drains at the eastern end of the lot.

H-53 (area marked with an open arrow and "H-53"):

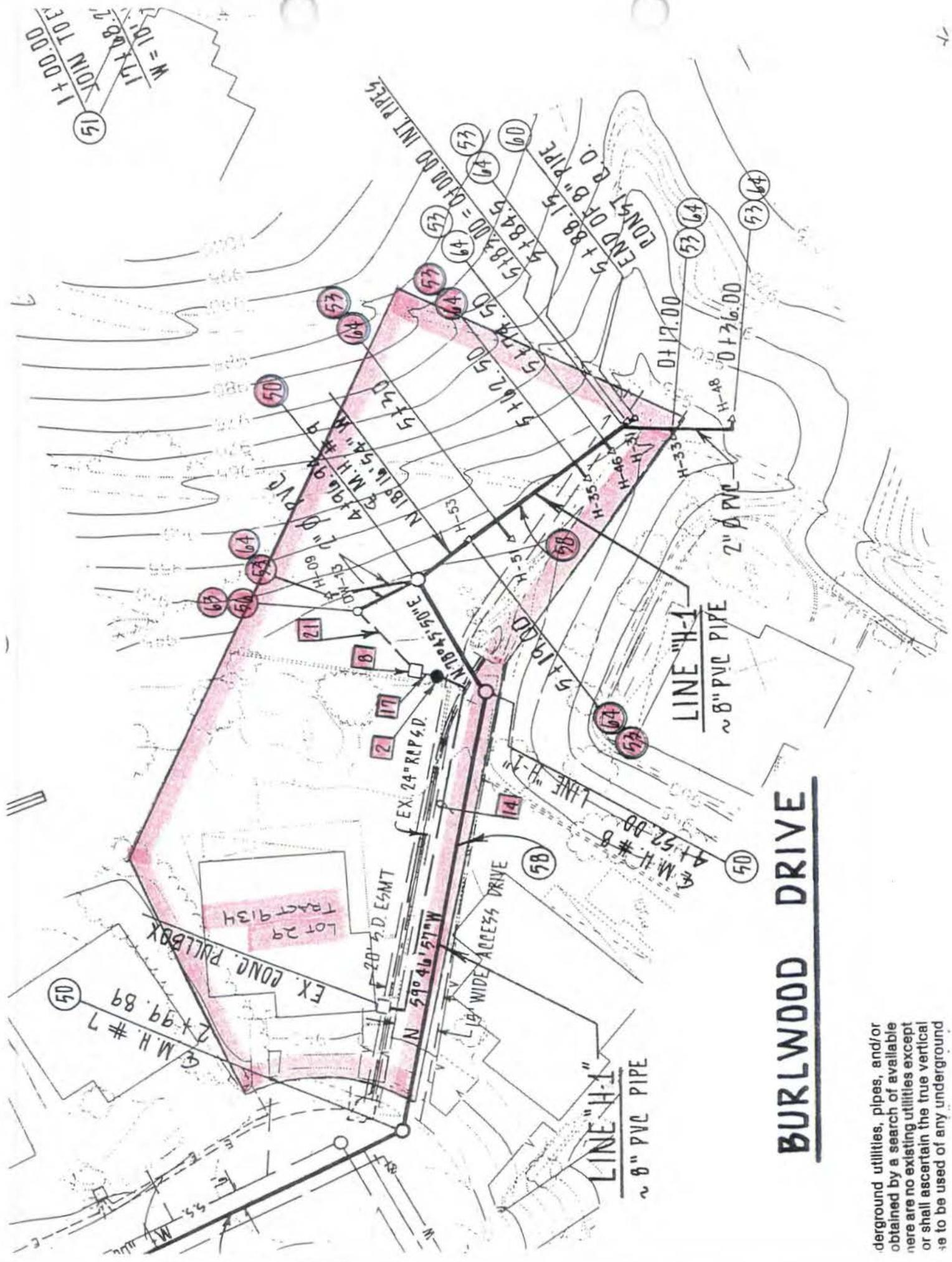
Horizontal drains at the eastern end of the lot.

