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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STRIDER CONSTRUCTION CO. INC.,

Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,

Defendant.

Case No. CV01-22-10932

**PLAINTIFF'S REPLY TO DEFENDANT
IDAHO WATER RESOURCE BOARD'S
COUNTERCLAIM**

Plaintiff Strider Construction Co Inc. ("Strider"), by and through its counsel of record, and by way of reply to Defendant Idaho Water Resource Board's (the "Board") Counterclaim against Strider, admits, denies, and alleges as follows:

GENERAL DENIAL

Strider denies all allegations set forth in the Board's Answer and Counterclaim unless an allegation is expressly admitted herein.

REPLY TO COUNTERCLAIM

1. Strider denies Paragraph 1.

2. As to the allegations in Paragraph 2, Strider admits Article 15, Section 7 of the Idaho Constitution, and Idaho Code § 42-1732 speak for themselves.

3. Strider admits Paragraph 3.

4. Strider admits Paragraph 4.

5. Strider admits Paragraph 5.

6. Strider admits Paragraph 6.

7. In response to Paragraph 7, to the extent Exhibit 2 is complete, Strider admits the same.

8. Strider admits Paragraph 8.

9. In response to Paragraph 9, Strider admits the Project was scheduled to be completed in one season. With respect to the remaining allegations, Strider admits the contract documents speak for themselves.

10. In response to Paragraph 10, Strider admits Idaho Code § 67-5711C speaks for itself.

11. In response to Paragraph 11, Strider admits its bid met the bid requirements and, to Strider's knowledge, Strider submitted the lowest cost bid for the Project. Strider denies any remaining allegations in Paragraph 11.

12. In response to Paragraph 12, Strider admits the Board sent the letter attached as Exhibit 3 to Strider. Strider denies all remaining allegations in Paragraph 12.

13. In response to Paragraph 13, Strider admits it sent the Board the letter attached as Exhibit 4.

14. In response to Paragraph 14, Strider admits it was awarded the contract and that Idaho Code § 67-5711C speaks for itself.

15. In response to Paragraph 15, Strider admits the Board and Strider entered into a contract, which is attached in part at Exhibit 1.

16. In response to Paragraph 16, Strider admits the contract between the Board and Strider speaks for itself. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the contract, Strider denies the same.

17. In response to Paragraph 17, Strider admits the contract between the Board and Strider speaks for itself. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the contract, Strider denies the same.

18. In response to Paragraph 18, Strider admits the contract between the Board and Strider speaks for itself. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the contract, Strider denies the same.

19. In response to Paragraph 19, Strider admits the contract between the Board and Strider speaks for itself. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the contract, Strider denies the same.

20. In response to Paragraph 20, Strider admits the contract technical specifications speak for themselves. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the technical specifications, Strider denies the same.

21. In response to Paragraph 21, Strider admits the contract technical specifications speak for themselves. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the technical specifications, Strider denies the same.

22. In response to Paragraph 22, Strider admits the contract technical specifications speak for themselves. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the technical specifications, Strider denies the same.

23. In response to Paragraph 23, Strider admits the contract technical specifications speak for themselves. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the technical specifications, Strider denies the same.

24. In response to Paragraph 24, Strider admits the contract between the Board and Strider speaks for itself. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the contract, Strider denies the same.

25. In response to Paragraph 25, Strider denies the same.

26. In response to Paragraph 26, Strider admits the contract between the Board and Strider speaks for itself. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the contract, Strider denies the same.

27. In response to Paragraph 27, Strider admits it submitted a dewatering plan on or about October 19, 2020. Strider denies the remainder of paragraph 27.

28. In response to Paragraph 28, Strider admits it provided a second Dewatering Plan submittal, submitted Nov 18, 2020, which included stamped cofferdam design by Junso Consulting Group bearing Brandon Junso's Idaho P.E. stamp and signature. Strider further responds that the Owner's Representative improperly rejected the resubmittal based on criteria not required by the contract between the Owner and Strider. Strider denies any remaining allegations in Paragraph 28.

29. In response to Paragraph 29, Strider responds that it started work on the dewatering system on or around December 2, 2020. Strider further responds a plan meeting the specification requirements had been submitted prior to commencement and the submittal response from the Owner's Representative took no objection to the cofferdam design.

30. In response to Paragraph 30, Strider admits that it notified the Board of changed conditions relating to the dewatering of the Phase I work area and requested an equitable adjustment, including as part of four separate letters. To the extent any remaining allegations are contained in Paragraph 30, Strider denies the same.

