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CITY OF ANAHEIM  
12

13 **JAMS ARBITRATION**

14  
15 SANTIAGO GEOLOGIC HAZARD  
ABATEMENT DISTRICT, a political  
16 subdivision of the state of California,  
17 Claimant,  
18 vs.  
19 CITY OF ANAHEIM,  
20 Respondent.

21 JAMS Reference #: 1200059076  
Judge: Hon. Nancy Wieben Stock (Ret.) or  
as otherwise determined  
**CITY OF ANAHEIM'S RESPONSE TO  
CLAIMANT SANTIAGO GEOLOGIC  
HAZARD ABATEMENT DISTRICT'S  
DEMAND FOR ARBITRATION AND  
RESPONSE TO CLAIMANT'S  
ELECTION TO OPT IN TO  
EXPEDITED PROCEDURES**

22 Respondent City of Anaheim ("City") responds to the Demand for Arbitration and  
23 Claim of the Santiago Geologic Hazard Abatement District ("SGHAD") as follows:

24 City declines to agree to JAMS' Expedited Procedures but has offered to agree to  
25 such expedited procedures if SGHAD agrees to permit City to take up to one deposition, if  
26 the City deems it necessary, after receiving SGHAD's exchange of information.

27 City generally denies the allegations in SGHAD's Claim except that City admits the  
28

1 allegations in paragraphs 1, 2, 6, 7, 9 through 22, 28, 29 and 37 of the Claim. Anaheim  
2 specifically denies that it has taken any position on whether or not SGHAD's performance  
3 is excused by alleged impossibility, impracticality, and/or frustration of purpose in the  
4 hypothetical future event wherein SGHAD has no funds to perform and no means to fund  
5 its performance. SGHAD has current funds to perform for years in the future and the  
6 means to raise additional funds to perform, so there has been no necessity for the City to  
7 form a contention as to what its position would be if and when conjectural future events  
8 happen to occur. If such hypothetical event were to occur, it is probable that the decision  
9 makers on the City Council will be different than those currently on the City Council, all  
10 of which could impact any hypothetical contention.

11 As affirmative defenses, jurisdictional challenges and further allegations in response  
12 to SGHAD's Claim, City alleges the following based upon information and belief:

13 1. Paragraph 26 of SGHAD's Claim alleges that its fiscal year 2020/2021  
14 budget estimates a fund balance of \$864,449 on June 30, 2021. That paragraph also asserts  
15 that the SGHAD estimates those funds will be sufficient to at least operate through the end  
16 of fiscal year 2023-2024 (June 30, 2024). Accordingly there is no current impossibility,  
17 impracticality, and/or frustration of purpose in connection with SGHAD's performance of  
18 the SGHAD agreement. Any potential future alleged impossibility, impracticality, and/or  
19 frustration of purpose is hypothetical and/or conjectural and not the proper subject of a  
20 request for declaratory relief which requires a current concrete controversy.

21 2. SGHAD has the legal and practical ability to seek to raise additional funds  
22 by means of an assessment before the depletion of the \$864,449 it projects to have on hand  
23 as of June 30, 2021. The City is informed and believes that the assessment that SGHAD  
24 attempted in 2019 was unpopular to the proposed assessees at that time because of the  
25 unfair way in which the assessed amounts were spread against the properties to be assessed  
26 and/or because the funds to be raised by the assessment were proposed to be used for  
27 purposes in addition to the mitigation of the Santiago landslide, purposes which were  
28 perceived as unfair to more than a majority of the proposed assessees. The City suspects

1 that if a more appropriate assessment were proposed, limited to mitigation of the Santiago  
2 landslide and continued maintenance, operation repair of the dewatering facilities, and  
3 spread among the assessees in a fair and just manner, the assessment would likely be  
4 approved by the required majority of the vote. Accordingly, any potential future alleged  
5 impossibility, impracticality, and/or frustration of purpose is hypothetical and/or  
6 conjectural and not the proper subject of a request for declaratory relief which requires a  
7 current concrete controversy.