H-09 (area marked with an open arrow and "H-09"):

Horizontal drains at the eastern end of the lot.

DW-13 (area marked with an open arrow and "DW-13"):

Dewatering well at the center of the lot.



BURLWOOD DRIVE

derground utilities, pipes, and/or
 obtained by a search of available
 here are no existing utilities except
 or shall ascertain the true vertical
 -is to be used of any underground

EXHIBIT B

BENINK &
 **SLAVENS, LLP**

Eric J. Benink, Esq.
eric@beninkslavens.com
Vincent D. Slavens, Esq.
vince@beninkslavens.com

8885 Rio San Diego, Suite 207
San Diego, CA 92108
Tel: 619.369.5252 Fax: 619.369.5253
www.beninkslavens.com

May 7, 2021

Via e-mail (tbass@anaheim.net) and U.S. Mail

Theresa Bass
City Clerk
City of Anaheim
200 S. Anaheim Blvd.
2nd Floor, Room 217
Anaheim, CA 92805

Re: Demand for Arbitration

Dear Ms. Bass:

This firm represents the Santiago Geologic Hazard Abatement District (“SGHAD”). On or about June 10, 1999, the City and SGHAD entered into an *Agreement Between the City of Anaheim and the Santiago Geologic Hazard Abatement District* (“Agreement”). Paragraph 7 of the Agreement requires that any disputes concerning the Agreement be resolved through binding arbitration utilizing a mutually agreed-upon arbitrator. A dispute has arisen which SGHAD wishes to submit to arbitration. Transmitted herewith is a draft of the Complaint for Declaratory Relief which reflects SGHAD’s allegations and claims. Because paragraph 7 of the Agreement is silent with respect to the arbitration forum, we propose that the parties utilize JAMS and its Expedited Procedures.

Please respond no later than May 17, 2021 as to your position on utilizing JAMS and its Expedited Procedures. We are happy to discuss the selection of the forum with you further.

///

///

///

Theresa Bass
City of Anaheim
May 7, 2021
Page 2

Thank you for your anticipated cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Benink". The signature is fluid and cursive, with a large initial "E" and "B".

Eric J. Benink

cc: City Attorney's Office via e-mail (cityattorneysoffice@anaheim.net) and U.S. Mail

1 Eric J. Benink, Esq., SBN 187434
eric@beninkslavens.com
2 **BENINK & SLAVENS, LLP**
8885 Rio San Diego Drive, Suite 207
3 San Diego, CA 92108
Tel.: (619) 369-5252
4 Fax: (619) 369-5253

DRAFT

5 Attorneys for Claimant

6 **ARBITRATION**
7 **BEFORE JAMS**
8

9 **SANTIAGO GEOLOGIC HAZARD**
10 **ABATEMENT DISTRICT**, a political
subdivision of the state of California,

11 Claimant,

12 v.

13 **CITY OF ANAHEIM**, a California
14 charter city,

15 Respondent.

) **Case No.**

) **COMPLAINT FOR DECLARATORY**
RELIEF

16
17 Claimant Santiago Geologic Hazard Abatement District (“SGHAD”) brings this complaint for
18 declaratory relief and alleges as follows:

19 **INTRODUCTION**

20 1. This complaint involves duties and obligations arising from an “Agreement Between
21 the City of Anaheim and the Santiago Geologic Hazard Abatement District” executed on or about
22 June 10, 1999 (“Agreement”). The City of Anaheim (“Anaheim”) and SGHAD entered the
23 Agreement in conjunction with the settlement of dozens of lawsuits residential property owners had
24 brought against Anaheim over damages suffered as a result of a 1993 landslide (the “Santiago
25 Landslide”). SGHAD is a political subdivision of the state that Anaheim formed in furtherance of the
26 settlements.

27 2. Prior to the Agreement, Anaheim had constructed and was operating dewatering
28 facilities designed to lower elevated groundwater levels, stabilize the earth movement, and monitor

1 groundwater levels and movement. The Agreement required Anaheim to transfer the dewatering
2 facilities to SGHAD and contribute \$3.5 million for its operation. In turn, SGHAD agreed to use the
3 funds to maintain and operate the dewatering facilities.