31. In response to Paragraph 31, Strider denies the same. Strider further responds that based on information and belief, any dewatering failure is the result of the Board's inadequate design, specifications, and contract documents, and/or changed conditions allowing for subterranean water infiltration.

32. Strider admits Paragraph 32.

33. In response to Paragraph 33, Strider admits that the Owner's Representative requested the installed pump be shut off. Strider denies any remaining allegations of Paragraph 33.

34. Strider denies Paragraph 34. Strider further responds that at the time of the concrete placement, there were three dewatering pumps in operation. Two for clean water that discharged directly back into the river and one turbid water pump that discharged into the treatment tank. Upon notification from the Owner's Representative that one of the clean water pumps was discharging turbid water, that pump was shut off and the turbid water pump was accelerated to handle the increased turbid water. No equipment was removed. Further, Strider personnel continued to monitor the dewatering effort to see if a dry cell was maintained before personnel left the site for the evening. Strider denies any remaining allegations of Paragraph 34.

35. In response to Paragraph 35, Strider responds that, based on information and belief, sometime during that night, subterranean conditions resulted in additional water infiltrating into the cell and overtaking the dewatering capacity, slowly flooding the cell to above the concrete apron elevation. Strider denies any remaining allegations in Paragraph 35.

36. In response to Paragraph 36, Strider responds that it notified the Owner's Representative that the water had overtaken the cell after the condition was discovered when the Inspector arrived onsite. Strider denies any remaining allegations of Paragraph 36.

37. Strider denies Paragraph 37. Strider further responds the cofferdam did not fail and that the conditions that resulted in the water overtaking the cell were beyond Strider's control.

38. In response to Paragraph 38, Strider responds that the Owner's Representative directed that a test be performed with respect to the concrete and further directed the testing agency to use ASTM test methods that are not accepted for this application. ASTM C805, Standard Test Method for Rebound Number of Hardened Concrete, 5. The parameters for this test, provide that the test method "is not suitable as the basis for acceptance or rejection of concrete." Strider further responds that the test was performed contrary to the parameters specified in the ASTM. Strider denies any remaining allegations of Paragraph 38.

39. Strider denies Paragraph 39 for lack of information sufficient to admit or deny the allegations.

40. In response to Paragraph 40, Strider responds that during the process of removing water from the area that testing occurred, the water froze. Strider denies all remaining allegations in Paragraph 40.

41. Strider denies Paragraph 41.

42. In response to Paragraph 42, Strider responds that it continued to notify the Board that the work could not be completed due to the deficient design and contract documents and additional changes and impacts that were impacting the Project. Strider denies any remaining allegations of Paragraph 42.

43. In response to Paragraph 43, Strider admits that Change Order 3 granted a time extension and speaks for itself. Strider denies any remaining allegations of Paragraph 43.

44. Strider denies Paragraph 44.

45. In response to Paragraph 45, Strider responds Drawing Sheet C-4 Note 6 relates to the rock armor part of the downstream improvement (i.e. downstream of the concrete apron). Strider denies any remaining allegations of Paragraph 45.

46. Strider denies Paragraph 46. Strider further responds as follows: Strider submitted a proposal for approval to use a precast keyway in lieu of cast-in-place concrete. That plan was reviewed by the Owner's Representative. Strider did include a proposed method of a hydraulic barrier in the subgrade between Phase I and Phase II separation line. The Board issued a Change Order drafted by the Owner's Representative incorporating the precast element of Strider's proposal.

47. Strider denies Paragraph 47.

48. In response to Paragraph 48, Strider responds that when Strider initiated dewatering of the Phase II downstream cell, water began flowing from under the existing dam structure. This condition was confirmed by an extensive pump test performed by Strider's geotechnical engineer RAM GeoServices (December 14 and 15, 2021) in the presence of IWRB Representatives. Upon

information and belief, the source of infiltration is most likely the apron slab underdrain system designed by the Engineer. Strider denies any remaining allegations of Paragraph 48.

49. Strider denies Paragraph 49.

50. In response to Paragraph 50, Strider admits the Board issued a Stop Work Order that speaks for itself. Strider denies any remaining allegations of Paragraph 50.

51. In response to Paragraph 51, Strider denies its dewatering plan was faulty or is the cause of any lateral water flow. Strider further admits it demanded amounts due and owing. Strider denies any remaining allegations of Paragraph 51.

