

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

5 Attorneys for Claimant, Santiago Geologic Hazard
Abatement District

8 **JAMS ARBITRATION**

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

JAMS Reference #1200059076

11 Claimant,

**STIPULATION OF FACTS AND
AUTHENTICITY OF DOCUMENTS**

12 v.

13 CITY OF ANAHEIM, a California charter
city,

Hon. Nancy Wieben Stock (Ret.)

14 Respondent.

Arbitration Date: January 30, 2023
Time: 9:00 a.m.

17 Whereas, this above-entitled matter is scheduled for hearing on January 30, 2023; and
18 Whereas, Claimant Santiago Geologic Hazard Abatement District (“SGHAD”) and
19 Respondent City of Anaheim (“City”) wish to stipulate to facts and the authenticity of documents
20 to streamline the hearing and obviate or minimize the need for live witnesses.
21

22 WHEREFORE, it is hereby stipulated, by and between, SGHAD and the City, through their
23 respective attorneys of record as follows:

- 24
- 25 1. The “Santiago Landslide” refers to an area encompassing roughly 25 acres of developed and
natural terrain in the Anaheim Hills area of Anaheim, California consisting of portions of
26 Tracts 7587, 9080, 9133, 9134 and 10996. Ground deformations associated with the
27 Santiago Landslide accelerated in January 1993 during massive rainstorms that hit Orange
County. The rainstorms wreaked damage throughout Orange County causing the California

1 Governor to proclaim a state of emergency in Orange County and ultimately cause President
2 Clinton to declare Orange County a disaster area. The City also declared a state of
3 emergency and defined the area of the Santiago Landslide a “Disaster Area”. Pursuant to this
4 declaration, the City took emergency actions including the installation (within publicly
5 owned and privately owned properties) and operation of a system of vertical and horizontal
6 wells to lower ground water levels for the area, as well as installation of observation wells,
7 piezometers, manometers and other devices to measure ground water levels and ground
8 movement as well as facilities to power the equipment and to discharge the withdrawn
9 ground water (“Dewatering Facilities”). The intent and result of the operation of the
10 Dewatering Facilities was to lower groundwater levels and thereby stop further earth
11 movement. By February 15, 1993 gross earth movement ceased.

- 12 2. The City retained geological and geotechnical consultants, Eberhart & Stone, Inc. (“E&S”)
13 to assist the City with the emergency response and to investigate the geologic conditions and
14 report its findings and conclusions. E&S prepared and submitted its June 28, 1996 report to
15 the City (“E&S 1996 Report”) that documented the conditions and incidents associated with
16 the Santiago Landslide.
- 17 3. A conclusion in the E&S Report was: “Cessation of earth movements and associated
18 deformation was, and remains totally dependent on control of local ground water. Continued
19 stability of the deformation area and adjoining terrain will necessitate effective dewatering
20 for the foreseeable future.”¹
- 21 4. The E&S Report recommended “[t]he implementation of a Geological Hazard Abatement
22 District (GHAD) [as] a means of raising the necessary funds for maintaining, monitoring,
23 and managing the dewatering system for the benefit of all properties threatened by renewed
24 landslide movement.”² The E&S Report further concluded: “Expenditures for operation,
25 maintenance, and monitoring of the system will continue as long as the potential for high

26
27 ¹ Page 61 of E&S Report.

28 ² Page 68 of E&S Report.

1 ground water remains. Therefore, the existing dewatering operation and its associated costs
2 are likely to remain necessary indefinitely.”³