4 3. SGHAD has successfully maintained and operated the dewatering facilities since 1999.
5 But the \$3.5 million fund is being depleted each year. SGHAD has available to it, a single mechanism
6 to generate revenue to fund operations: a special assessment imposed on property owners. But special
7 assessments require majority approval of the property owners. In 2019, SGHAD proposed a special
8 assessment and conducted an election as required by our state Constitution, but property owners
9 overwhelmingly rejected it.

10 4. The costs of operating the dewatering facilities is approximately \$265,000 per year and
11 that does not even count the costs of replacing aging-out infrastructure or major repairs. SGHAD
12 estimates that its fund balance will be \$864,449 on June 30, 2021. Thus, its ability to operate and
13 maintain the dewatering facilities will cease at some point over the next few years.

14 5. By this complaint, SGHAD seeks a declaratory judgment that upon depletion of its
15 funds, it is excused from any contractual obligation to maintain, operate, and repair the dewatering
16 facilities under the doctrines of impossibility, impracticability, and/or frustration of purpose.
17 Alternatively, it seeks a declaratory judgment that it has no such obligation upon depletion of the
18 funds. Hundreds of residential properties and public property owned by Anaheim are at risk. Without
19 active operation and management of the dewatering facilities, catastrophic consequences will follow.
20 A declaratory judgment will put all interested parties on notice that they cannot rely on SGHAD to
21 provide these services going forward.

22 PARTIES

23 6. Claimant Santiago Geologic Hazard Abatement District was formed pursuant to Public
24 Resources Code section 26558, et seq. It is a political subdivision of the state. (Pub. Resources Code
25 § 26570.) It is governed by a five-person Board of Directors (“Board”). It may sue and be sued.
26 (Pub. Resources Code § 26574, subd. (a).)

27 7. Respondent City of Anaheim is a charter city located in Orange County.

28 ///

1 **GENERAL ALLEGATIONS**

2 ***The Landslide***

3 8. In January 1993, a landslide activated in an area of Anaheim Hills (part of the City of
4 Anaheim) forcing dozens of residential property owners to evacuate their homes. Many never
5 returned and others allowed banks to foreclose rather than make mortgage payments on their damaged
6 homes. The landslide was the subject of local, state, and federal disaster declarations.

7 9. In response to the landslide, Anaheim and its consultants installed dewatering facilities,
8 including but not limited to horizontal wells, vertical wells, pumps, and associated equipment on
9 public and private properties in the vicinity of the earth movement. The intent was to lower
10 groundwater levels and stabilize the earth movement. Anaheim also repaired damage to public
11 improvements, such as roadways, water delivery systems, sidewalks, and sewers.

12 10. In 1996, Anaheim’s geological consultants, Eberhart & Stone, Inc. issued a 98-page
13 report that documented the conditions and incidents associated with the “Santiago Landslide,” a
14 roughly 25 acre area. The report made recommendations as to mitigate the landslide. It also
15 recommended “[t]he implementation of a Geologic Hazard Abatement District (GHAD) [as] a means
16 of raising the necessary funds for maintaining, monitoring, and managing the dewatering system for
17 the benefit of all properties threatened by renewed landslide movement.”

18 ***The Lawsuits and Delmonico Settlement***

19 11. Following the Santiago Landslide, dozens of property owners filed lawsuits against
20 Anaheim for inverse condemnation, negligence, nuisance, dangerous condition of property, failure to
21 discharge mandatory duty, strict products liability, and fraudulent concealment. In 1995, the City filed
22 a cross-claim against the property owners for their own acts that allegedly contributed to the landslide
23 and for express indemnity arising from agreements that property developers had allegedly executed.
24 The cross-claim also named as ROE Defendants, unidentified insurers of the property owners. The
25 cases were consolidated as *Delmonico v. City of Anaheim* (“Delmonico Lawsuit”).