52. In response to Paragraph 52, Strider admits that the Board issued an order to allow non critical work to proceed. Strider denies the Stop Work Order with respect to the Phase II cell under hydrostatic equilibrium has ever been lifted and denies any remaining allegations of Paragraph 52.

53. In response to Paragraph 53, Strider denies Strider was required to “[i]nstall radial gates...”. Strider further responds that Contract Drawing no GN-2 n. 5 speaks for itself and Strider installed the J-Seals in accordance with the Contract Documents. Strider denies any remaining allegations of Paragraph 53.

54. Strider denies Paragraph 54 and further responds that Specification 05 12 00 is inapplicable as Strider did not remove the gates nor was removal of the gates required by the contract.

55. Strider denies Paragraph 55. Strider further responds that Strider installed the J-Seals in accordance with the contract documents and that any failure of the J-Seal is the result of inadequate design, the existing condition of the Tainter gates, and/or other causes beyond Strider’s control.

56. Strider denies Paragraph 56. Strider further responds that Strider did not install the Tainter gates.

57. Strider denies Paragraph 57. Strider further responds that to Strider’s knowledge, all welds are in accordance with the contract documents. Strider further responds that to date, the

Board has yet to provide any notice or support to Strider supporting any purported failure of “some of the welds on the Tainter gates” not meeting the specifications.

58. In response to Paragraph 58, Strider admits it provided a notice regarding contract termination in accordance with the contract on or about July 27, 2022.

59. In response to Paragraph 59, Strider admits that the contract provides Strider may terminate the contract due to the Stop Work Order in place. In addition, Strider admits the Board’s improper withholding of payment entitles Strider to stop work. Among other claims and defenses, Strider further responds that the Board’s breaches of the contract excuse any further performance by Strider. Strider denies any remaining allegations of Paragraph 59.

60. In response to Paragraph 60, Strider admits the contract between the Board and Strider speaks for itself. To the extent the paragraph seeks to summarize, interpret, apply, or draw conclusions from the contract, Strider denies the same.

61. Strider denies Paragraph 61.

62. Strider denies Paragraph 62.

63. In response to Paragraph 63, Strider admits the Board has withheld payment due to Strider. Strider denies any remaining allegation in Paragraph 63.

64. Strider denies Paragraph 64.

65. Strider denies Paragraph 65.

66. Strider incorporates its above responses to paragraphs 1 – 65 of the Board’s counterclaim.

67. Strider denies Paragraph 67, including all sub-parts.

68. Strider denies Paragraph 68.

69. Strider denies Paragraph 69.

70. Strider denies Paragraph 70.

71. Strider denies Paragraph 71.

PRAYER FOR RELIEF

To the extent the Board's prayer for relief requires an answer, Strider denies the same.

AFFIRMATIVE DEFENSES

Having fully answered the Board's Counterclaim, and without waving any allegations previously denied, Strider asserts the following affirmative defenses:

1. Failure to state a claim upon which relief can be granted.
2. Assumption of risk, including by choosing design, method, and materials specified.
3. Accord and satisfaction.
4. Unclean hands.
5. Waiver, estoppel and laches.
6. Failure of condition precedent.
7. The Board's claim is overstated.
8. Failure to comply with contractual requirements
9. Failure to mitigate, minimize, or avoid damages allegedly sustained.
10. The Board's claims are barred in whole or in part by its own negligence and/or breaches of the contract.
11. Strider performed in accordance with the contract documents.
12. The Board's claims are limited or barred by the application of the *Spearin* doctrine.
13. Failure to join a necessary and indispensable party.
14. The Board's breach of the contract excuses any purported non-performance by Strider, if any.
15. Any damages sustained by Board or breach is the result of action or inaction of the Board, third parties, and/or site conditions beyond Strider's control.
16. None of Strider's alleged actions or inactions caused or proximately caused the Board's damages, if any.
17. Strider reserves the right to amend this answer, including the addition of affirmative defenses, warranted by investigation and discovery, and to make such amendments either before

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2022, a true and correct copy of the within and foregoing instrument was served upon:

Garrick L. Baxter, ISB #6301
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Meghan M. Carter, ISB #8863
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*Attorney for Defendant Idaho Water
Resource Board*

- Via U.S. Mail
- Via Legal Messenger
- Via Federal Express
- Via Facsimile
- Via iCourt E-File and Serve**

/s/ John Guin

John Guin