8       3.     A pre-condition to asserting the defense of impossibility or impracticality is  
9 that the party show that the impossibility exists “in spite of skill, diligence and good faith”  
10 on the party’s part. SGHAD has not set forth facts and cannot set forth facts evidencing its  
11 application of skill, diligence and good faith in attempting to utilize all means to raise  
12 additional funds to supplement the \$864,449 it projects to have on hand as of June 30,  
13 2021. The City further incorporates the allegations set forth in its 2d affirmative defense in  
14 support of this affirmative defense.

15       4.     Inherent in every contract is a covenant of good-faith and fair dealing.  
16 SGHAD would be in violation of its covenant of good faith and fair dealing if it failed to  
17 utilize all reasonable means to raise additional funds to supplement the \$864,449 it projects  
18 to have on hand as of June 30, 2021. The City further incorporates the allegations set forth  
19 in its 2d affirmative defense in support of this affirmative defense.

20       5.     SGHAD’s Claim is barred by the doctrine of prematurity based upon the  
21 reasons alleged in the City’s first and second affirmative defenses which are incorporated  
22 herein.

23       6.     SGHAD’s Claim is barred by the equitable doctrine of estoppel based upon  
24 the reasons alleged in the City’s first and second affirmative defenses which are  
25 incorporated herein.

26       7.     SGHAD’s Claim is barred by the equitable doctrine of laches based upon the  
27 reasons alleged in the City’s first and second affirmative defenses which are incorporated  
28 herein.

1       8.     SGHAD's Claim is barred by the equitable doctrine of unclean hands based  
2 upon the reasons alleged in the City's first and second affirmative defenses which are  
3 incorporated herein.

4       9.     SGHAD's Claim is barred by its failure to take reasonable steps to mitigate  
5 its alleged need for obtaining the judicial/arbitral relief being sought based upon the  
6 reasons alleged in the City's first and second affirmative defenses which are incorporated  
7 herein.

8       10.    SGHAD's Claim is barred by the doctrine of waiver based upon the reasons  
9 alleged in the City's first and second affirmative defenses which are incorporated herein.

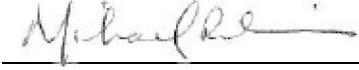
10      11.    City reserves the right to assert such additional affirmative defenses as may  
11 arise as a result of further discovery and/or further identification of issues or defenses.

12      WHEREFORE, Respondent City prays as follows:

- 13      1.   SGHAD be denied its requests for declaratory relief set forth in its Claim.
- 14      2.   City be awarded costs of arbitration.
- 15      3.   Such other relief as the Arbitrator may deem just and proper.

16  
17 Dated: November 15, 2021

RUTAN & TUCKER, LLP  
MICHAEL RUBIN

18  
19 By:   
20 Michael Rubin  
For Respondent City of Anaheim

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

I am employed by the law office of Rutan & Tucker, LLP 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 18575 Jamboree Road, 9th Floor, Irvine, CA 92612. My electronic notification address is mmartinez@rutan.com.

On November 15, 2021, I served on the interested parties in said action the within:

**CITY OF ANAHEIM'S RESPONSE TO CLAIMANT SANTIAGO GEOLOGIC  
HAZARD ABATEMENT DISTRICT'S DEMAND FOR ARBITRATION AND RESPONSE  
TO CLAIMANT'S ELECTION TO OPT IN TO EXPEDITED PROCEDURES**

as stated below:

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(BY MAIL) by placing a true copy thereof in sealed envelope(s) addressed as shown above.

In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand personal observation, become readily familiar with Rutan & Tucker, LLP's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, I deposited such envelope(s) in an out-box for collection by other personnel of Rutan & Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same day in the ordinary course of business. If the customary business practices of Rutan & Tucker, LLP with regard to collection and processing of correspondence and mailing were followed, and I am confident that they were, such envelope(s) were posted and placed in the United States mail at Irvine, California, that same date. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(BY E-MAIL) by transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth above.

24 Executed on November 15, 2021, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Marisol Martinez  
(Type or print name)

(Signature)