26 12. The Delmonico Lawsuit was pending for years. The court appointed a neutral
27 geologist to opine on the area of the earth movement. In 1995, the City settled with insurers in the
28 amount of \$3 million “for use towards the resolution of the claims asserted by the [Delmonico]

1 plaintiffs.” The settlement provided that the funds could not be released until a global resolution of
2 the Delmonico Lawsuit.

3 13. In early 1999, a global settlement of the Delmonico Lawsuit was proposed under which
4 Anaheim would form a geologic hazard abatement district to which it would transfer responsibility of
5 the operation and maintenance of the dewatering facilities. Anaheim would also fund the district with
6 \$3.5 million.

7 14. On February 23, 1999, in anticipation of the proposed global settlement, Anaheim’s
8 City Council passed Resolution No. 99R-31 which initiated proceedings to form a geologic hazard
9 abatement district pursuant to Public Resources Code section 26500, et seq. Resolution No. 99R-31
10 stated that City Council had been presented with and had reviewed a plan of control, as required by
11 Public Resources Code section 26558. The plan it had reviewed is titled “Plan of Control Prepared for
12 Proposed Santiago Geologic Hazard Abatement District” (“Plan of Control”).

13 15. On March 16, 1999, the City Council, after finding that it had not received written
14 objections from property owners representing greater than 50 percent of the assessed valuation, passed
15 Resolution No. 99R-50 approving the formation of the SGHAD and appointing an initial board of
16 directors.

17 16. On March 2, 1999 (between the adoption of the two above-referenced resolutions), the
18 City and the *Delmonico* plaintiffs entered into a global settlement agreement (“Delmonico
19 Agreement”). The Delmonico Agreement required the City to pay \$15.5 million, which included a
20 \$5.5 million contribution from other parties, inclusive of the \$3 million payment from insurers.

21 Paragraph I.D of the Delmonico Agreement states:

22 *This Agreement shall be further conditioned on the following:*

23 *1. The GHAD [geologic hazard abatement district] and its board are approved not*
24 *later than March 23, 1999.*

25 *2. The GHAD enters into a contract with the City, no later than April 30, 1999,*
26 *accepting ownership, maintenance and operation responsibilities for the Dewatering*
System.

27 17. Paragraph I.E. of the Delmonico Agreement required the City to pay \$12 million of the
28 \$15.5 million directly to the plaintiff property owners. The balance (\$3.5 million) was to “be paid to

1 the GHAD, if approved, providing the GHAD enters into the contract with the City referred to herein
2 relating to the Dewatering System by April 30, 1999. If the GHAD is not approved or if the GHAD
3 does not enter into the contract with the City by April 30, 1999, the Agreement shall have no further
4 force or effect and neither the Settlement Distribution nor the GHAD Distribution shall be made,
5 unless the City agrees to waive the GHAD conditions.”

6 ***The Anaheim-SGHAD Agreement***

7 18. As contemplated by the Delmonico Agreement, on or about June 10, 1999, Anaheim
8 and SGHAD entered in an “Agreement Between the City of Anaheim and the Santiago Geologic
9 Hazard Abatement District” (“Agreement”). Attached hereto as **Exhibit A** is a true and correct copy
10 of the Agreement.

11 19. Under the Agreement, Anaheim (a) transferred and assigned all rights and interests that
12 it held in specified Dewatering Facilities, (b) provided SGHAD access to such facilities, and (c)
13 transferred \$3.5 million to SGHAD for the purpose of construction, acquisition, operation,
14 maintenance, and repair of dewatering facilities and for the purpose of monitoring, abating and/or
15 stabilizing the Santiago Landslide, *inter alia*. (See Ex. A, ¶¶ 1, 3, 4, 5.)

