JAMS ARBITRATION
No. 1200059076

SANTIAGO GEOLOGIC HAZARD ABATEMENT DISTRICT,

Claimant,

v.

CITY OF ANAHEIM,

Respondent.

FINAL AWARD

1) Parties and Counsel. The parties to this arbitration, and their attorneys are as follows:

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2) Arbitrator

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Place of Arbitration: Irvine, California (via Zoom)

Date of Final Award: February 13, 2023

THE UNDERSIGNED ARBITRATOR, was selected and appointed to serve as the Arbitrator in this matter under the authority of the *Agreement Between the City of Anaheim and the Santiago Geologic Hazard Abatement District* ("Agreement"). The Arbitrator having examined the submissions, proof and allegations of the parties, finds, concludes and issues this Final Award as follows:

I. Procedural Background

On October 28, 2021, Santiago Geologic Hazard Abatement District ("SGHAD") filed a Demand in Arbitration with JAMS. The Demand attached a Complaint for Declaratory Relief against respondent, City of Anaheim (the "City"). The Complaint sought a declaratory judgment, pursuant to California Civil Code section 1060, declaring that SGHAD's performance of any contractual obligation to maintain, operate, or repair the Dewatering Facilities excused, when the funds on hand have been depleted. (Complaint, p. 11). On November 15, 2021, City filed its response.

On February 2, 2022, the Arbitrator convened a telephonic Preliminary Arbitration Management Conference. In Scheduling Order No. 1, the Arbitrator

confirmed that the dispute was arbitrable pursuant to an agreement to arbitrate contained in an *Agreement Between the City of Anaheim and the Santiago Geologic Hazard Abatement District*, dated June 10, 1999. (Ex. 17, §7).[1] The Arbitration Hearing was set for May 12, 2022.

On October 26, 2022, the parties signed a stipulation and proposed order to continue the Arbitration Hearing, to permit time for SGHAD to conduct a vote of its stakeholders, to obtain an assessment to fund its continued operations of certain dewatering facilities. On November 14, 2022, the Arbitrator convened a further case management conference. The Arbitration Hearing was rescheduled for January 30, 2023. (*Report and Scheduling Order No. 2*).

On January 20, 2023, the Arbitrator conducted a Final Readiness Conference. The parties confirmed their agreement that the Arbitration Hearing would be hosted on the Zoom platform. Counsel confirmed their agreement that declarations submitted with the arbitration briefs would be deemed admitted into evidence, and each side would waive cross-examination of the declarants. Counsel confirmed there would be no award of attorney's fees to the prevailing party in arbitration. Counsel agreed to further meet and confer on their respective legal positions on whether to seek a fee-shifting award for statutory costs, if applicable, or the JAMS arbitration fees and costs.

On January 23, 2023, the parties filed their opening arbitration briefs. The opening arbitration briefs attached testimonial declarations from, (a) Uri Eliahu and (b) Michael Rubin, Esq. On January 27, 2023, the parties filed their reply briefs.

On January 30, 2023, the Arbitrator convened the Arbitration Hearing on Zoom. Eric J. Benink Esq. appeared for SGHAD. Also present were Craig Schill, Chairman of the SGHAD Board, and Uri Eliahu, President of ENGEO, Inc., Manager of the SGHAD's operations. Michael Rubin Esq. appeared for City of Anaheim. Also present were Robert Fabela, Esq., City Attorney of Anaheim, Kristen A. Pelletier,

[1] All exhibit references pertain to the hearing exhibits identified in the *Joint Exhibit List* filed by the parties. These are the same as the unnumbered exhibits attached as Exhibit "A", to the *Stipulation of Facts and Authenticity of Documents*.

Esq., Chief Assistant City Attorney of Anaheim, and Rudy Emami, Director of Public Works, City of Anaheim. The proceedings were not reported by a Certified Shorthand Reporter.

