



# Demand for Arbitration Form

## Instructions for Submittal of Arbitration to JAMS

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### INSTRUCTIONS

Please submit this form to your local JAMS Resolution Center. Once the below items are received, a JAMS professional will contact all parties to commence and coordinate the arbitration process, including the appointment of an arbitrator and scheduling a hearing date.

☎ 1-800-352-JAMS  
🌐 [www.jamsadr.com](http://www.jamsadr.com)

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If you wish to proceed with an arbitration by executing and serving a Demand for Arbitration on the appropriate party, please submit the following items to JAMS with the requested number of copies:

- A. Demand for Arbitration (2 copies)**
- B. Proof of service of the Demand on the appropriate party (2 copies)**
- C. Entire contract containing the arbitration clause (2 copies)**
  - To the extent there are any court orders or stipulations relevant to this arbitration demand, e.g. an order compelling arbitration, please also include two copies.
- D. Administrative Fees**
  - *For two party matters, the Filing Fee is \$1,750. For matters involving three or more parties, the filing fee is \$3,000. The entire Filing Fee must be paid in full to expedite the commencement of the proceedings. Thereafter, a Case Management Fee of 12% will be assessed against all Professional Fees, including time spent for hearings, pre- and post-hearing reading and research and award preparation. JAMS also charges a \$1,750 filing fee for counterclaims. A refund of up to \$875 will be issued if the matter is withdrawn within five days of filing. After five days, the filing fee is non-refundable.*
  - *For matters involving consumers, the consumer is only required to pay \$250. See JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses. For matters based on a clause or agreement that is required as a condition of employment, the employee is only required to pay \$400. See JAMS Policy on Employment Arbitrations, Minimum Standards of Fairness. JAMS may apply its Employment Minimum Standards where an individual claims to have been misclassified as an independent contractor or otherwise improperly placed into a category other than employee or applicant for employment.*
  - *If an arbitration is based on a clause or agreement that is required as a condition of employment, or with individual consumers as defined by JAMS Policies on Employment and Consumer Arbitration, and the company fails to pay its filing or other fees, JAMS may place the matter on administrative suspension and, in such case, will advise the parties in writing of that action so that the employee or consumer may seek appropriate redress in a court of competent jurisdiction.*

**Once completed, please submit to your local JAMS Resolution Center.**  
Resolution Center locations can be found on the JAMS website at: <http://www.jamsadr.com/locations/>.



# Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

## TO RESPONDENT (PARTY ON WHOM DEMAND FOR ARBITRATION IS MADE)

Add more respondents on page 6.

RESPONDENT NAME City of Anaheim, a California charter city

ADDRESS 200 S. Anaheim Blvd., 2nd Floor

CITY Anaheim STATE CA ZIP 92805

PHONE (714) 765-5166 FAX (714) 765-4105 EMAIL tbass@anaheim.net

## RESPONDENT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY Michael Rubin, Esq.

FIRM/COMPANY Rutan & Tucker, LLP

ADDRESS 18575 Jamboree Rd., 9th Floor

CITY Irvine STATE CA ZIP 92612

PHONE 714-641-5100 FAX 714-546-9035 EMAIL mrubin@rutan.com

## FROM CLAIMANT

Add more claimants on page 7.

CLAIMANT NAME Santiago Geologic Hazard Abatement District, a political subdivision of the state of California

ADDRESS c/o Engeo, Inc. 2010 Crow Canyon Pl., Ste. 250

CITY San Ramon STATE CA ZIP 94583

PHONE (925) 395-2547 FAX (888) 279-2698 EMAIL eharrell@engeo.com

## CLAIMANT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY Eric J. Benink, Esq.

FIRM/COMPANY Benink & Slavens, LLP

ADDRESS 8885 Rio San Diego Drive, Suite 207

CITY San Diego STATE CA ZIP 92108

PHONE 619-369-5252 FAX 619-369-5253 EMAIL eric@beninkslavens.com



# Demand for Arbitration Form (continued)

## Instructions for Submittal of Arbitration to JAMS

### MEDIATION IN ADVANCE OF THE ARBITRATION

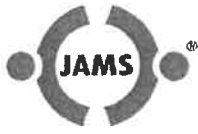
- If mediation in advance of the arbitration is desired, please check here and a JAMS Case Manager will assist the parties in coordinating a mediation session.

### NATURE OF DISPUTE / CLAIMS & RELIEF SOUGHT BY CLAIMANT

**CLAIMANT HEREBY DEMANDS THAT YOU SUBMIT THE FOLLOWING DISPUTE TO FINAL AND BINDING ARBITRATION.  
A MORE DETAILED STATEMENT OF CLAIMS MAY BE ATTACHED IF NEEDED.**

See attached Exhibit A.

AMOUNT IN CONTROVERSY (US DOLLARS)



# Demand for Arbitration Form (continued)

## Instructions for Submittal of Arbitration to JAMS

### ARBITRATION AGREEMENT

This demand is made pursuant to the arbitration agreement which the parties made as follows. *Please cite location of arbitration provision and attach two copies of entire agreement.*

#### ARBITRATION PROVISION LOCATION

Agreement Between the City of Anaheim and the Santiago Geologic Hazard Abatement District, page 5, at paragraph 7.