- 3 5. In 1993, approximately 464 individuals, representing ownership of approximately 249
4 separate parcels of real property in Anaheim Hills, some within what was later found to be
5 the Santiago Landslide boundaries and some outside of those boundaries, filed 15 separate
6 lawsuits against the City and several other defendants for inverse condemnation, negligence,
7 nuisance, dangerous condition of property, failure to discharge mandatory duty, fraudulent
8 concealment and strict products liability. All of the Plaintiffs were represented by the same
9 law firm, Pillsbury, Madison & Sutro. The 15 cases were consolidated as *Delmonico v. City*
10 *of Anaheim*. (“Delmonico Lawsuit”).
- 11 6. In 1995, the City filed a cross-complaint against 230 of the 464 plaintiffs and against the
12 Window Hill Homeowner’s Association alleging causes of action for equitable indemnity,
13 equitable apportionment, negligence, declaratory relief and as to some of the cross-
14 defendants, express indemnity. Among other things, the City alleged that the cross-
15 defendants were actively responsible for the occurrence of the Santiago Landslide due to
16 their acts and omissions, including but not limited to failure to follow prudent practices in
17 landscaping and irrigating their properties, failure to follow prudent practices in maintaining
18 or installing appropriate drainage facilities, imprudently constructing improvements upon or
19 grading their properties, altering drainage patterns, failing to repair leaking pools and ponds,
20 etc. all of which contributed to high groundwater levels which reduced the stability of the
21 hillside.
- 22 7. The 230 plaintiffs named in the City’s cross-complaint tendered the City’s claims against
23 them to their homeowners’ insurance companies for defense and indemnity. The 14
24 homeowners insurance companies to whom defense and indemnity was tendered (“Owners’
25 Insurers”) reached a conditional settlement with the City in 1995 on behalf of their insureds.
26 Under that conditional settlement, in return for the City’s dismissal of its cross-complaint

27
28 ³ Page 68 of E&S Report.

against the 230 plaintiffs, the 14 insurers pledged to make available a fund in the amount of \$3 million “for use towards the resolution of the claims asserted by the [Delmonico] plaintiffs.” The conditional settlement provided that no part of the funds could be released until there was a “Final Global Resolution” of the complaints and cross-complaints in the cases consolidated with the Delmonico Lawsuit.

8. In 1998, after a series of preliminary rulings in the Delmonico lawsuit and the deposition testimony of a neutral court appointed geologist, settlement negotiations ensued between the City and the Delmonico lawsuit plaintiffs (and other parties to the lawsuit). Part of the settlement discussions involved the proposal for the City to initiate the formation of a geological hazard abatement district (“GHAD”). The formation of the GHAD required a vote of the owners of the properties within the boundaries of the proposed district, whereby a majority protest (based upon assessed value) would preclude the formation of the district. One issue in the settlement negotiations between the City and the plaintiffs was how much of the settlement dollars would be dedicated to fund the district, if it were formed.
9. A settlement agreement (“Delmonico Agreement”) was reached between the City and the plaintiffs dated March 2, 1999. The total Settlement Sum paid to Plaintiffs to settle the Delmonico Lawsuit (including consolidated cases) under the Settlement agreement with the City was \$15,500,000 of which \$5,500,000 came from cross-defendants pursuant to the City’s cross-complaints in the litigation (which included the \$3,000,000 from the Owners’ Insurers).
10. Paragraph I.E. of the Delmonico Agreement required the City to pay \$12 million of the \$15.5 million directly to the plaintiff property owners. The balance (\$3.5 million) was to “be paid to the GHAD, if approved, providing the GHAD enters into the contract with the City referred to herein relating to the Dewatering System by April 30, 1999. If the GHAD is not approved or if the GHAD does not enter into the contract with the City by April 30, 1999, the Agreement shall have no further force or effect and neither the Settlement Distribution nor the GHAD Distribution shall be made, unless the City agrees to waive the GHAD conditions.”
11. On February 23, 1999, in anticipation of the proposed global settlement, Anaheim’s City Council passed Resolution No. 99R-31 which initiated proceedings to form a geologic hazard

1 abatement district pursuant to Public Resources Code section 26500, et seq. Resolution No.
2 99R-31, stated that City Council had been presented with and had reviewed a plan of control, as
3 required by Public Resources Code section 26558. The plan it had reviewed is titled “Plan of
4 Control Prepared for Proposed Santiago Geologic Hazard Abatement District” (“Plan of
5 Control”). The Resolution set a public hearing on March 16, 1999 to consider the formation of
6 the district and to receive written objection from owners of real property proposed to be included
7 with the GHAD boundaries. A majority protest, i.e., written objections from property owners
8 representing greater than 50 percent of the assessed valuation, would preclude the formation of
9 the district.

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

14 13. SGHAD was formed pursuant to Public Resources Code section 26500, et seq. It is a separate
15 political subdivision of the State of California (Pub. Resources Code § 26570). It is governed by
16 a five-person Board of Directors. It is not a political subdivision of or an agency of the City.