16 20. SGHAD’s obligation under the Agreement was to “assume sole and total responsibility
17 for all ownership, control, operational, maintenance, and repair responsibilities relating to the
18 Dewatering Facilities.” (*Id.* at ¶ 6.) Specifically, the Agreement provides that “[t]he District shall
19 operate, maintain, and repair all or part of the Dewatering Facilities, as well as any additional new or
20 replacement facilities the District may construct or install, in a manner within its discretion which will
21 control groundwater levels to prevent reactivation and/or to abate movement of the Santiago
22 Landslide.” (*Ibid.*)

23 ***SGHAD’s Operations to Date***

24 21. The Dewatering Facilities specified in the Agreement include:

- 25 ● 36 pumped, standby, and abandoned vertical dewatering wells as identified as DW-1
26 through DW-23 and DW 25- DW-37 in the Plan of Control (active dewatering wells)
- 27 ● 87 horizontal dewatering wells (passive dewatering wells)
- 28 ● 28 open-tube stand-pipe piezometers

- 1 • 5 multi-point piezometers
- 2 • 10 inclinometer casings

3 (See Agreement, Ex. A.) The piezometers monitor the depth of groundwater. Inclinometers measure
4 displacements in ground and in structures that lie below ground level (e.g. retaining walls) in relation
5 to a baseline reading.

6 22. The Plan of Control states:

7 *The objective is to achieve area groundwater elevations no higher than those recorded*
8 *for October 5, 1994 each and every year at the onset (October 15) of the seasonal rain-*
9 *year.*

10 The Plan of Control provides that a minimum of three entities need to provide technical and
11 contractual services on behalf of SGHAD: (1) a primary geologic/geotechnical consultant to conduct
12 monitoring of water elevations, perform inclinometer surveys, compile pump discharge volumes, and
13 report and analyze findings, (2) pump contractor to service pumps, monitor performance and report to
14 primary consultant, and (3) review geologic/geotechnical consultant to assist SGHAD in reviewing
15 reports and activities.

16 23. SGHAD has successfully operated, maintained, and repaired the Dewatering Facilities
17 in accordance with the Plan of Control, and as required by the Agreement. It presently engages two
18 consultants: ENGEO Incorporated (“ENGEO”) and Charles King Company (“Charles King”).
19 ENGEO acts as the primary geologic/geotechnical consultant and liaison to SGHAD, and acts as the
20 day-to-day manager, retaining other consultants as needed. It monitors and maintains measurement
21 devices, such as piezometers and inclinometers, and evaluates and reports system data to SGHAD.
22 Charles King maintains and repairs the dewatering wells and related equipment like pumps and
23 electric systems, and obtains and reports water levels of, and volumes pumped from, wells.

24 24. SGHAD’s Fiscal Year (“FY”) 2020/21 Budget was \$266,646. It consisted of the
25 following projected expenses:

26 Scheduled Monitoring and Analysis Activities	\$ 42,300
27 Maintenance and Operations	\$172,500

1 Administration and Accounting
(SGHAD Manager) \$ 27,000

2 Administration and Accounting
3 (Outside Professional Services) \$ 23,846

4
5 25. The FY 2020/21 Budget notes that “[w]hile it appears that there are significant well
6 maintenance and repair items that have been deferred, to help maintain the GHAD account balance
7 and allow response to critical failures that may occur, these items are not funded in the FY 2020/21
8 budget.” SGHAD has, in fact, deferred maintenance which creates significant financial burdens in the
9 future.

10 26. The FY 2020/21 Budget estimates a fund balance of \$864,449 on June 30, 2021. It
11 also estimates that FY 2023/24 will be the final year in which it will have sufficient funds by which to
12 operate, maintain, and repair the Dewatering Facilities. And this does not take into account
13 expenditures for critical well failures. Wells have a lifespan of 30-50 years. As most were
14 constructed in the mid-1990’s, they are approaching their end-of-life.

15 ***SGHAD’s Lack of Funding Sources***

16 27. SGHAD invests its fund balance in certificates of deposit and money market accounts
17 that generate nominal returns. These nominal returns have represented its sole source of revenue.

18 28. Public Resources Code section 26650 authorizes SGHAD to levy and collect
19 assessments to pay for the cost and expenses of maintenance and operation of improvements.
20 Pursuant to Public Resources Code section 26587, SGHAD may fund the costs of improvements via
21 the Improvement Act of 1911 (commencing with Section 5000 of the Streets and Highways Code) or
22 the Municipal Improvement Act of 1913 (commencing with Section 10000 of the Streets and
23 Highways Code) or the Improvement Bond Act of 1915 (commencing with Section 8500 of the
24 Streets and Highways Code).