The Arbitrator received as evidence, the parties' *Stipulation of Facts and Authenticity of Documents* ("Stipulation of Facts") and all exhibits referenced therein. Pursuant to the Stipulation of Facts, all exhibits referenced in the attached exhibit list were deemed authentic and admissible, even if not all might be relevant to the Arbitrator's Analysis. (Stipulation of Fact, ¶ 33). Likewise, the parties agreed that not all of the stipulated facts were necessarily relevant to the issues. (*Id*. at ¶ 32). Following oral closing arguments, each side waived written closing briefs. The matter was Submitted for the preparation of a Final Award,

II. Facts

The following is a statement of those facts found by the Arbitrator to be true and necessary to the Award. If this recitation differs from either party's position, it results from a determination on credibility, relevance, burden of proof considerations and weighing evidence, both oral and written.

This arbitration concerns the interpretation of an agreement entered into between the parties, and whether equitable remedies are available to claimant for anticipated non-performance of its duties as geologic hazard abatement district.

The agreement between SGHAD and the City of Anaheim originated from a series of lawsuits between various stakeholders following landslides in the area known as "Santiago Landslide," in the City of Anaheim. The settlement of those lawsuits resulted in an agreement known as the "Delmonico Settlement Agreement." (Ex. 4). The Delmonico Settlement Agreement was reached on March 2, 1999, between the City of Anaheim and the certain homeowner plaintiffs, insurance carriers and others, following years of litigation. (Stipulation of Facts, ¶ 9).

The Delmonico Settlement Agreement called for the payment of $15,500,000, of which $5,500,000 came from various cross-defendants pursuant to City's cross-complaints in the litigation. The settlement fund included $3,000,000 contributed by the Owners' Insurers. (*Id*.). Paragraph I.(E) of the Delmonico Settlement Agreement

required 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, provided the GHAD entered into a contract with the City, relating to the Dewatering System (referenced elsewhere in this Award as the "Dewatering Facility"). (*See*, Stipulation of Facts ¶ 10)

In anticipation of the proposed global settlement, the Anaheim City Council passed a resolution, initiating proceedings to form a geologic hazard abatement district pursuant to Public Resources Code section 26500, *et seq*. The City's Resolution stated that City Council had been presented with and had reviewed a plan of control, as required by Public Resources Code section 26558. The Resolution set a public hearing on March 16, 1999, to consider the formation of the District and to receive written objections from owners of real property, proposed to be included with the GHAD boundaries. A majority protest, i.e., written objections from property owners representing greater than 50 percent of the assessed valuation, would have precluded formation of the district. (*Id.* at ¶11).

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

On March 29, 1999, the members of the Board of Directors of the SGHAD were sworn in and held their first meeting. As reflected in the meeting minutes, SGHAD board member Salene asked the attorney representing the City of Anaheim, Mr. Rubin, about the long-term cost of operating the Dewatering Facilities. Mr. Rubin responded that the costs are based on the dewatering system as it presently exists and that the costs add up to approximately $19,166 per month ($230,000 divided by 12). Mr. Salene commented that the interest on the $3.5 million would not cover these costs indefinitely.

On April 12, 1999, the SGHAD Board met again. At that meeting various costs for management of the SGHAD were discussed including $1,000 per month proposal by a consultant to provide management services, $7,400 per month for well

monitoring, and $9,000 per month for geologic engineering services and monitoring, to be performed by Eberhart & Stone. The SGHAD Board met on April 28, 1999, and among other things discussed a proposed agreement with the City. The SGHAD Board met on May 10, 1999, and received a presentation by geologic engineer, Mark McLarty of Eberhart & Stone. It also received a bid for liability insurance for $63,000 per year. In addition to the SGHAD Board members, representatives of the law firm of Burke Williams & Sorenson attended all of these meetings as General Counsel for the SGHAD. (*Id*. at ¶14).

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

On or about June 10, 1999, Anaheim and SGHAD entered into the, *Agreement Between the City of Anaheim and the Santiago Geologic Hazard Abatement District* ("Agreement"). (*Id*. at ¶ 16). The Agreement was signed by representatives of the SGHAD on May 26, 1999, and by representatives of the City on June 10, 1999. (Ex. 17). That agreement was amended by the parties by an amendment signed by the SGHAD representative on December 6, 1999, and by the City representative on November 3, 1999.

The June 10, 1999, Agreement was amended by an amendment to the agreement. (Ex. 18). SGHAD was represented by its General Counsel, Carl K. Newton, of the law firm, Burke, Williams & Sorenson, who signed both the June 10, 1999 agreement and the amendment to the agreement, "Approved as to Form" as General Counsel. (*Id*.).