17 14. The members of the Board of Directors of the SGHAD were sworn in and held their first
18 meeting on March 29, 1999. As reflected in the minutes of the March 29, 1999 SGHAD Board
19 meeting, Board member Salene asked the attorney representing the City of Anaheim, Mr. Rubin,
20 regarding the cost of operating the system. Mr. Rubin responded that the costs are based on the
21 dewatering system as it presently exists and that the costs add up to approximately \$19,166 per
22 month (\$230,000 divided by 12). Mr. Salene commented that the interest on the \$3.5 million
23 would not cover these costs indefinitely. The SGHAD Board met again on April 12, 1999. At
24 that meeting various costs for management of the SGHAD were discussed including \$1,000 per
25 month proposal by a consultant to provide management services, \$7,400 per month for well
26 monitoring, and \$9,000 per month for geologic engineering services by Eberhart & Stone for
27 monitoring. The SGHAD Board met on April 28, 1999 and among other things discussed the
28 proposed agreement with the City. The SGHAD Board met on May 10, 1999 and among other

1 things received a presentation by geologic engineer, Mark McLarty of Eberhart & Stone and also
2 received a bid for liability insurance for \$63,000 per year. In addition to the SGHAD Board
3 members, representatives of the law firm of Burke Williams & Sorenson attended all of these
4 meetings as General Counsel for the SGHAD.

5 15. At the May 10, 1999 SGHAD Board meeting, Chairman Collett made a motion to not approve
6 the contract with the City based upon his belief that the SGHAD would be underfunded. This
7 motion was seconded by Director Muratori who stated that he agreed with Collett. The motion
8 to not approve the contract failed 3-0. After further discussion a motion was made to approve
9 the contract which passed by a 2-1 vote.

10 16. On or about June 10, 1999, Anaheim and SGHAD entered in an “Agreement Between the City
11 of Anaheim and the Santiago Geologic Hazard Abatement District” (the “Agreement”). The
12 Agreement was signed by representatives of the SGHAD on May 26, 1999 and by
13 representatives of the City on June 10, 1999. That agreement was amended by the parties by an
14 amendment signed by the SGHAD representative on December 6, 1999 and by the City
15 representative on November 3, 1999. The June 10, 1999 agreement as amended by the
16 amendment to the agreement is referred to herein as the “Agreement”. The SGHAD was
17 represented in connection with the Agreement by its General Counsel, Carl K. Newton, of the
18 law firm, Burke, Williams & Sorenson, who signed the June 10, 1999 agreement and the
19 amendment to the agreement “Approved as to Form” as General Counsel. The June 10, 1999
20 agreement was signed “Approved as to Form” by the City Attorney, Jack White, and the
21 amendment to the agreement was signed “Approved as to Form” by the Deputy City Attorney,
22 Malcolm Slaughter.

23 17. Paragraph 6 of the Agreement (on page 4) provides: “The District shall operate, maintain,
24 and repair all or part of the Dewatering Facilities, as well as any additional new or
25 replacement facilities the District may construct or install, in a manner within its discretion
26 which will control groundwater levels to prevent reactivation and/or to abate movement of
27 the Santiago Landslide.” SGHAD has operated, maintained, and repaired the Dewatering
28 Facilities since approximately late 1999 or early 2000. It presently engages two consultants,

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

8 18. SGHAD’s annual budgets over the past four fiscal years, including the current fiscal year,
9 were:

10	FY 19/20	\$269,826
11	FY 20/21	\$266,646
12	FY 21/22	\$337,646
13	FY 22/23	\$339,566

14 The FY 21/22 and FY 22/23 budgets include the legal costs associated with these
15 arbitration proceedings.

16 19. SGHAD has \$381,210.06 in cash and cash alternatives on hand as of January 1, 2023.

17 20. SGHAD has not generated any revenue or income over the past five years other than interest
18 earned from cash on deposit at its financial institution.

19 21. In 2019 and 2022, SGHAD attempted to pass two separate property assessments pursuant to
20 the election procedures set forth in Proposition 218 (Cal. Const., art. XIII D, § 4) and the
21 Geologic Hazard Abatement District law (Public Resources Code §§ 26500, et seq.)

22 22. Proposition 218 requires that an assessment be supported by a detailed engineer’s report by a
23 registered professional engineer certified by the State of California. (Cal. Const., art. XIII D,
24 § 4, subd. (b).) ENGEO prepared the engineer’s reports and conducted the mail-in ballot
25 elections in connection with both the 2019 and 2022 proposed assessments.