25 29. In order to fund such costs or improvements as authorized by Public Resources Code
26 section 26650, or under each of the foregoing acts, SGHAD must levy special assessments against
27 property owners. Special assessments are subject to procedures set forth in our state Constitution.
28 Specifically, article XIII D, section 4, subdivision (d) requires a local agency proposing an assessment
to mail ballots to each property owner. Subdivision (e) provides each property owner the right to

1 protest the assessment according to the proportional financial obligation of the affected property. If
2 ballots submitted in opposition to the assessment exceed the ballot submitted in favor, the local agency
3 may not impose the assessment.

4 30. In 2019, SGHAD endeavored to pass an annual \$923 per parcel special assessment on
5 303 properties within its boundaries. As required by the California Constitution, SGHAD retained a
6 registered professional engineer (ENGEO) to prepare a detailed engineer’s report to support the
7 assessment. The engineer’s report identified the cost of major well reconditioning or replacements at
8 \$200,000 each and assumed such a replacement would occur once every 5 years. It also projected
9 that, without the assessment, SGHAD’s fund balance would be \$338,849 by the end of FY 2023/24.

10 31. On January 31, 2019, the Board passed Resolution No. 2019/03: “A Resolution of
11 Intention to Order an Assessment for the Santiago Geologic Hazard Abatement District and Set a
12 Public Hearing for March 28, 2019, to Consider the Proposed Assessment and Protests Thereto.”
13 Resolution No. 2019/03 directed SGHAD’s manager (ENGEO) to mail a “Notice of Adoption of
14 Resolution, Proposed Assessment, and Public Hearing” to property owners. It also stated ballots
15 would be tabulated at the March 28, 2019 public hearing.

16 32. In connection with the proposed assessment, SGHAD conducted extensive outreach to
17 property owners, including workshops, mailings, flyers, face-to-face meetings and a website.

18 33. At the March 28, 2019 public hearing, the ballots were tabulated. Of the 177 ballots
19 received, 136 were against, and 41 were for the assessment. In other words, nearly 77% of property
20 owners voted against it. The costs associated with the failed assessment was approximately \$25,000.

21 34. Public Resources Code section 26593 provides that SGHAD is authorized to borrow
22 money. But without any revenue stream to repay it, it is not possible to obtain loans. Nor is SGHAD
23 aware of any available assistance from other private or public sources. (Pub. Resources Code §
24 26591.)

25 35. On March 6, 2020, representatives of SGHAD met with Anaheim City Councilmember
26 Trevor O’Neil and his aide Justin Glover. At the meeting, SGHAD raised the same issues referenced
27 herein, i.e., SGHAD will run out of funds to the detriment of public and private property and was
28 unable to obtain property owner approval to levy assessments. It asked that Anaheim contribute funds

1 in order to sustain SGHAD's operations. O'Neil and Glover suggested that SGHAD consider a bond.
2 But a bond is not possible without a repayment mechanism as discussed above. A few weeks after the
3 meeting, Glover reported that O'Neil would not recommend providing any financial assistance to
4 SGHAD.

5 36. It is certain that SGHAD **will** run out of funds to sustain the maintenance, operation,
6 and repair of the Dewatering Facilities. The timeline will depend, in part, on the need to address
7 major repair events and well failures. Once such operations cease, it is certain that the Santiago
8 Landslide will reactivate causing a catastrophic event for property owners and Anaheim. The
9 Dewatering Facilities protect the public and private property worth hundreds of millions of dollars.
10 And landslides can injure or kill people as well. For over twenty years, SGHAD has safeguarded
11 property and protected the public through its prudent and professional management and operation of
12 the Dewatering Facilities. At the time the parties entered the Agreement, they assumed SGHAD
13 would be able to levy assessments to sustain its operations. SGHAD sought to ensure its continued
14 operation by seeking an assessment two years ago, which, despite its best efforts, failed. It has no
15 options going forward.