### RESPONSE

The respondent may file a response and counter-claim to the above-stated claim according to the applicable arbitration rules. *Send the original response and counter-claim to the claimant at the address stated above with two copies to JAMS.*

### REQUEST FOR HEARING

REQUESTED LOCATION **5 Park Plaza, Suite 400, Irvine, CA 92614**

### ELECTION FOR EXPEDITED PROCEDURES (IF COMPREHENSIVE RULES APPLY)

See: *Comprehensive Rule 16.1*



By checking the box to the left, Claimant requests that the Expedited Procedures described in JAMS Comprehensive Rules 16.1 and 16.2 be applied in this matter. Respondent shall indicate not later than seven (7) days from the date this Demand is served whether it agrees to the Expedited Procedures.

### SUBMISSION INFORMATION

SIGNATURE

DATE **October 28, 2021**

NAME  
(PRINT/TYPED)

**Eric J. Benink, Esq.**



# Demand for Arbitration Form (continued)

## Instructions for Submittal of Arbitration to JAMS

Completion of this section is required for all consumer or employment claims.

### CONSUMER AND EMPLOYMENT ARBITRATION

Please indicate if this is a CONSUMER ARBITRATION. For purposes of this designation, and whether this case will be administered in California or elsewhere, JAMS is guided by *California Rules of Court Ethics Standards for Neutral Arbitrators, Standard 2(d) and (e)*, as defined below, and the JAMS Consumer and Employment Minimum Standards of Procedural Fairness:

**YES**, this is a CONSUMER ARBITRATION.

**NO**, this is **not** a CONSUMER ARBITRATION.

"Consumer arbitration" means an arbitration conducted under a pre-dispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

1. The contract is with a consumer party, as defined in these standards;
2. The contract was drafted by or on behalf of the non-consumer party; and
3. The consumer party was required to accept the arbitration provision in the contract.

"Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

1. An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;
2. An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;
3. An individual with a medical malpractice claim that is subject to the arbitration agreement; or
4. An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

NOTE: JAMS is guided by its Consumer Minimum Standards and Employment Minimum Standards when determining whether a matter is a consumer matter. In addition, JAMS may treat a matter as a consumer matter and apply the Employment Minimum Standards where an individual claims to have been misclassified as an independent contractor or otherwise improperly placed into a category other than employee or applicant for employment.

### EMPLOYMENT MATTERS

If this is an EMPLOYMENT matter, Claimant must complete the following information:

Private arbitration companies are required to collect and publish certain information at least quarterly, and make it available to the public in a computer-searchable format. In employment cases, this includes the amount of the employee's annual wage. The employee's name will not appear in the database, but the employer's name will be published. Please check the applicable box below:

Less than \$100,000     \$100,000 to \$250,000     More than \$250,000     Decline to State

### WAIVER OF ARBITRATION FEES

In certain states (e.g. California), the law provides that consumers (as defined above) with a gross monthly income of less than 300% of the federal poverty guidelines are entitled to a waiver of the arbitration fees. In those cases, the respondent must pay 100% of the fees. Consumers must submit a declaration under oath stating the consumer's monthly income and the number of persons living in his or her household. Please contact JAMS at 1-800-352-5267 for further information. Note: this requirement is not applicable in all states.



# Demand for Arbitration Form (continued)

## Instructions for Submittal of Arbitration to JAMS

### RESPONDENT #2 (PARTY ON WHOM DEMAND FOR ARBITRATION IS MADE)

RESPONDENT NAME		
ADDRESS		
CITY	STATE	ZIP
PHONE	FAX	EMAIL

### RESPONDENT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY		
FIRM/COMPANY		
ADDRESS		
CITY	STATE	ZIP
PHONE	FAX	EMAIL

### RESPONDENT #3 (PARTY ON WHOM DEMAND FOR ARBITRATION IS MADE)

RESPONDENT NAME		
ADDRESS		
CITY	STATE	ZIP
PHONE	FAX	EMAIL

### RESPONDENT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY		
FIRM/COMPANY		
ADDRESS		
CITY	STATE	ZIP
PHONE	FAX	EMAIL



# Demand for Arbitration Form (continued)

Instructions for Submittal of Arbitration to JAMS

## CLAIMANT #2

CLAIMANT  
NAME

ADDRESS

CITY

STATE

ZIP

PHONE

FAX

EMAIL

CLAIMANT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY

FIRM/  
COMPANY

ADDRESS

CITY

STATE

ZIP

PHONE

FAX

EMAIL

## CLAIMANT #3

CLAIMANT  
NAME

ADDRESS

CITY

STATE

ZIP

PHONE

FAX

EMAIL

CLAIMANT'S REPRESENTATIVE OR ATTORNEY (IF KNOWN)

REPRESENTATIVE/ATTORNEY

FIRM/  
COMPANY

ADDRESS

CITY

STATE

ZIP

PHONE

FAX

EMAIL

## EXHIBIT A



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

5 Attorneys for Claimant

6 **ARBITRATION**

7 **BEFORE JAMS**

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

28

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

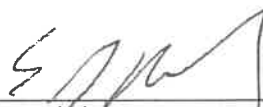
1 that its performance of any contractual obligation to maintain, operate, or repair the Dewatering  
2 Facilities will be excused when the funds on hand have been depleted based on the doctrines of  
3 impossibility, impracticability, and/or frustration of purpose. Or alternatively, a declaratory judgment  
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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11 DATED: 10-28-21

**BENINK & SLAVENS, LLP**

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