Paragraph 6 of the Agreement provides: "The District [SGHAD] shall operate, maintain, and repair all or part of the Dewatering Facilities, as well as any additional new or replacement facilities the District may construct or install, in *a* manner within its discretion which will control groundwater levels to prevent reactivation and/or to

abate movement of the Santiago Landslide." (Ex. 17). SGHAD has operated, maintained, and repaired the Dewatering Facilities since approximately late 1999 or early 2000. SGHAD presently engages two consultants, ENGEO Incorporated ("ENGEO") and Charles King Company ("Charles King"). ENGEO acts as the primary geological/geotechnical consultant and liaison to SGHAD, and acts as day-to-day manager, retaining other consultants as needed. It monitors and maintains measurement devices, such as piezometers and inclinometers, and evaluates and reports system data to SGHAD. Charles King maintains and repairs dewatering wells and related equipment like pumps and electrical systems, and obtains and reports water levels of, and volumes pumped from, wells.

SGHAD' s annual budgets over the past four fiscal years, including the current fiscal year, were:

FY 19/20 $269,826

FY 20/21 $266,646

FY 21/22 $337,646 [2]

FY 22/23 $339,566

As of January 1, 2023, SGHAD has $381,210.06 in cash and cash alternatives on hand. (*Id.* at ¶19). SGHAD has not generated any revenue or income over the past five years other than interest earned from cash on deposit at its financial institution. (*Id. at* ¶20).

The parties agree for purposes of arbitration, the SGHAD has no practical ability to issue bonds without a source of repayment. (*Id.* at ¶29). In 2019 and 2022, SGHAD attempted to pass two separate property assessments pursuant to the election procedures set forth in Proposition 218 (Cal. Const., Art. XIII D, § 4) and the Geologic Hazard Abatement District law (Public Resources Code §§ 26500, *et seq*.) (*Id*. at ¶21).

[2] The FY 21/22 and FY 22/23 budgets include the legal costs associated with these arbitration proceedings. (*Id*. at ¶18).

Proposition 218 requires that an assessment be supported by a detailed engineer's report, issued by a registered professional engineer. (*Cal. Const., Art.* XIII D, § 4, subd. (b).) ENGEO prepared the engineer's reports and conducted the mail-in ballot elections in connection with both the 2019 and 2022 proposed assessments. (*Id. at* ¶ 22).

There are approximately 303 assessed parcels of land within the SGHAD boundaries. (*Id. at* ¶ 24). Any assessment requires a vote of all of the property owners, with each owner's vote based upon the portion of the proposed assessment to be levied against the owner's property. An assessment will be defeated if a majority of the assessed value that actually votes, votes against the assessment. (*Id.*)

SGHAD made versions of the 2022 engineer's report available to the property owners who were members of the SGHAD and to City's Public Works Director Rudy Emami, who were given the opportunity to provide input on the versions, and who provided input, including objections to aspects of the proposed assessment. (*Id.* at ¶ 26). Property owners voted against the proposed 2019 assessment by a margin of 136 to 41. (*Id. at* ¶ 25).

SGHAD's engineer formulated the final report and the apportionment of the proposed assessment which the SGHAD Board approved on September 8, 2022, and set for a November 3, 2022 public hearing to determine whether there was a majority protest to the proposed assessment. The City did not vote for or against the assessment. (*Id. at* ¶ 27). Once again, property owners voted *against* the proposed 2022 assessment, this time by a margin of 149 to 38. The weighted vote total (based on the proposed assessment amount against the property) was 90.78% against and 9.22%. in favor (*Id.* at ¶ 28).

III. Analysis

Claimant bears the burden of proof by a preponderance of the evidence on its respective claims. California law applies as provided in the arbitration agreement.

SGHAD's Demand for Arbitration seeks a declaration that its performance of any contractual obligation to maintain, operate, or repair the Dewatering Facilities will be excused when the funds on hand have been depleted based on the doctrines of

impossibility, impracticality, and/or frustration of purpose. Alternatively, it seeks a declaratory judgment that an implied term in the Agreement relieves SGHAD of the obligation to operate, maintain, or repair the Dewatering Facilities upon the depletion of its funds. (*See*, Stipulation of Facts, ¶ 30).