16 ARBITRABILITY

17 37. Section 7 of the Agreement provides:
18 *Any disputes between the City and the District concerning the interpretation or*
19 *enforcement of this Agreement shall be resolved through binding arbitration between*
20 *the parties utilizing a mutually-agreed upon arbitrator. The arbitration proceeding*
21 *may be commenced by either party by service of a notice of intent to arbitrate. The*
22 *arbitration shall be conducted on an agreed-upon date not more than three months*
23 *following service of such notice. It is specifically agreed that in addition to any other*
24 *available remedies, the arbitrator may order specific performance of this Agreement.*
25 *Judgment on the arbitration proceeding may be entered in any court of competent*
26 *jurisdiction.*

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CAUSE OF ACTION
Declaratory Relief
Code of Civil Procedure section 1060
(Against the City of Anaheim)

38. SGHAD realleges and incorporates by reference each of the foregoing allegations as though fully set forth herein.

39. SGHAD and Anaheim are parties to the Agreement. To date, SGHAD has performed each of its contractual obligations as required by the Agreement.

40. The Agreement places no explicit time restriction on SGHAD's obligation to operate, maintain, and repair the Dewatering Facilities, and thus, it could be interpreted to require such in perpetuity. SGHAD, by no fault of its own, and due to the unique powers conferred, and limitations imposed, upon it by virtue of the fact it exists merely as a political subdivision of the state pursuant to Public Resources Code section 26558, et seq., will be unable to operate, maintain, and repair the Dewatering Facilities in the future.

41. SGHAD contends that the performance of any contractual obligation to operate, maintain, or repair the Dewatering Facilities will be excused when its funds on hand have been depleted, based on the doctrines of impossibility, impracticability, and/or frustration of purpose. Alternatively, SGHAD contends that the Agreement does not impose on SGHAD any obligation to operate, maintain, or repair the Dewatering Facilities if it has no means to fund such.

42. Anaheim contends that SGHAD's performance is not excused by the doctrines of impossibility, impracticability, and/or frustration of purpose. It also contends that SGHAD's obligations continue despite the depletion of funds. Accordingly, a present and actual controversy exists between the parties with respect to SGHAD's duties under the Agreement.

43. SGHAD is entitled to a declaratory judgment, pursuant to Code of Civil Procedure section 1060.

PRAYER FOR RELIEF

WHEREFORE, SGHAD prays for the following relief against Anaheim:

1. A declaratory judgment, pursuant to Code of Civil Procedure section 1060, declaring

1 that its performance of any contractual obligation to maintain, operate, or repair the Dewatering
2 Facilities will be excused when the funds on hand have been depleted based on the doctrines of
3 impossibility, impracticability, and/or frustration of purpose. Or alternatively, a declaratory judgment
4 that declares that the Agreement does not impose on SGHAD any obligation to operate, maintain, or
5 repair the Dewatering Facilities upon depletion of its funds.

6 2. An award of costs of arbitration.

7 3. Any other relief that the Arbitrator may deem just and proper or in the interest of
8 justice.

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10
11 **DATED:** _____

BENINK & SLAVENS, LLP

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13 _____
14 Eric J. Benink
15 Attorneys for Claimant,
16 Santiago Geologic Hazard Abatement District
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EXHIBIT C



City of Anaheim
OFFICE OF THE CITY ATTORNEY

May 28, 2021

Eric J. Benink, Esq.
Benink and Slavens, LLP
8885 Rio San Diego, Suite 207
San Diego, CA 92108

Re: Demand for Arbitration

Dear Mr. Benink:

The City of Anaheim does not believe that Section 7 of the Agreement Between the City of Anaheim and the Santiago Geologic Hazard Abatement District has been implicated. Section 7 covers any “disputes between the City and the District concerning the interpretation or enforcement of this Agreement...” In your Arbitration Demand, you have not raised any actual disputes concerning the interpretation or enforcement of the Agreement between the parties. As such, the City does not agree to arbitrate this matter.

Sincerely,

ROBERT FABELA, CITY ATTORNEY

By: 

Kristin A. Pelletier
Senior Assistant City Attorney

KAP:RS