26 23. ENGEO has billed SGHAD approximately \$88,178.41 for its work in connection with
27 preparation of the 2022 engineer’s report and for conducting the mail-in ballot election.

28 24. There are approximately 303 assessor parcels of land within the SGHAD boundaries. Any

1 assessment requires a vote of the property owners with each owner's vote based upon the
2 portion of the proposed assessment to be levied against the owner's property. An assessment
3 will be defeated if a majority of the assessed value that actually votes, votes against the
4 assessment.

5 25. Property owners voted against the proposed 2019 assessment by a margin of 136 to 41. All
6 votes were weighted equally because the proposed assessment amount was the same for each
7 property.

8 26. SGHAD made versions of the 2022 engineer's report available to the property owners who
9 were members of the SGHAD and to City's Public Works Director Rudy Emami, who were
10 given the opportunity to provide input on the versions, and who provided input, including
11 objections to aspects of the proposed assessment. Mr. Emami raised concerns regarding the
12 fact that the proposed 2022 assessment sought to assess the City for City street rights of way
13 within the Santiago Landslide area. Neither party is aware of any prior California local
14 agency that has sought to impose assessments on street rights of way.

15 27. The SGHAD's engineer formulated the final report and the apportionment of the proposed
16 assessment which the SGHAD Board approved on September 8, 2022 and set for a
17 November 3, 2022 public hearing to determine whether there was a majority protest to the
18 proposed assessment. The City did not vote for or against the assessment.

19 28. Property owners voted against the proposed 2022 assessment by a margin of 149 to 38. The
20 weighted vote total (based on the proposed assessment amount against the property) was
21 90.78% to 9.22%.

22 29. The SGHAD has no practical ability to issue bonds without a source of repayment.

23 30. SGHAD's demand for arbitration seeks a declaration that its performance of any contractual
24 obligation to maintain, operate, or repair the Dewatering Facilities will be excused when the
25 funds on hand have been depleted based on the doctrines of impossibility, impracticality,
26 and/or frustration of purpose. Alternatively, SGHAD seeks a declaratory judgment that the
27 Agreement does not impose on SGHAD any obligation to operate, maintain, or repair the
28 Dewatering Facilities upon the depletion of its funds.

- 1 31. The City disagrees that i) SGHAD is entitled to a declaratory judgment, ii) that the doctrines
2 of impossibility, impracticality, and/or frustration of purpose apply. In addition, the City
3 contends that there is no actual controversy as required by California Code of Civil
4 Procedure § 1060 that would warrant a declaratory judgment.
- 5 32. The parties do not necessarily agree that each fact stipulated to herein is relevant to the issues
6 sought to be adjudicated and by stipulating to such facts, neither party waives its right to
7 argue that certain facts are irrelevant.
- 8 33. The exhibits identified in Exhibit A attached hereto shall be self-authenticating and
9 admissible at hearing. However, nothing herein shall be construed as a waiver of a party's
10 right to contest the relevance or interpretation of said exhibits.