A. Whether There is an Implied Term in the Contract

SGHAD argues that there is an implied condition in the Agreement that SGHAD's obligation to operate the Dewatering Facility after depletion of the initial $3.5 million funding was conditioned upon SGHAD's successful passing of an assessment. It requests that the Arbitrator enter a declaratory judgment that states that SGHAD's contractual duties under paragraph 6(a) of the Agreement are subject to an implied term that the SGHAD have access to assessment funding.

> The City believed and understood that SGHAD could only perform if it successfully secured an assessment in the future. Indeed, the E&S Report recommended "[t]he implementation of a Geological Hazard Abatement District (GHAD) [as] a means of raising the necessary funds for maintaining, monitoring, and managing the dewatering system for the benefit of all properties threated by renewed landslide movement." (citation omitted) This term was implied in the Agreement. (SGHAD Opening Brief, p. 19).

In support of its argument, SGHAD cites to legal principles that govern contract interpretation, with an emphasis on the mutual intent of the parties. (*Waller v. Truck Ins. Exch., Inc*. (1995) 11 Cal. 4th 1, 18, as modified on denial of reh'g (Oct. 26, 1995)). Though intent is to be inferred, if possible, solely from the written provisions of the contract (Civil Code § 1639), the contract must be interpreted as a whole, with various individual provisions interpreted together, to give effect to all. (*See, City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 472.)

Citing, *Kessler v. General Cable Corp*. (1979) 92 Cal.App.3d 531, SGHAD argues, a contractual term may be implied when the term arises from the language used or is indispensable to effectuate the intention of the parties, or when it can be rightfully assumed that it would have been made if attention had been called to it.

(SGHAD). But a term cannot be implied when the subject is completely covered by the contract. (*Id*.)

This case is distinguishable from *Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306. There, the unexpected cessation of a contemplated condition occurred, excusing further contractual performance. Here the condition of underfunding was anticipated and discussed in the Agreement. SGHAD Board members asked about this at the initial SGHAD meeting on March 29, 1999, and were told that City proposed a *larger* amount of the settlement go to SGHAD. (Decl. of Michael Rubin, ¶ 11; Stipulated Facts, ¶ 14) At its May 10, 1999 meeting when the Agreement was approved, SGHAD's Board first voted whether to *reject* the Agreement due to *inadequate* funding. (Stipulated Facts, ¶ 15; Ex. 13). The City correctly points out that,

> SGHAD's members and Board were well aware that the $3.5 million would not last indefinitely. Board members asked about this at the initial SGHAD meeting on March 29, 1999, and were told that City had proposed a larger amount of the settlement go to SGHAD but that had been rejected. (Decl. of Michael Rubin, Stipulated Facts, ¶ 14). At its May 10, 1999, meeting when the Agreement was approved, SGHAD's Board first voted to reject the Agreement due to inadequate funding. (Stipulated Facts #15, also see Ex. 13, Minutes of May 10, 1999 SGHAD Board Meeting, at SGHAD 4084.) (City's Opening Brief, p. 3).

In contrast to the SGHAD and City's Agreement, which should place permanent funding responsibility in the hands of SGHAD, the underlying Delmonico Settlement Agreement, limited the City's financial contribution to the Dewatering Facility at $3.5 million. It is unlikely that the City, after attempting to insulate itself from unlimited funding of the Dewatering Facility in the Delmonico Settlement Agreement, would turn around and impliedly accept that obligation in its agreement with SGHAD.

SGHAD has failed to demonstrate that the implied term (perpetual funding through assessments) was indispensable to effectuate the intent of the parties, because it would have been included if the parties attention had been called to it. Declaratory relief is denied on this ground.

B. Whether SGHAD's Performance is Legally Excused

SGHAD seeks to be excused from performing any further operations at the Dewatering Facility after funds have been exhausted. SGHAD seeks this relief on two alternative grounds. First, that performance is impossible or impracticable, and second, there has been a frustration of purpose.

