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12 ATTORNEYS FOR RESPONDENT
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**FILING FEE EXEMPT PURSUANT TO
GOVERNMENT CODE § 6103**

14 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE**

16 SANTIAGO GEOLOGIC HAZARD
17 ABATEMENT DISTRICT, a political
subdivision of the State of California,

18 Petitioner,

19 v.

20 CITY OF ANAHEIM, a California charter
21 city,

22 Respondent.

CASE NO. 30-2021-01203933 CU-PT-CJC

**RESPONDENT'S RESPONSE TO
PETITION TO: (1) COMPEL
ARBITRATION OF DECLARATORY
RELIEF AND ALL OTHER RELATED
CLAIMS, AND (2) APPOINT
ARBITRATOR**

23
24 Respondent City of Anaheim ("Respondent") answers and responds to petitioner Santiago
25 Geologic Hazard Abatement District's ("Petitioner") petition to compel arbitration and for related
26 relief (the "Petition") as follows:

27 1. Responding to Paragraphs 1 and 41 of the Petition, Respondent denies the existence
28 of a dispute between the parties concerning the interpretation and enforcement of the agreement

1 alleged therein (the “Agreement”). Except as otherwise denied, Respondent admits the allegations in
2 Paragraphs 1 and 41.

3 2. Respondent admits the allegations in Paragraphs 2, 8, 10 to 24, 30, and 39 to 41.

4 3. Responding to the following paragraphs of the Petition, Respondent lacks sufficient
5 information or belief to admit or deny the allegations contained therein: 3, 4, 25-29, and 31-36.
6 Notwithstanding Respondent’s lack of information or belief, and for the limited purpose of the
7 instant judicial proceeding to compel arbitration (without prejudice to the right to contest facts or to
8 demand proof of facts in a subsequent or later proceeding, including in any arbitration that the Court
9 may order in the instant proceeding), Respondent does not contest to the facts alleged in the
10 foregoing paragraphs and on that basis admits them.

11 4. Responding to Paragraph 4 of the Petition, Respondent lacks information or belief
12 sufficient to admit or deny the allegations therein, and on that basis specifically denies the allegation
13 that Petitioner’s ability to maintain dewatering facilities will cease at some point over the next few
14 years. Except as otherwise denied, and notwithstanding its lack of information or belief, Respondent
15 does not contest the allegations of Paragraph 4 for purposes of the instant judicial proceeding to
16 compel arbitration (without prejudice to the right to contest facts or to demand proof of facts in a
17 subsequent or later proceeding, including in any arbitration that the Court may order in the instant
18 proceeding), and on that basis admits them.

19 5. Responding to Paragraph 5 of the Petition, to the extent Petitioner alleges the nature
20 of the relief sought by it, those allegations are procedural and not factual in nature so that no
21 response is required. To the extent Paragraph 5 contains factual allegations, Petitioner lacks
22 information or belief sufficient to admit or deny those allegations, and on that basis denies them.

23 6. Responding to Paragraph 6 of the Petition, Respondent denies the existence of a
24 dispute between the parties that is subject to arbitration. Respondent admits that it has not agreed to
25 Petitioner’s arbitration request. To the extent Paragraph 6 alleges procedural matters, no response is
26 required. To the extent Paragraph 6 includes factual allegations not otherwise responded to herein,
27 Respondent denies those allegations.

28

1 any contractual duty to operate, maintain, and repair dewatering facilities is not a perpetual duty
2 owed by it to Respondent or that it will be excused from performance if it runs out of money. There
3 is no current dispute over these matters in that Respondent has not taken a position concerning them,
4 and it is entirely unnecessary for it to do so at this time.

5 **SECOND AFFIRMATIVE DEFENSE**

6 **(Insufficient Facts Alleged)**

7 The facts alleged in the Petition are insufficient for the Court to compel arbitration. The Petition
8 does not allege any facts demonstrating an actual dispute between the parties that would be subject
9 to the Agreement's arbitration clause. It is also apparent from the face of the Petition that there is no
10 current necessity for Respondent to take a position on matters addressed in the Petition. As alleged
11 at Paragraphs 23 to 28, Petitioner has a current fund balance of \$864,449 with annual outlays of
12 \$266,646, so that Petitioner anticipates being funded through Fiscal Year 2023 to 2024. As alleged
13 at Paragraphs 29 to 36 of the Petition, Petitioner has made only one attempt to raise new revenues, so
14 that it is not yet certain that Petitioner will run out of funding. Also, as alleged at Paragraph 7 of the
15 Petition, Petitioner is a political subdivision of the State of California. Petitioner is not an agency of
16 Respondent so that it is unnecessary for Respondent to form a position with respect to all of
17 Petitioner's affairs.

18
19 WHEREFORE, Respondent prays:

- 20 1. That the Petition be denied;
21 2. That Respondent be awarded costs of suit and attorney's fees herein incurred; and
22 3. For such other and further relief as the court may deem proper.

23
24 Dated: August 4, 2021

BERLINER COHEN, LLP

25
26 By: 

27 _____
ERIK RAMAKRISHNAN
Attorneys for RESPONDENT
CITY OF ANAHEIM

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 200 S. Anaheim Boulevard, Suite 356, Anaheim, California 92805.

On August 5, 2021, I served the foregoing document described as:

RESPONDENT'S RESPONSE TO PEITION TO: (1) COMPEL ARBITRATION OF DECLARATORY RELIEF AND ALL OTHER RELATED CLAIMS, AND (2) APPOINT ARBITRATOR

on interested parties in this action by placing the original/a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Eric J. Benink, Esq. Attorney for Petitioner
Benink & Slavens, LLP
8885 Rio San Diego Drive, Suite 207
San Diego, CA 92108
Tel: 619-369-5252
E-Mail: eric@beninkslavens.com

BY MAIL: As follows: I am readily familiar with the City's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice correspondence is deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Anaheim, California in the ordinary course of business. The correspondence described above was placed for deposit at 200 S. Anaheim Boulevard, Anaheim, California 92805, on the date set forth above.

BY ELECTRONIC MAIL TRANSMISSION: By electronic mail submission by transmitting a PDF format copy of such document(s) to each such person at the email address listed above/by their address(es) and via One Legal e-service. The document(s) was/were transmitted by electronic transmission and such transmission was reported as complete and without error.

BY FACSIMILE: I caused the contents of said envelope to be delivered by facsimile transmission to the above addressee(s).

BY METHOD OF OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered via Express Mail or other method of delivery providing for overnight delivery to the addressee(s) designated.

BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

I declare under penalty of perjury that the above is true and correct.

Executed at Anaheim, California.


Michelle M. Russell