11
12
13 DATED: January 10, 2023

BENINK & SLAVENS, LLP



Eric J. Benink, Esq.
Attorneys for Claimant

14
15
16
17
18 DATED: January 10, 2023

RUTAN & TUCKER, LLP



Michael Rubin, Esq.
Attorneys for Respondent

EXHIBIT A

DESCRIPTION	BATES RANGE
E&S REPORT	SGHAD 003925-004023
SETTLEMENT AGREEMENT WITH INSURERS	SGHAD 00583-000648
MEETING NOTES MARCH 5, 1998 LANDSLIDE COMMITTEE	ANA 000533-000535
DELMONICO SETTLEMENT	ANA 000411-000510
CITY RESOLUTION 99R-2 (JANUARY 5, 1999)	SGHAD 000748-000749
CITY COUNCIL MINUTES FEBRUARY 23, 1999	SGHAD 000693-000715
CITY RESOLUTION 99R-31 (FEBRUARY 23, 1999)	SGHAD 000750-000755
PLAN OF CONTROL	SGHAD 004067-004080
AMENDED PLAN OF CONTROL	SGHAD 005054-004066
CITY COUNCIL MINUTES MARCH 16, 1999	SGHAD 000716-000744
CITY RESOLUTION 99-50 (MARCH 16, 1999)	SGHAD 000756-000761
SGHAD MARCH 29, 1999 MEETING MINUTES	SGHAD 004085-004089
SGHAD MAY 10, 1999 MEETING MINUTES	SGHAD 004082-004084
SGHAD APRIL 12, 1999 MEETING MINUTES	SGHAD 005111-005113
SGHAD APRIL 28, 1999 MEETING MINUTES	SGHAD 004090-004093
SGHAD SEPTEMBER 22, 1999 MEETING MINUTES	SGHAD 005222-005223
JUNE 19, 1999 AGREEMENT BETWEEN SGHAD AND ANAHEIM	SGHAD 000482-000542
AMENDMENT TO AGREEMENT BETWEEN SGHAD AND AHAHEIM	SGHAD 000544-000545
JANUARY 31, 2019 MEMO FROM GHAD MANAGER TO BOARD	SGHAD 000170-000172
SGHAD RESOLUTION 2019/03 (INTENTION TO ASSESS AND SETTING PUBLIC HEARING)	SGHAD 000173-000176
2019 ENGINEER'S REPORT (ATTACHMENT A TO RESOLUTION 2019/03)	SGHAD 000039-000057
NOTICE OF ADOPTION OF RESOLUTION NO. 19/03 (ATTACHMENT B TO RESOLUTION 2019/03)	SGHAD 000168-000169
BALLOT (ATTACHMENT C TO RESOLUTION 2019/03)	SGHAD 000163-000164
MARCH 29, 2019 MEMO FROM GHAD MANAGER TO BOARD	SGHAD 000100-000201
MINUTES OF JANUARY 31, 2019 SGHAD MEETING	SGHAD 000281-000285
MARCH 28, 2019 MINUTES OF SGHAD MEETING	SGHAD 000286-000292
SGHAD BUDGET 19/20	SGHAD 000649-000662
SGHAD BUDGET 20/21	SGHAD 000663-000677
SGHAD BUDGET 21/22	SGHAD 000678-000692
SGHAD BUDGET 22/23	SGHAD 005150-005165
FEBRUARY 11, 2011 LETTER TO PROPERTY OWNERS ATTACHING LETTER TO TREVOR O'NEIL	SGHAD 003914-003918
JUNE 23, 2022 SGHAD AGENDA PACKAGE	SGHAD 004130-004210
JUNE 23, 2022 POWERPOINT FOR BOARD MEETING "DRAFT ENGIENEER'S REPORT DISCUSSION"	SGHAD 004211-004227

JUNE 23, 2022 PROPOSED ASSESSMENTS BY APN FOR BOARD MEETING	SGHAD 004228-004234
JULY 14, 2022 SGHAD AGENDA PACKAGE	SGHAD 004243-004473
AUGUST 4, 2022 SGHAD AGENDA PACKAGE	SGHAD 004474-004709
SEPTEMBER 8, 2022 STAFF REPORT FOR SGHAD BOARD MEETING	SGHAD 004710-004739
SEPTEMBER 8, 2022 SGHAD AGENDA PACKAGE	SGHAD 004740-005006
SEPTMEBER 13, 2022 SGHAD AGENDA PACKAGE	SGHAD 005007-005012
NOVEMBER 3, 2022 SGHAD AGENDA PACKAGE	SGHAD 005013-005076
SGHAD RESOLUTION 2022/16	SGHAD 005077-005104
SGHAD RESOLUTION 2022/17	SGHAD 005105-005109
SGHAD RESOLUTION 2022/19	SGHAD 005110
SGHAD BOARD MINUTES - JUNE 23, 2022	SGHAD 005114-005120
SGHAD BOARD MINUTES - JULY 14, 2022	SGHAD 005121-005128
SGHAD BOARD MINTUES - AUGUST 4, 2022	SGHAD 005129-005135
SGHAD BOARD MINUTES - SEPTEMBER 8, 2022	SGHAD 005138-005142
SGHAD BOARD MINUTES - SEPTEMBER 13, 2022	SGHAD 005143-005145
SGHAD BOARD MINUTES - NOVEMBER 3, 2022	SGHAD 005146-005149
2022 FINAL ENGINEER'S REPORT	SGHAD 005166-005187
EMAILS FROM MARCH 2019 BETWEEN SGHAD AND RESIDENT	SGHAD 000257-000260