(1) Impossibility/Impracticability

SGHAD cites Civil Code section 1511 in support of an order excusing it from performance of the Agreement. Section 1511 lists the type of excuses that qualify. They consist of cases where performance, "is prevented… by the operation of law," or by, "an irresistible, superhuman cause." None of these apply to SGHAD.

The law has evolved to allow impracticability to be an equivalent ground to impossibility. In the case of city of *Vernon v. City of Los Angeles* (1955) 45 Cal.2d 710, 720, the Court held, "[a] thing is impossible in legal contemplation when it is not practicable; and a thing is impracticable when it can only be done at an excessive and unreasonable cost." Each of the cases cited by SGHAD in support of impracticability are distinguishable from the facts in this case, because each involves additional tasks or obligations not included in the original understanding or involve tasks, the cost of which has become prohibitive for reasons external to the agreement or obligation. None of these circumstances apply here, where the operations of the Dewatering Facility have remained predictably constant, and no new tasks outside the scope of the operations have been added.

In *Superior Court of Alameda v. County of Alameda* (2021) 65 C.A.5th 838, the Superior Court filed a complaint for declaratory relief against the County and Sheriff, seeking a declaration that the sheriff was obligated to provide local court security services at the level specified in initial memorandum of understanding (MOU) with the local court until the parties entered into a new MOU. The Sheriff had sought $3 million in supplemental funding from the California Administrative Office of the Courts ("AOC"), but had received only $500,000 in supplemental funding. The case was remanded to the trial court to develop facts further defining the tripartite

relationship between the service provider (Sheriff) and the service recipient (County Court) and the funder (AOC).

In *Sutro Heights Land Co. v. Merced Irrigation Dist*. (1931) 211 Cal. 670, a landowner sought to enforce the California Drainage Act of 1907, by compelling the local irrigation district to drain landowner's parcel. Relief was denied, with the Supreme Court explaining that,

> [I]t was [never] intended by those responsible for the enactment of the Drainage Act of 1907 that an irrigation district, situated as is the defendant in this action, should be compelled to work its own destruction by undertaking to provide drainage facilities for the district, the expense of which is beyond its financial ability to meet or pay for. *(Id*. at 703).

The instant case is not an enforcement action against SGHAD by a party seeking to force SGHAD to perform any functions after its funds are depleted. The City concedes that they cannot compel a public entity (like SGHAD) to operate the Dewatering Facilities if and when SGHAD's funds are depleted and that mandamus will not issue to compel SGHAD to perform under those circumstances. (*See*, City Reply, p. 4).

In *Board of Supervisors of Butte County v. McMahon* (1990) 219 C.A.3d 286, the Court of Appeal reversed a trial court judgment commanding the County to comply with state law on the funding of all of its state-mandated welfare programs, and a preliminary injunction ordering the State to entirely fund the County's AFDC program. The Court held the trial court abused its discretion in granting the injunction and remanded for further evidence-taking and findings. Like *Superior Court of Alameda v. County of Alameda*, *supra*, this case involved substantially funded government entities, the County and the State of California, where the only issue was which one would have to pick up the financial shortfall for mandated services. There was never an issue that one of the entities, would soon become insolvent.

(2) Frustration of Purpose

SGHAD cites *Autry v. Republic Productions* (1947) 30 Cal.2d 148 and *Lloyd v. Murphy* (1944) 25 Cal.2d 48, as authority for excusal from further operation of the

Dewatering Facilities. The law will support relief where there is, "an unanticipated circumstance, the risk of which should not be fairly thrown on the promisor, [where it] has made performance vitally different from what was reasonably to be expected. [citations]." (*Lloyd v. Murphy* at 53-54). SGHAD's case fails on two prongs, the diminished funding was not "unanticipated." Unfortunately it was identified from the inception. If anything, the City and certain SGHAD Board Member's early warnings have come true. Also, the lack of funding has not made SGHAD's continued performance under the Agreement, "vitally different from what was reasonably to be expected."

SGHAD's request to be legally excused from performance of the Agreement must be denied on the grounds of impossibility/impracticability and frustration of purpose.

C. Whether Declaratory Relief is an Appropriate Remedy

Section 1060 of the Code of Civil Procedure provides, in part:

> Any person interested under a … contract, who desires a declaration of his or her rights or duties with respect to another… may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract.

