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11 Attorneys for Respondent
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

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By: 

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Michael Rubin
For Respondent City of Anaheim

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3
4 I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State
5 of California. I am over the age of 18 and not a party to the within action. My business address is
6 18575 Jamboree Road, 9th Floor, Irvine, CA 92612. My electronic notification address is
7 mmartinez@rutan.com.

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

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

12 as stated below:

13 Eric J. Benink	Robert Fabela
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17 (BY MAIL) by placing a true copy thereof in sealed envelope(s) addressed as shown
18 above.

19 In the course of my employment with Rutan & Tucker, LLP, I have, through first-hand
20 personal observation, become readily familiar with Rutan & Tucker, LLP’s practice of collection
21 and processing correspondence for mailing with the United States Postal Service. Under that
22 practice, I deposited such envelope(s) in an out-box for collection by other personnel of Rutan &
23 Tucker, LLP, and for ultimate posting and placement with the U.S. Postal Service on that same
24 day in the ordinary course of business. If the customary business practices of Rutan & Tucker,
25 LLP with regard to collection and processing of correspondence and mailing were followed, and I
26 am confident that they were, such envelope(s) were posted and placed in the United States mail at
27 Irvine, California, that same date. I am aware that on motion of party served, service is presumed
28 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.

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)