The City argues that declaratory relief is not appropriate under the circumstances of this case, because SGHAD is not facing any immediate legal consequences as a result of its diminished funding capacity. "City concedes that they cannot compel a public entity (like SGHAD) to operate the Dewatering Facilities if and when SGHAD's funds are depleted and that mandamus will not issue to compel SGHAD to perform under those circumstances." (City Reply, p. 4).

SGHAD argues that "[o]nly a judicial declaration will legally foreclose a lawsuit; anything short of that leaves the decision in the hands of seven future city council members." (SGHAD Reply, p. 4). SGHAD does not explain why a decision whether or not to sue should not be decided by the City Council, or why it is a proper use of declaratory relief to prophylactically prevent a lawsuit.

SGHAD argues that declaratory relief is necessary, "to advise the public that SGHAD is not legally responsible for operating the Dewatering Facilities when funds are depleted." (SGHAD Reply, p. 5). SGHAD has not explained why this "advice" to the public would be meaningful. The stakeholders have already been apprised during two separate assessment campaigns, that the funding was woefully insufficient to sustain future operations at the Dewatering Facilities. To the extent stakeholders, or their representatives, were privy to the Delmonico Settlement Agrement, it also advised that the agreement did not eliminate an obligation by the city, "to the extent that such an obligation might exist independent of this [Delmonico] Agreement." (Ex. 4, § I. E).

Since the Delmonico Settlement Agreement did not relieve the City of possible future responsibilities concerning the Dewatering Facilities, it remains to be seen how the City might respond to the inevitable extermination of SGHAD's ability to continue operations. The City's response could be the product of legal, political and practical considerations, none of which are properly before the Arbitrator. This also raises the concern that the City has not necessarily consented to have those future decisions tested in an arbitration.

Finally, SGHAD's request for declaratory relief does not pass the two-pronged test set forth in *Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 C.A.4th 531, 540. Stonehouse requires that, "(1) the dispute [is] sufficiently concrete that declaratory relief is appropriate and (2)… [will] result in the parties suffering hardship." SGHAD has cited to the "hardship" of diminished funding, leading to a termination of SH's operations. This is not the type of hardship contemplated by the cases. There is no hardship to SGHAD in its inability to fund further operations. This deficit was baked into its creation and has been present from the beginning. Whereas it is a hardship to stakeholders whose homes are at risk from a lack of future landslide remediation efforts, this risk is not affected by a declaration that SGHAD is no longer responsible for funding the efforts. A declaration of this nature would be redundant, as this reality is readily apparent from the Delmonico Settlement Agreement and the Agreement between these parties. The future of the Dewatering Facilities is

dependent on a lot more than a simple declaration that SGHAD is running out of operating funds.

IV. Attorney Fees & Arbitration Costs

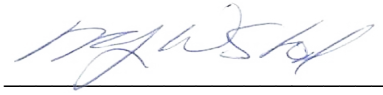
Rule 24(g) of the JAMS Comprehensive Arbitration Rules and Procedures ("Rules") allows for an award of attorney's fees and costs if provided by the parties' contract or otherwise allowable by law. The parties may also seek fee-shifting of arbitration fees and costs, in certain circumstances. In Scheduling Order No. 1, the issue of the entitlement to an award of attorney's fees and costs was to be determined at the Arbitration Hearing. At the Arbitration Hearing counsel stipulated that neither side is seeking an award of attorney's fees and costs or arbitration fees and costs. Each side shall bear its own fees and costs.

V. Final Award

SGHAD's request for declaratory relief, excusing its performance of its contractual obligation to maintain, operate, or repair the Dewatering Facilities, when the funds on hand have been depleted, based on the doctrines of impossibility, impracticality, or frustration of purpose is denied. Alternatively, SGHAD's request for declaratory relief based on an implied term in the Settlement Agreement that its contractual obligation to maintain, operate, or repair the Dewatering Facilities, is excused when the funds on hand have been depleted is denied. Judgment shall be entered for City of Anaheim. Each side shall bear its own fees and costs.

The Case Manager shall serve this Order upon the parties.

DATED: February 13, 2023



Nancy Wieben Stock
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